



216

VBCL Law Review

ISSN No. 2456-0480

DECEMBER 2022

Vaikunta Baliga College of Law

(A Unit of Dr. T. M. A. Pai Foundation, Manipal)

KUNJIBETTU, UDUPI - 576 102 KARNATAKA

Phone: (0820) 2520373

Email: vbcl_college@yahoo.com Website: www.vbclaw.edu.in

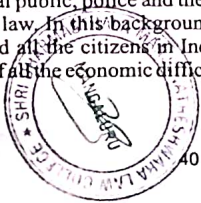
CONCLUSION

The Indian Constitution and the Code of Criminal Procedure provides a set of just and fair rights to the accused so that he can maintain his basic human dignity as envisaged by the founding fathers of our Constitution. These rights have been further reinforced by a number of judicial decisions that have come about in the past several years in conformity with most of the set international standards.

Provisions regarding liberty and protection of human rights of the accused have been given under Articles 20, 21 and 22 of the Indian Constitution. These rights include presumption of innocence, fair trial, right against ex-post facto operation of criminal law, protection against double jeopardy and immunity against self-incrimination. These constitutional provisions have been given concrete shape by the Code of Criminal Procedure which confers a number of rights and liberties upon an accused.

The judiciary through its landmark decisions has laid down several provisions guaranteeing many rights to the accused as well as to the convicts. Such rights include right to live with dignity, prohibition of inhuman prison practices such as solitary confinement, handcuffing, and torture. Accused also have other rights like right to medical attention, free legal aid, speedy trial, fair trial, to get paid for their work in prisons and the right to get bail after twenty-four hours in police custody etc. The Criminal Procedure Code (CrPC) expressly lays down a number of provisions relating to the rights of the accused at the time of arrest and during the pendency of the trial. These specifically include right to speedy trial, right to medical examination, right to bail, right against torture, right against arbitrary arrest, search of person and property etc.

Article 22(1) of the Constitution of India provides that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This constitutional provision has been ratified by the Section 303 of the Code of Criminal Procedure. Indian Constitution through its Article 21 implicitly guarantees the right of free legal aid at the expense of the State to an indigent accused who is very poor to afford a lawyer, this constitutional right has been given practical implication by the Section 304 of the Criminal Procedure Code. At last, it may be mentioned that we may have the best of the criminal procedure of the criminal law, it will not be effective unless the implementation machinery, at all levels including general public, police and the Courts are honest in implementing the spirit of the law. In this background there needs to be strictness right from the top and all the citizens in India should have self-restraint to be honest in spite of all the economic difficulties.



NEED FOR STRENGTHENING THE FOURTH PILLAR OF DEMOCRACY-ISSUES AND CONCERNS

Dr. Ashwini P*

ABSTRACT

One of the most crucial roles which media plays is it helps in shaping democracy. It keeps the general audience updated with any kind of social, economic or political activities which are happening all around, depicting how the world is changing and how it is supposed to grow in the near future. Media is now not only restricted to the radios and televisions but has its influence over the internet as well. The power of media has grown exponentially with the advent of social media. People usually are updated about everything by social media and the internet. This leads to even more reach to the general audience. Media has been given the status of being the fourth pillar in any kind of government. For sure any kind of government can't run systematically without having any of the three important pillars, yet it is now considered that one body equally necessary that runs side by side in the media. Thus, the media even plays an important role in building careers. There are a lot of enterprises who offer jobs to citizens with proper abilities and calibre, fit for the job. The demand and supply of mass communication are well flourishing these days and the brightest minds are being attracted to it. Mass Media and technology have blended perfectly and have made sure to reduce the events of corruption and other such issues in society. At the same time, the journalists are expected to provide totally unbiased and true stories about any event which they report. At this juncture, this paper analyses need for strengthening the Media and also author has made an attempt to come out with possible suggestions.

Key Words: Media, democracy, regulation, journalism, ethics.

* Assistant Professor, SDM aw College, Centre for Post Graduate Studies & Research in Law, Mangaluru

INTRODUCTION

Those days are gone when the media had imbibed the ideas of freedom in the minds of the people of democratic country like India. Media has reached a long way from being regulated and unregulated to centralized and privatized. The facets of media have transformed and each form of media of today enjoys a significant number of audiences. But with great power to influence, the media also is tainted with evils of false information, baseless media trials, paid journalism and so on. The advanced civilization of today has achieved the peak of freedom and knowledge. Today's world is at everyone's finger-tip. But do we all see the same world? Is it biased? Does the generation feed itself a daily dose of present-day occurrences or is it fed? Who provides it?

All the questions invariably point towards one thing the 'Media'. Media is the essence of everyone's daily mood. If the media reports of a winning sports victory and does not highlight the sufferings of the children of Yemen, an essential identification of media functioning can be analysed which is that the media grows on our daily interest and likes. The social media is an ocean where any drop of information put into it goes untraceable. Regulation of social media is a herculean task altogether but is there regulation in place for registered media houses indulge in profit making?

This particular paper deals with the reasons for diminishing quality of journalism, the judicial assertions regarding the same, the legal framework around the covering of issues by the media and suggestions for effective and responsible journalism.

THE MEDIA'S MAGNIFICENT MALAFIDE SIDE

In the legal framework of India, there is no express statutory provision that allows for the 'Freedom of Press', but the freedom of press is interpreted through Article 19(1) (a) of the Constitution of India which enshrines within itself the Freedom of Speech and Expression.¹ Media Ethics has been defined as "Media ethics job role is to deal with the specific ethical principles and standards of media."² The Role of Media holds paramount importance to today's world yet it is an undisputable fact of the present-day world that the quality of content reported by the media houses of today is diminishing. The situation is not limited to a particular country but it surpasses the borders. In Russia there occurred a huge spill from a power plant but the information of the same reached the appropriate authorities through social media and the Russian President Vladimir Putin questioned the status quo frowning on the fact that the nation gets to know

1 K D Gaur, 'Constitutional rights and freedom of the media in India,' (1990) 11 JMLP 44

2 Dr. Archana, 'Media Laws in India: Origin, Analysis and Relevance in Present Scenario', (2018) 7 IJHSSI 14

of emergencies through social media. But there is high failure of social media on points of authenticity, accuracy and originality of the content circulated in social media. The rescue of any rational citizen in this regard will always be to fall back on public media housing that are engaged in press or broadcasting. The situation of the right to know of the citizen is pitiful for today as even though there exist faculties to exercise such right, there exists institutions who allow for the exercise of such right, the subject matter of the right that is the knowledge is trickled to circulation of cheap quality content.

THE MAIN OUTLINE OF CAUSES FOR DIMINISHING QUALITY OF JOURNALISM IN SENSITIVE ISSUES

"Four hostile the press are more to be feared than a thousand bayonets", said Napoleon Bonaparte. The statement holds true to today's different facets of media. The present-day journalism with biased opinion holds the power to wreck the thinking of even a logical Indian to recheck his own true views, cause communal conflict, and make the public lose confidence in actions of the government.

Below are the causes identified by the author for the dilution of quality content on media.

The Free Bird: Social Media

The coverage of issues by media is highly for a profitable purpose in the present-day world than for a social cause. The media of today exists in different forms, from the newspapers, radio, television, online blog, e-print of newspaper, social media, social media handle of so-called woke citizens. The social media is a hoarder of news whether it is false or true. There is a new term in the present generation called a social media influencer who as a person is only a virtual reality and unlike a traditional journalist who is bound by the ethos of his profession to be neutral and not publish news in insightful manner, the social media influencers are politically biased and as a general rule is aimed at producing content for gaining high numbers of followers. The items circulated by such influencers made people to believe the same. The mere portrayal of social, political, legal content does not happen on social media, there are always a side taken, a blame put on and a judgment delivered. Hashtag activism occurs by such social media influencers which are clues for media houses to report on. This is a means for the media to identify the interest of the public, but this does not allow for identification of need of information that will enable for an informed citizenry. The trending hashtags become sensitive issues for the media houses to report on.

For instance, the unfortunate event of mega-star Sushant Singh Rajput's Suicide, it trended on the social media network, there were demands on social media by netizens with the hash tag "JUSTICE FOR SSR" and so on.

The demand of fake media trial continued which enabled for broadcasting media to unearth their own facts on the basis of social media activity. The citizens have right to know but the outpour of emotions on social media is a delicious invitation for media houses to guise themselves as producer of the information to satisfy our interest and inevitably leads to export of required information in a less popularized manner.

The Hide and Seek of True Facts and TRP Facts

As rightly called the fourth pillar of democracy, be it an issue of international impact, national order, or a local tragedy, the media is bound to report the issue as it is. There should be no exaggeration, distortion, biased highlighting, intentional concealing or wrongful conveyance of the facts. Media should act as an educator of public and not mis-leader of public. The comments of the media should pave way for an educated thinking community of people. That must be its task of the media and the source of its power should be on how such comment of media instills rightful thinking. There have been instances when the facts are not portrayed truly but are used in such a manner to gain more circulation.

For instance, one very popular national newspaper published a headline stating "Supreme Court Judge says that her daughters are liabilities". The true fact was that the Justices were obligated to reveal their asset and property holdings. In the liability column the Justice had put that he had daughters who were yet to be married. The intention of the Justice was to only convey that he had expenses of marriage to be met in future and not that daughters were liability. But the media had misled the audience to form an opinion of sexism against the Justice.³

N Ram a popular journalist in one of his articles points out his observation from the book "Markets, Morals and the Media" by Prabhat Patnaik and states that there is disproportionate coverage that leads the public to believe what the media houses want to convey rather than look for the actual truth. He highlights the occurrence of the carnage of Muslims in Gujarat in 2002 where the state played a complicit role and Tehelka's sting operation in 2001 that exposed bribery. In these instances, the national media uncovered the truth of the matter whereas the local media tried to "push up the issue". Thus, it is observed that in sensitive issues only facts that gain TRP for the media house is put out for public scrutiny whereas the complete truth is hidden for their own agendas.⁴

3 D. Gorwala, *The Press as an Educative Factor, Freedom of the Press in India*, Edited by A. G. Noorani, Bombay, P. 36

4 Markandey Katju, 'Media Issues and Responsibility', *The Hindu*, October 21, 2011
5 Pam N, *The Changing Role of the News Media in Contemporary India* available at www.the-hindu.com/multimedia/.../Contemporary_India_863821a.pdf last accessed 20 September 2020

6 Ibid

The One Rupee Payer and the Behind the Scenes Payer

Lord Acton, a British historian famously said Power corrupts and absolute power corrupts absolutely. The media within itself holds immense power to change the thinking and perspective of people. Though the cost of newspapers come below ten rupees, the worth of the information to influence the citizens is priceless. But as there exists corruption in every wake of life, so it does exist in the case of journalism too, and is popularly called as paid news.

47th report presented by Department-Related Parliamentary Standing Committee on Information Technology regarding the "Issues Related to Paid News" in the Lok Sabha on May 6, 2013 defined paid news as, "advertisements camouflaged as news, denial of coverage to select electoral candidates, exchanging of advertisement space for equity stakes between media houses and corporate and the rise in paid content as manifestations of paid news."⁷

Paid news is another menace in free flow of information to the public as news is tainted by the intention to convey something for a consideration which is taken by the publisher or the owner of such media. The Radio Tapes scandal that occurred in 2009 essentially exposed the corruption of the media houses and political lobbying.⁸ In the case of *Dr. Narottam Mishra vs Election Commission of India*,⁹ Supreme Court stayed an order of Delhi Court that tied the hands of the Election Commission from taking action against paid news. The stay enabled the panel to trace the instances of paid news.

The existence of paid news corruption belittles the essence of democracy and right to know of citizens. The media does not exist to provoke or influence the public to involve in acts detrimental to public interest but the profit and money greedy media enterprises indulge themselves and interfere the flow of thought of citizens in sensitive issues.¹⁰

WHAT IS HAPPENING? AND WHAT IS THE MEDIA COVERING?

The duty of the media while imparting news should be based on a moderate classification of issues. Media deals with politics, society, governance, sports, achievements, corporate, legal, entertainment and various other issues. But the media indulges itself in highlighting the issues of celebrities and other issues that will only make the audience a product of one-way gossip on issues essentially covered in "Page 3".

- 7 Parliamentary Standing Committee on Information Technology 47TH on the "Issues Related to Paid News", May, 2013
- 8 Satya Sagar, 'The Radioactive Indian Media,' *Economic and Political Weekly*, DECEMBER 25-31, 2010
- 9 *Dr. Narottam Mishra vs Election Commission of India* 249 (2018) DLT 130
- 10 *Supra* Note 9

At times there is high expectations on the media to cover certain topics of importance and media fails to live up to the expectations of the public, because the issue that needs to be covered and is covered is entirely different¹¹. In a Lakme Fashion Week event that took place in Nagpur, there were 500 odd journalists who had come to cover the news at the venue which was exhibiting cotton clothes. But at a distance of twenty kilometres from the place of event there were cotton farmer suicides that were occurring which went unreported.¹²

Sensationalism of media has led to losing of confidence in media. The focus is only on issues of murders, kidnappings, sex scandals, misconduct of wealthy actors and businessmen etc. American Society of Newspaper Editors' study revealed that, 80% of the citizens said they believed that the "journalists chase sensational stories because they think it will sell papers, not because they think it is important news"¹³.

DIVIDE AND RULE? THE RELIGIOUS DIVIDE WIDENED

Being judgmental is human nature. But the judgmental nature of the media has repercussions that can cost the life of many. With respect to any issues of bomb blast or terror attacks there is prejudice against the doing of Muslims. Soon after such acts there are several media houses who claim that one of the Muslim militant organisations has claimed responsibility of the same. Though such information is not true.¹⁴

Such kind of labelling or branding on a particular makes people non-secular and encourages Islam phobic attitude. Any aggravated unrest amongst the public can incite riots, religious violence and harm¹⁵. With respect to the *Sudarshan TV case* that is still in the Supreme Court, Justice Chandrachud has observed that, "Let a message go to media that a particular community cannot be targeted. We have to look forward the future of a nation which is cohesive and diverse. We recognize national security, at the same time we need to have individual respect too".¹⁶ The three-judge bench of Justices DY Chandrachud, KM Joseph and Indu Malhotra passed an order with respect to one of the programmes named UPSC Jihad by Sudarshan TV and said that, "The

11 Supra Note 7

12 Supra note 4

13 "Current Problems in the Media, Daily Source Global Social Justice news", available at <https://www.dailysource.org/about/problems#.X2themgzblIU> (Visited on 22 September 2020)

14 Supra note 12

15 Ibid

16 Debayan Roy, Let a message go to media that a particular community cannot be targeted, 10 remarks made during the "UPSC Jihad" hearing in Supreme Court" available at <https://www.barandbench.com/news/litigation/10-remarks-made-during-the-upsc-jihad-hearing-in-supreme-court> (Visited on 22 September 2020)

newscaster allegation is that a since a particular group is gaining entry into civil services, How far insidious is this? Such insidious charges also point out at the UPSC exams. Criticisms have been cast on UPSC. Such allegations are without any basis of facts, which leaves with following questions as to how can this be allowed? Can such programs be allowed in a free society? Shouldn't there be enforceable standards that the media profess itself to so that Article 19(1)(a) is upheld?"¹⁷

During the initial spread of corona virus, there were many false allegations towards the Muslim community members who attended Tablighi Jamaat.¹⁸ Not only that, several media platforms with presence in social media also circulated the messages of false allegation on the members of the Muslim community that proved to be false later on.¹⁹ These kind of acts by the media create public unrest and promotes hatred between communities. The seed of divide sown by false information will not only cause problems in near future but also has serious affects in future²⁰.

THE TRIAL OF THE INCOMPETENT

The trial by television and newspaper has become old now. At present social media network such as Instagram, Face book, Twitter and even LinkedIn have participants who engage themselves in analysing case, playing the blame-game and even adjudicate for their own satisfaction the wrongdoer without the authority, competency and required knowledge for the same.

Be it in the case of *Kanhaiya Kumar of JNU*²¹, *Manu Sharma v State of Delhi* popularly known as the *Jessica Lal murder case*²², *Nupur Talwar v Central Bureau of Investigation (Arushi Talwar case)*²³, *Sheena Bohra*

17 Debayan Roy, regulate digital media first before TV or Electronic media, Centre tells Supreme Court in plea against Sudarshan TV'S UPSC Jihad", available at <https://www.barandbench.com/news/litigation/breaking-regulate-digital-media-first-before-tv-or-electronic-media-centre-tells-supreme-court-in-plea-against-sudarshan-tvs-upsc-jihad>, (Visited September 20 2020)

18 "Police Says Zee News Report on Medical Workers, Tablighi Jamaat Members Being Attacked Is False", The Wire available at <https://thewire.in/media/firozabad-police-zee-news-tablighi-jamaat> (visited on 21 September 2020)

19 Aditi Chattopadhyay, Top Five Fake News Targeting Muslim Community Amid Nationwide Lockdown, The Logical Indian, available at <https://thelogicalindian.com/news/islamophobia-covid-19-coronavirus-fake-news-muslim-tablighi-jamaat-20543> (Visited on 21 September 2020)

20 Supra Note 19

21 Nithin Yadav, Nation wants to know Indian media's role in JNU coverage, available at <https://www.dailyo.in/politics/jnu-row-kanhaiya-kumar-umar-khalid-anti-india-slogans-fake-videos-medias-ole-accountability-democracy/story/1/9194.html> (Visited on 19 September 2020)

22 Manu Sharma v State of Delhi AIR 2010 SC 2352.

23 Nupur Talwar v Central Bureau of Investigation AIR 2012 SC 1921

Munster Cave and several others, the media has led to trial by them. For investigative journalism if validly done in the interest of justice there is aid to the legal system. But if the trial is solely concentrated on aspects to keep the audience engaged and to increase the ratings of such outlet it leads to negative developments in the case as well as public perspective²⁴.

The Judiciary has at different times in different cases warned the media to adhere to strict journalistic conduct. With respect to Parliamentary Shashi Tharoor's suit for interim injunction against the journalist Arnab Goswami with respect to his late wife *Sunanda Pushkar's* case where journalist Arnab Goswami has been conducting media trial on his own accord, Justice Gupta warned and stated that, "This is not evidence. They are statements from here and there. A court has to take a point of view on what is evidence. You are nobody in the field to get evidence or get access to evidence. Understand what evidence in criminal law" "... Is it is not a reflection on the Plaintiff (Tharoor) but that of the investigating officer. Can there be a analogous investigation or trial by some other organ. Would you not like the judiciary to take their own course?"²⁵

In the case of court hearing of Actress Rakul Preet's connection with drugs, the Justice Navin Chawla observed as follows, "As far as prayer made in interim application is concerned, it is hoped that media houses would show restraint and abide by the Programme Code and other guidelines, both statutory and self-regulatory while making any report."²⁶

The media for its sensational greed has also stooped low to name the victims of crime who are statutorily protected of privacy rights. As an attempt to regulate the Press Council of India has developed the Norms of Journalistic Conduct to draw a line on what the media can cover and what is off limits. It touches the aspects of Privacy Rights, Newspapers to Eschew Suggestive Guilt, Investigative Journalism, and Caution in Criticizing Judicial Acts.²⁷

THE LEGAL FRAMEWORK TO GOVERN THE MEDIA

The Constitution of India has defined free speech and they are subjected to the reasonable restriction under Article 19(2). Any information in any

Supra Note 16

Aditi Singh, Responsible Journalism need of the time: Delhi HC directs Arnab Goswami to show restraint, bring down rhetoric in Sunanda Pushkar case, available at <https://www.barandbench.com/news/litigation/delhi-hc-tharoor-arnab-goswami-show-restraint-bring-down-rhetoric-sunanda-pushkar> (Visited on 10 September 2020)

Aditi Singh, "Hope media houses will show restraint, abide by Programme Code while reporting on actor Rakul Preet: Delhi HC" available at <https://www.barandbench.com/news/litigation/rhea-chakraborty-drug-media-houses-restraint-reporting-rakul-preet-delhi-hc> (Visited 20 September 2020)

27 Sanatan Deshpande, A critical analysis of media trial and its effect on Indian judiciary, 6 IRRARJAN-MARCH-2019

media platform shall pass the test of Article 19(2) and that alone. The media freedom shall not affect the operation of any existing law or any law made by the State in the "interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public decency or morality or in relation to contempt of court, defamation or incitement to offence" as mentioned under Article 19(2) of the Indian Constitution. In this regard, it is the responsibility of the media to act as the facilitator of free speech. The deep-rooted opinion about the digital media is that it is totally different from the print media. Hence the rules and regulation relating to the print media cannot be adopted for the broadcasting. The High Court of Bombay has rightfully observed that "true democracy can thrive only in a free clearing house of competing ideologies and philosophies, political, economic and social. In this the press has an important role to play. The day this clearing house closes down would toll the death knell of democracy"²⁸ Unlike the US Constitution restriction on freedom has been expressly provided under the Indian Constitution.

The Indian Penal Code the substantive criminal law. Section 124A of the IPC punishes any person making sedition against the government with imprisonment or fine or with both. Section 499 and 500 of IPC is broad enough to punish any person publishing or disseminating any defamatory statement either through mainstream media or electronic media with simple imprisonment for 2 years or with fine or both. Further the Indian Penal Code under section 501 prohibits the printing or engraving of defamatory matter. So also selling of such a printed or engraved defamatory substance is an offence under section 502 of the Indian Penal Code²⁹.

The most important task of social media is to provide truthful and objective information to the netizens that will empower them to form rational opinions, which is a sine qua non in the democratic system. Although the mainstream media i.e., whether print or electronic form, social media is more popular due to its faster reach from a wider audience. It also has a greater potential to become viral because of the several platforms like YouTube, Facebook, twitter, WhatsApp, etc. considering all these serious impacts the social media monster capable of causing, it is therefore important to regulate social media as there already exists sufficient framework and judicial pronouncements to regulate print and electronic media³⁰.

28 Binod Rao v Minocher Rustom Masani (1976) 78 Bombay L.R. 125

29 Supra Note 24

30 Ibid

- Social media falls under the definition of 'intermediary' provided under Section 2(1) (w) of the Information Technology Act, 2000³¹, it is required by social media under the "Intermediary Guidelines, 2011" notified under Section 79³² of the "Information Technology Act, 2000"³³ to 'due diligence' while discharging its duties and "to inform the users not to host, display, upload, modify, publish, transmit, update or share any information that may affect public order and unlawful in any way".
- The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011³⁴ defines 'sensitive personal data.' The rules mandate any legal entity that is processing, dealing or handling sensitive personal data to implement reasonable security practices and procedures³⁵.

31 The Information Technology Act, 2000 (Act 21 of 2000), s.2(1) (w), "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-marketplaces and cybercafes;

32 The liability of the intermediaries is lucidly explained in section 79 of the Act. Section 79 of the Information Technology Act, 2000 exempts intermediaries from liability in certain instances. It states that intermediaries will not be liable for any third party information, data or communication link made available by them.

33 The Information Technology Act, 2000 (Act 21 of 2000), s. 79 (2)(c), 'the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.'

34 The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 r. 3, 'Sensitive personal data or information. - Sensitive personal data or information of a person means such personal information which consists of information relating to;

- password;
- financial information such as Bank account or credit card or debit card or other payment instrument details;
- physical, physiological and mental health condition;
- sexual orientation;
- medical records and history;
- Biometric information;
- any detail relating to the above clauses as provided to body corporate for providing service; and
- any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise: provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules'

35 Supra Note 24

- Section 43A of the IT Act, 2000³⁶ imposes civil liability upon body corporate while dealing, handling or processing with sensitive personal data, to provide for damages in case of failure to protect data.
- Section 66³⁷ of the IT Act, 2000³⁸ provides restrictions for transmission, posting of messages, emails, and comments either through computer or other computer devices including social media which are offensive and unwarranted³⁹.

The Press Council of India claims to be the statutory regulatory body in India established under the Press Council of India Act, 1978. The PCI was constituted to serve as a watchdog for newspapers and news agencies of the country, with powers to censure outlets for violations. The Press Council has encouraged the media houses in the country to not sensationalize while reporting suicide and other cases. The PCI has advised the media to follow the normal journalistic conducts and to not conduct parallel trials during sensitive news reporting, especially while covering the recent death of film actor, Sushant Singh Rajput. Even though the press council does not have punitive powers to discipline the media, it is the only available instrument outside the defamation law and contempt to influence media policies relating to judicial proceedings.

"News Broadcasting Standards Authority (NBSA)" is an independent body set up by the News Broadcasters Association. Its task is to consider and adjudicate upon complaints about broadcasts. It is also representative and collective voice of the private television news and current affairs broadcasters in India. Funding for this organization is entirely by its members. It administers the Codes of Ethics & Broadcasting Standards,

36 The Information Technology Act, 2000 (Act 21 of 2000), s.43A "where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, to the person so affected.

37 Struck down as arbitrary in Shreya Singhal Vs Union of India

38 The Information Technology Act, 2000 (Act 21 of 2000), s.66A "Any person who sends, by means of a computer resource or a communication device, -

- any information that is grossly offensive or has menacing character; or
- any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.⁴⁰ In Shreya Singhal and Ors. vs Union of India (2013) 12 SCC 23 struck down Section 66A of the Information & Technology Act, 2000

39 Supra Note 24

which has been voluntarily drawn by the News Broadcasters Association (NBA) for its member broadcasters to demonstrate their commitment to responsible broadcasting and to self-regulate themselves. The powers of NBA⁴⁰ include:

- "Authority can, warn, admonish, censure, express disapproval against and/or impose a fine upon the broadcaster. It can also recommend to the concerned authority for suspension / revocation of license of such broadcaster".

- It can impose fine not exceeding Rs. 1, 00,000/- (Rupees One Lakh only) and the same can be recovered from the concerned Broadcaster.

The following are the guidelines laid down by NBSA while reporting sensitive issues:

- "Guidelines on Reportage of Cases of Sexual Assault, 2013": There must be sensitive, discretionary and sound judgment to be exercisable by the News Channels particularly in the following cases:

a. When disclosure of details of the sexual assault would only serve to re-traumatize the survivor;

b. When details of the sexual assault are needed to be disclosed to secure a safe environment.

- "Guidelines to prevent communal colour in reporting crime, riots, rumours and such related incidents, 2012": While reporting on the victims of any such incidents, care should be taken to prevent disclosure of their identity based on grounds such as "caste, religion or any other distinction".

- "Norms and Guidelines on Paid News, 2011": As per this guideline, prohibits the broadcast or associating in any manner with the Paid News broadcast. Any kind of the violation of these norms shall be subject to the procedure and consequences provided under the "News Broadcasting Standards (Disputes Redressal) Regulations".⁴¹

40 News Broadcasting Association

41 News Broadcasting Standards (Disputes Redressal) Regulations, r.7, "Where, on receipt of a complaint made to it or otherwise, the Authority has reason to believe that a broadcaster has violated or offended against the Code of Conduct, the Authority may, after giving the broadcaster concerned an opportunity of being heard, hold an inquiry in such manner as is provided by these Regulations and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish, censure, express disapproval against and/or impose a fine upon the broadcaster and or recommend to the concerned authority for suspension/revocation of license of such broadcaster;

Provided that the fine imposed by the Authority shall not exceed Rs. 1,00,000/- (Rupees One Lac Only) and such fine shall be recovered from the concerned broadcaster;

Provided also that the Authority may not take cognizance of a complaint if, in the opinion of the Chairperson, there is no sufficient ground for holding an inquiry"

- *Specific Guidelines for Reporting Court Proceedings, 2009*: A news report in relation to a proceeding pending in a Court, Tribunal or other judicial forum shall be neutral and balanced, giving the version of all, or substantially of all, parties to the proceedings.

NBA Guidelines on Media Reporting on Children: This guideline was proposed in the background of the *Court on its own motion Vs. Union of India & Ors*⁴². According to this Guideline, Media shall ensure that child victims of rape, other sexual offences, trafficking, drug/substance abuse, elopement, organized crimes, and children used in armed conflicts, children in conflict with law and child witnesses etc. are automatically guaranteed anonymity for life.

Although there cannot be a 'Blanket Ban' on media from reporting rape and other sexual offences, media is required to restrain from covering such issues in the interest of criminal justice system. For instance, The Patna High Court had issued a notice to the Press Council India restraining the media from probe into the Muzaffarpur Shelter Home case. The bench of Justices Madan B. Lokur and Deepak Gupta issued notices to the Press Council of India, Editors Guild of India, News Broadcasting Standards Authority and News Broadcasters Association seeking not to sensationalize the alleged rape and sexual offences against several women. Media is required to comply with several laws, rules, guidelines in this matter.

- Section 228A of IPC⁴³ prohibits the disclosure of the name of the victim of sexual offences which shall be punishable with imprisonment for two years and fine. It is however, subjected to exemptions under Section 228A (2).

- Section 23(2) of the POCSO⁴⁴ Act prohibits the publishing of the identity of the child victim of sexual abuse.

42 (Writ Petition (Civil) No. 787 of 2012)

43 The Indian Penal Code (Act 45 of 1860) s. 228A, 'Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorization in writing of, the victim; or

- (c) where the victim is dead or minor or of unsound mind, by, or with the authorization in writing of, the next of kin of the victim: Provided that no such authorization shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognized welfare institution or organization.'

44 The POCSO Act, 2012 (No.32 of 2012) s. 23(2), 'No reports in any media shall disclose, the identity of a child including his name, address, family details, school neighborhood or any other particulars which may lead to disclosure of identity of the child.'

- Norm 6(ii) of the Norms of Journalistic Conducts⁴⁵ imposes restriction on the media from disclosing any identity related to the survivors of sexual offence in accordance with their right to privacy.
- “Guidelines on Reportage of Cases of Sexual Assault, 2013”, issued by NSBA provides that, “in reporting on cases of sexual assault on women, victims of child abuse and juvenile delinquents, to respect their privacy; the name, photograph and other details that may lead to disclosure of their identity or that of the family shall not be broadcast or divulged”.

ETHICAL REGULATION OF MEDIA HOUSES

The media has reached a long way from ‘traditional journalism’ to ‘participatory journalism.’ media has the inherent responsibility to act as ethical gatekeepers in gathering, monitoring and publishing news as well as other information. However, the challenge arises when there are no statutory guidelines to follow while acting as ethical gatekeepers of sensitive coverage and reporting. Is it possible when ‘accuracy’ and ‘speed’ competes each other in the media houses to conform to its ethical standards? These questions are raised at the two stages of information gathering and information reporting⁴⁶.

It is expected from every reporters and journalists to act in accordance with the ethical standards so as uphold their constitutional rights of media freedom. Media shoulders its responsibility and provides to its readers and viewers accurate information giving objective view without unnecessary attempt at sensationalizing the events. Accountability, accuracy and fairness are three key ethical principles the new age media shall follow in the entire course sensitive information coverage. The dictate of the Press Council of India, News Broadcasters Association as well as analogous bodies across the world is to explicitly promote the standards of the media by building up for it a code of conduct. It is to be appreciated that our legislation very wisely did not entrust on the council the task of ‘laying down’ a code of conduct. What more is required to better understand the importance of regulating me that the words of profound journalist, M.K Gandhi, “The sole objective of the journalism should be service. The newspaper or press is a great power; but just as unchained torrent of water submerges the whole geography and devastates crops, even so an uncontrolled pen serves but to destroy”. If the control is from without, it proves more poisonous than want of control. It can be gainful only when exercised from within”.

45 The Norms of Journalistic Conducts n. 6(ii), ‘Caution against Identification: While reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published’

46 Supra Note 2

47 Ibid

FINDINGS AND CONCLUSION

Pen is considered to be mightier than the sword. Though the saying might be old, it is still true that a single post, a single comment, a single opinion expressed has the ability to break borders for international wars, to trigger mass killings in the name of religion, or to push an individual to accept terrorist ideologies. The media should and must always think twice before putting anything out on the public domain and the appropriate authorities must be on their toes to curb maximum impact of any information mishap. The existing legal framework signals the need to overlook our regulation system. The first approach shall be to establish an independent body for regulating social media by laying fundamental principles. Secondly, it is the need of the hour for content porting of laws so as to reduce the gaps and ambiguities of various laws.

With regard to the role of media in covering of sensitive issues, given below are the suggestions:

- Structure change of PCT, with powers to penalize and enforce orders.
- Journalism as a profession must be backed by an adequate academic course, adherence to code of conduct and should include license to practice.
- Restrictions to be placed on the growing number of social media influencers who have more than a threshold of followers to be bound by a clear conduct which will reinforce more responsibility on such private individual to exercise the media with conscious mind set.
- Rather than only actions against the media forums, there must be provision for declaration to be made by the media with such reasonable impact clarifying to the public the information that had been falsely reported as a corrective mechanism.
- Local news system must be encouraged to disclose true facts as they usually form the basis of any news.
- Media’s conduct is expected to be governed with certain amount of professionalism and ethics in the mind.
- Media shall be regulated statutorily and by self regulation mechanisms like any other profession in our country by disciplinary measures to be administered on violation of the code of conduct by journalists, media houses, etc.
- It is essential to make ethical studies obligatory in media school emphasizing its importance.
- With respect to news channels, it must be made sure that there is a dedicated time slot for information that the media thinks are sensational, which must not be run in greater percentage than other relevant news.