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**MEDIA ETHICS AS A TOOL FOR SELF-REGULATION***Dr. N. Sathish Gowda<sup>1</sup> and Dr. Ashwini P<sup>2</sup>***Abstract**

*Collecting and selling of news and views is essentially a public trust by the media, which is also an underlying principle that governs or should govern the Media. The same kind of trust is implied in the relationship between a doctor and his patients, though medical men work under the discipline of a professional code and are obliged to hold medical degrees, whereas journalism is a 'free' profession subject only to the external restrictions which the law may place upon it. But the dishonest doctor can harm only a few dozen or a few score patients, while a dishonest journalist may poison the minds of thousands or millions of his fellow men. At this juncture, the paper evaluates the question about ethical/ self-regulation of media in the light of the fundamental public purposes and social responsibilities and also an attempt has been made to examine role of codes of conduct or media ethics in avoiding the harm or danger supposed to be done by media personnel to an individual, a family, a group, a culture and to a country.*

**Key Words:** *Media, Self-Regulation, Statutory-Regulation, Ethics, Co-Regulation.*

**I. Introduction**

Media is the powerful social institution which brings changes within societies, subcultures, families and individuals. It plays an important role in shaping opinions, beliefs and attitudes. It is the primary source of information in modern democratic society. People of this fast-moving postmodern world solely rely on the media for first-hand information. It makes their judgment concerning home, family, education, institution and societies on the basis of information provided by the media. Furthermore, the media plays an important role in fashioning our tests and moral stands. It has a significant role in the socialization of the young generation. Moreover, the media has been called the fourth pillar of democracy. It is the backbone of democracy. It helps democracy become 'of' and 'by' the people. It facilitates

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democracy by making interaction between the governed and the governor. However, the media is pervasive in our lives. It has a tremendous impact on our life, our government and our society as a whole. In view of the deep penetration in society and in our life, people should be vigilant and conscious of its negative impact. As the saying goes, everything has its two sides, negative and positive. So, this equally applies to media<sup>3</sup>. No doubt it has positive contributions and positive impact on our society but, its negative impact can also not be denied as people have raised their voices against the media on several occasions. Apart from this, media have got potential to be used for some negative activities such as propaganda, character assassination, invasion of privacy etc. Seeing the other side of the media's negative impact or potential to have a negative impact, it is appropriate to use this powerful instrument with great caution and control. In view of the caution taken to control the media is not legal, rather moral or ethical. Media practitioners and media organizations themselves resolved to come out with 'codes of conduct' or 'canon of journalism' known as media ethics or journalism ethics as controlling measures. At this juncture, At this juncture, the paper evaluates the question about ethical or self-regulation of media in the light of the fundamental public purposes and social responsibilities<sup>4</sup>.

## II. Meaning of 'Ethics'

'Ethics' is a system or Code or morals, of a particular person, religion, group, profession etc. Ethics is defined as "that branch of philosophy dealing with values relating to human conduct, with respect to rightness and wrongness of certain actions and to the goodness and badness of the motives and ends of such actions". By dictionary definition ethics and morality are interchangeable. Media ethics apply mostly to cases not specifically covered by law. At present sub-standard journalism exists everywhere. Journalists and other media persons operate without any guidelines at all. There is a need for a Code of ethics for media persons. The Code of ethics for media persons is a statement of broad moral principles which will aid and guide the media persons and which will help them in the process of self-appraisal and self-regulation.

<sup>3</sup> Mohd. Ehsan, 'Contemporary issues in media ethic', Shodhganga', <https://shodhganga.inflibnet.ac.in/bitstream/10603/76234/3/chapter1.pdf> (visited on 10/06/2019)

<sup>4</sup> *Supra* Note 3



### III. Statutory Regulation of Media in India

Law consists of rules made by authority for the proper regulation of community or society. According to Austin, "Law is a rule laid down for the guidance of a being by an intelligent being having power over him". Law means any set of uniform principles which is generally followed. It refers to those rules which are issued by the State for determining the relationship of men in organised society. The purpose of law is to regulate and control human action in society. Law is enacted to regulate the social and economic acts of individuals or organizations. The ultimate end of the law is the welfare of the society.

Some propagate self-regulation for the media following their own code of ethics, disagreeing with the concept of self-regulation by the media. Former Chairperson of the Press Council of India, Hon'ble Justice Markandeya Katju favoured only regulating media, not controlling it. But regulation should be by an independent body and not by the Government. He says that "self-regulation is not always enough and that is why we have law". He further says, "Normally, negotiating with the media (on the content) should be the way, but we do need laws under some extreme situations... I believe 90% of the people are incorrigible for whom we need laws<sup>5</sup>.

In a free society, public opinion reflects the mood of the majority of the people, especially their reactions to governmental activities. Usually, people look forward to the media for critical comments on contemporary events. This is all the more significant during elections. But, the nexus between business and press/media often colours the opinions. "Big business invaded the field of journalism and the monopoly check to manifest in press ownership. The octopus of newspaper chains with control over news agencies as well spread its tentacles far and wide"<sup>6</sup>. Therefore, it is suggested that there should be suitable laws to curb cross-media ownership as well as business houses owning newspapers<sup>7</sup>.

For instance, there are certain laws which directly affect the media. For instance, there are statutes like The Indecent Representation of Women (Prohibition) Act, 1986, the Young Persons (Harmful Publication) Act, 1956 and the CopyRight Act, 1957 etc. Legal awareness of these laws will guide a person in his work as a journalist<sup>8</sup>.

<sup>5</sup> The Hindu 19.04.2012.

<sup>6</sup> M.K Dharma Raja, *Opinion Journalism, Mass Media in India*, 11, (1991).

<sup>7</sup> S Sivakumar, *Press law and Journalists: Watchdog to Guide Dog*, 195, Universal Law Publications, New Delhi, (2015).

<sup>8</sup> *Ibid*.





#### IV. Code of Ethics for Media Personnel

There are various Codes of Ethics which have been formulated from time to time, such as the International Code, the Press Council's Code, the ANIEC Code, and the Parliament Code etc. to guide journalists and the media. It is not possible in Code of ethics to detail grounds. To formulate a comprehensive, rigid Code of ethics for a journalist is neither feasible nor prudent. Yet, some organisations have adopted Codes of Ethics<sup>9</sup>.

The Code of Ethics is not legal documents but they are guidelines for professional quality and efficiency. In order to carry his message effectively, and to maintain the credibility of his newspaper or magazine, a journalist has to disseminate news in accordance with established norms and traditions of the society. Despite all the provocations and dangers, journalists must function strictly within the framework of ethical norms. As the Codes of Ethics are not formulated by the State legislature they are not Acts and they cannot be enforced by law. Yet, the Code of Ethics makes a journalist a 'perfect professional' if he digests the codes of ethics and adopts them in his professional life.

In modern democracies, the media plays a significant role by presenting news as well as views. This is done with a view to creating, shaping or sometimes more importantly distorting public opinion. In this sense, media is an unacknowledged legislator<sup>10</sup>. Media enjoys some respect in almost all democratic countries. But it is working within many constraints as well. The law as well as the enforcement agencies often impedes its work<sup>11</sup>. On the one hand the government, i.e. the three organs of the government, will try to use law to protect the interests of the Media. On the other hand, Media may have to face obstacles from within, because the Media as a business may not like to invite the wrath of those in power if it can be avoided<sup>12</sup>. Secondly, individuals and pressure groups in the society may also try to

<sup>9</sup> The Codes of Ethics and a Charter for Editors formulated by the All India Newspaper Editors Conference, 1953, International Code of Ethics, 1991, All-India Newspaper Editors Conference Code of Conduct, 1968, National Integration Council Code Conduct for the Media, 1962, Press Council Code of Ethics, Press Council Code of Ethics on Communal Writings, Parliament Code of Ethics, 1975, Code of Ethics for Broadcasters, 1969, Code of Ethics adopted by the International Public Relations Association at Athens, 1963

<sup>10</sup> Analyzing the place of journalism in the discipline of communication, especially in a democratic country like the USA, Barbie Zelizer observed: Media power is one of the standing constraints of contemporary public discourse, in that we still cannot account for the media's persistent presence as arbiters of events of the real world. Audiences tend to question journalistic authority only when journalist's versions of events conflict with the audience's view of the same events. And while critical appraisals of the media should be part of everyday life, journalistic power burgeons largely due to the public's general acquiescence and its reluctance to question journalism's parameters and fundamental legitimacy.

<sup>11</sup> In *Branzburg v. Hayes*, 408 US Supreme Court held that journalists did not have a First Amendment Right against forced disclosure of confidential source or information when summoned before grand juries investigating crimes. In countries following common law also such privilege is absent.

<sup>12</sup> Barbie Zelizer, *Has Communication Explained Journalism*, 43, *Journal of Communication*, 80, (1993).



protect and defend their interests which might be threatened by the work of an investigative journalist.

A question about ethics of media needs to be evaluated in the light of the fundamental public purposes and social responsibilities of media<sup>13</sup>. All media personnel need not be honest. Moreover, in the modern era communication, revolution has become a 'walking paradox'<sup>14</sup>. This is because of "the contradictions involved in the very nature of journalism as a *profession* and *mission*, being with the anti-democratic tendencies associated with any strong profession"<sup>15</sup>. Ethical standards have come down.

Even though the print media is losing dominance with the advent of electronic one, it continues to be of vital importance in democratic societies. According to Karle Nordenstreng, there are four aspects or dimensions which are:

- Obvious:
- Accuracy,
- Rapidity,
- Seriousness and Autonomy<sup>16</sup>. It means that quite often the presentation of news and facts suffer from doctoring or colouring and consequently accuracy suffers<sup>17</sup>.

Speed is the most essential requirement of journalism. With the development of electronic media, the whole media environment has been overflowing with information. This offers many details about what is happening. But it may not present a true picture of fundamental developments. Thus, modern journalism is becoming more narrative than interpretative. Thirdly, the new media environment does not attach importance to seriousness. Rather the media caters to what is attractive for the readers<sup>18</sup>.

Fourthly, autonomy<sup>19</sup> means a certain degree of independence of government, management and pressure groups etc., which represent sociolect-politico-economic forces. The paradox that emerges here is the fact that autonomy will easily lead the media into a self-centred fortress of journalism, alienated from the people it is supposed to serve.

<sup>13</sup> Stephen J. A. Ward, *Global Journalism Ethics: Widening the Conceptual Base*, 1, Global Media Journal, 137, (2008).

<sup>14</sup> Kaarle Nordenstreng, *The Journalist: A Walking Paradox in Philip Lee (Ed.)*, The Democratization of Communication, 114 (University of Wales Press, 1995).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Supra* Note 5

<sup>19</sup> Owen M. Fiss, *Why the State*, 100 Harv. L. Rev. 781 (1986-87)





In India, the media enjoy lesser autonomy but the fortress of journalism is very strong because of the vertical movement of labour. To ensure "healthy public debate" the media should be aware of this conundrum. Moreover, the situation becomes all the more complicated as the print media faces grave challenges from electronic media.

Media profession, like any other, has its own ethical standards<sup>20</sup>. A code of conduct distinguishes a profession from an occupation<sup>21</sup>. Profession of media is different from other professions because of its unique fourth estate role. It is singular because of its independence. In a profession it is necessary that a member should be judged by his peers and the function is to be so exercised as to maintain the objective of exemplary professional conduct.

#### V. Advantages of Self-Regulation

A significant advantage is that it lends credibility and trust to the media. In jurisdictions where the media is seen as strictly regulated or not independent, citizens tend to lose interest in the media and the quality of freedom of expression and consequently public debates are diminished. A good example is the Nigerian media which is divided into state owned broadcast media and privately owned print media. The public media sector is dominated by the Nigerian Television Authority (NTA) which is spread across the country. However, due to its close association with the government and the perceived lack of independence in its news content, it has lost its audience to independent television stations considered more credible.

Another reason for self-regulation is the ease with which self-regulation responds to changes and new developments. Another good example of self-regulation is the way the Press Complaints Commission (PCC) in the United Kingdom works and how it has responded to the criticisms of its operations following the phone hacking scandal. The unique nature of online media which operates without boundaries makes it almost impossible for statutory regulation, which makes self-regulation the best option<sup>22</sup>.

<sup>20</sup> Ethics is usually understood as something dealing with right or wrong in reference to determinative principles. In the Greek philosophical tradition, it means the systematic study of the principles that ought to underline behaviour

<sup>21</sup> V. S. Deshpande J, 'Preface' to *violation of journalistic Ethics and Public Taste* (1984). It is said that the responsibility of journalists to the community grows every year in a fairly exact ratio to the way in which an educated democracy itself broadens its spheres of knowledge and interests.

<sup>22</sup>International Journal of Communication and Social Research, Vol. 2, No.2: July 2014 30



## VI. Review of Self-Regulation in India

The freedom of speech and expression or freedom of press is present in all statutes and constitutions but not appropriately practiced. Therefore, it is crucial to understand the importance of freedom of press and the type of regulation followed in a country. The principle of self-regulation entails regulation by itself where the media does not have a regulatory body under it. The primary rights of reporters and editors under freedom of expression have to be acknowledged and at the same time their reports should not be detrimental to the functioning of state<sup>23</sup>. There comes the dilemma of who maintains the checks and balances in what is written and published. Theoretically speaking, leaving the regulations to the media itself would generate the likelihood that it may subjugate regulatory aims to its own business goals. For instance, cross-media ownership by big corporate companies has assumed alarming proportions. Early 2013 saw the leak of the *Radio* tapes which disclosed the shocking and unholy links between journalists and politicians, lobbyists and business groups. The Press Council of India through its Chairman addressed this issue; however, no stringent measures had been taken. That depicts the incapacity of the Press Council of India. It cannot suspend the journalists for the unfair work they do<sup>24</sup>.

Presently, there is no qualification prescribed by the Press Council for journalists, although there is such a situation prevailing in the Bar Council Act for advocates and Medical Council Act for medical practitioners. The Bar Council of India and the State Bar Councils have control to remove<sup>25</sup> a member from the profession for professional misbehaviour and infringement of professional principles. The Medical Council also has similar powers<sup>26</sup>. But, the Press Council does not have any power beyond warning or censuring<sup>27</sup> delinquent journalists. Thus in India, there is no self-regulation in reality. Proper self-regulation can be done in many forms, including information movement, examination charters, in-house complaints management division and procedures, accreditation, licensing and association certification, quality guarantee arrangement, standards, regulations and dispute resolution format. In fact, in India, there is no single medium on media regulation and redressal. The Press Council of India as discussed has very limited power.

<sup>23</sup>This is precisely how our Constitution has the reasonable restrictions provided under art. 19 (2). India Const. Art 19.

<sup>24</sup>Dunja Mijatović, *Media Self-Regulation Guide Book*. (OSCE publication, Vienna, 2013)

<sup>25</sup>Section 35, Advocates Act, 1961, no-25 Act of parliament 1961.

<sup>26</sup>Indian Medical Council Act, 1956, S.24, no- 102 Act of Parliament 1956.

<sup>27</sup>Press Council Act, 1978, S. 14(1), no 37 Act of Parliament 1978.





### VII. Self-Regulatory Authorities of Media in India.

Media in India is mostly self-regulated and there is little scope of accountability in a democratic nation. The Press Council of India was established under the Press Council of India Act, 1978 for the purpose of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India. The PCI has the power to receive complaints of violation of the journalistic ethics, or professional misconduct by an editor or journalist. The PCI is responsible for enquiring into complaints received.

The powers of the PCI are limited. It has no authority to penalize newspapers, news agencies, editors and journalists for violation of the guidelines. It is to be noted that the PCI can exercise its power only on the functioning of press media and it does not have the power to review the functioning of the electronic media like radio, television and internet media.

The television media has associated its own 'self' regulatory mechanism - News Broadcasting Standards Authority (NBSA). However, there are issues such as cross media ownership, inaccurate news being published, creating sensationalism, absence of journalistic ethics, paid news, advertisement-oriented news being released for profit, privacy violation, unnecessary news on celebrities and superstardom being circulated, unethical sting operation being held for publicity and so forth that are never addressed.<sup>28</sup>

The Central Board of Film Certification (CBFC) takes part in screening the films including short films, documentaries, television shows and advertisements in theatres or broadcasting via television. The role of the CBFC is limited to controlling content of movies and television shows, etc.

On a closer look at these authorities, it is clear that they have little or no power of sanction for any offences. Therefore, the scope of accountability is minimal. The media personnel do not strictly adhere to the regulations of these authorities as there is no penal backing. In the name of Freedom of Press, the media personnel are at vast liberty to speak their mind without any legal restrictions. Therefore, it may sometimes lead to abuse of freedom. Therefore, self-regulation through code of ethics becomes necessary.

<sup>28</sup>S Sivakumar, *Press law and Journalists: Watchdog to Guide Dog*, Universal Law Publications, New Delhi, (2015)



### VIII. Criticisms on Self-Regulation

Several criticisms have been raised against the self-regulatory model not being effective. The recent example is the failure of the PCC in not stopping incidents like the phone hacking scandal in UK<sup>29</sup>. Criticisms include the fact that "self-regulation means that complaints are handled by an old boy network where journalists shrug off problems and defend the indefensible". Other criticisms include the fact that self-regulatory bodies are ineffective since they cannot impose penalties, and that corrections, which is the common type of remedy for complaints imposed by the press councils, are often buried in the publications. Further, the press councils and most self-regulatory models do not entertain third party complaints. Other criticisms of the self-regulatory model are that it allows newspapers to avoid ethical and legal responsibilities, allows the press to engage in excesses where there is no complaint, does not prevent excesses in the tabloids, is weak at safeguarding privacy and does not provide room for appeal. This has led to calls for statutory regulation<sup>30</sup>. Proponents of statutory media regulation argue that the government's power to impose penalties keeps the media in line. They also argue that a democratic government passing a legislation to control the media is in the public interest. However, they fail to disclose that in practice, the government is made of people and in most cases regulating the media has been used to protect the government in power and not public interest.

### IX. Criticisms on Statutory Regulation

Freedom House, an NGO which advocates media rights globally published in September 2011 instances where statutory regulation has been used as a tool for censorship. The three common ways in which statutory regulation is used to restrict press freedom include statutory controls on licensing and registration, the creation of nominally independent regulatory bodies with built in avenues for political influence and legal imposition of vague or burdensome content requirements<sup>31</sup>.

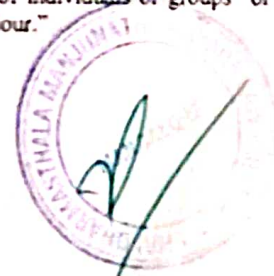
### X. Media and Co-Regulation

The tendency for statutory regulation to be abused and the perception that self-regulation is weak has led to calls for co-regulation by critics of the statutory and self-regulatory models.

<sup>29</sup> Hadwin & Bloy, 2007

<sup>30</sup> Nielsen, 2004, defines statutory regulation as "The imposition of rules by a government backed by the use of penalties and the authority of the state, that are meant to change the behaviour of individuals or groups" or broadly as "any technique or approach designed to control, alter or influence behaviour."

<sup>31</sup> Kariekar, Radsich, & Sierra, 2011)





A co-regulatory system combines elements of self-regulation as well as traditional statutory regulation to form a new and self-contained regulatory system<sup>32</sup>. An example of a co-regulatory system is the proposed News Media Council (NMC) in Australia. The NMC, which was proposed by an independent media enquiry set up by the Australian government, will be statutorily backed but operate independently and be in charge of print, broadcast and online media regulation with the stated aim "to promote the highest ethical and professional standards of journalism"<sup>33</sup>. The government will fund the NMC while an independent committee is supposed to appoint members of the NMC. The proposal fails to state clearly the process for the appointment of the independent committee though they are expected to consist of senior lawyers and academics<sup>34</sup>.

#### XI. Addressing the issues – A Way Forward

- There is a need to bring a specific provision for ensuring freedom of media with specific grounds of its regulation under Part III of the Indian Constitution in the changed scenario of media functioning
- Only those who have qualified with journalism should take up this profession like that of medical and legal profession.
- There is a need for having the contracts made and drafted among media and journalists or guest contributors that lay prominence on clear requirements to follow the Code of Practice. Each media establishment should have a concerned branch to see if it is followed strictly.
- Sufficient amendments are to be incorporated and that are to be put up under the Data Protection<sup>35</sup> which must be an indispensable part of contracts of employment service for journalists, editors, freelancers who write as guest columnists.
- There should be a universal code of ethics made and those should be distributed to staff journalists without impediment; assets and income or earnings of the

<sup>32</sup>Pulsar Scheuer, 2004

<sup>33</sup>Ramsay, 2012

<sup>34</sup>International Journal of Communication and Social Research, Vol. 2, No.2: July 2014 30

<sup>35</sup> Information Technology Act, 2000, s. 43A provides for the protection of sensitive personal data or information ('SPDI'). Also, s. 72A protects personal information from unlawful disclosure in breach of contract. The author feels that these sections need to be interpreted widely



newspaper company, the editors, journalists are to be made public. There should be meticulous appraisal controls for cash payments<sup>36</sup>.

- There should be an independent ombudsman appointed to solve any issues pertaining to newspapers and channels. This can be done assessing the circulation or viewership and further on the basis of revenue threshold<sup>37</sup>. The ombudsman should act as a support system for reporters who are asked to refrain from covering any matters, and additionally for readers to lodge complaints<sup>38</sup>.
- There is a necessity for media training that can be commenced by media establishments as part of journalism courses. New approaches need to be developed where students will be well informed about the current affairs, the working of press, media and that inculcates interests in them<sup>39</sup>.
- In the discharge of their duties, journalists shall attach due value to fundamental human and social rights and shall hold good faith and fair play in news reports and comments as essential professional obligations.
- All persons engaged in the gathering, transmission and dissemination of news and in commenting thereon shall seek to maintain full public confidence in the integrity and dignity of their profession. They shall assign and accept only such tasks as are compatible with this integrity and dignity and they shall guard against exploitation of their status.

**XI. Conclusion**

Media ethics has to be flexible in the ever-changing scenario of the world. Media possess a wide area of discretion in news gathering and in publishing the same. A judicious exercise of this discretion, keeping in mind the 'guide-dog' role of the media is desired. The objective is to make the stream of public debate flow unobstructed. Determining the content of a critical, global media ethics is a work-in-progress. According to Aristotle, moral virtue is a means

<sup>36</sup> Supra Note 23

<sup>37</sup> *Ibid*

<sup>38</sup> Keval J Kumar, *Media Education, Communications and Public Policy: An Indian Perspective*, (Himalaya Publishing House, Bombay, 1995). Available at : <http://www.diplomatic.gov.fr/fr/IMG/pdf/KevalKumar.pdf> (visited on Aug. 25, 2016).

<sup>39</sup> Here, the author means training and not marketing by the media. There was an allegation that some newspaper publishers, under the pretext of doing 'media education' have entered schools to market their products. Such is the attempt of The Times of India, one of the foremost national dailies, (with a circulation of over a million copies every day), to market the paper in the schools of New Delhi, Bombay, Pune and Bangalore. The experiment is termed 'Newspapers in Education' (NIE), and is taught during regular school hours, not by school teachers but by young men and women carefully recruited by the response department.





between two extremes. When this principle is applied to the media it may be said that the media should not do anything in excess. It means that it should not sensationalize the news or probe too much into private affairs. Newsworthiness is to be decided based on the virtues of balance and fairness.

Therefore, the Media can only be regulated and cannot be controlled. But, regulation should be by an independent body and not by the Government. Despite the difficult questions and daunting problems such as self-regulation being ineffective and unsatisfied statutory regulation, the future of journalism ethics requires nothing less than the construction of a new, bolder and more inclusive ethical framework for a multi-media, global media amid a pluralistic world or a co-regulatory system combining elements of self-regulation as well as traditional statutory regulation to form a new and self-contained regulatory system as an appropriate solution to overcome the negative impact of media on society.

