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"The Press Paradox: Striking a Harmonious Chord between Freedom and Regulation, India's Fourth Democratic Pillar"

Mrs. Nandini[1]
Ms. Chaaya[2]

ABSTRACT

"A free press can, of course, be good or bad, but, most certainly without freedom, the press will never be anything but bad."

- Albert Camus.[3]

Press being the fourth estate of Democracy, plays a decisive role in shaping the attitude and beliefs of the folk; hence, it is the paramount responsibility of a free press to act as a 'watchdog' of the administration and enable effective governance that is fair and transparent. It owes a sense of responsibility towards the citizens and thus, it ought to be ethical and straightforward in exposing the ultimate reality. However, this is not wholly true in the current scenario, as the media houses have become mere puppets in the hands of the puppeteers. The 'Nose for news' has lost its validity and currently its 'No news is news'. The fading journalistic ethics in today's reporting has resulted in crafting sensational news to increase their TRP. There is a saga of news channels that provide 24/7 news, but the effectiveness and authenticity of news has drastically deteriorated, which in turn questions the reliability of the news. Despite this darker shade, we still see a ray of hope amongst few journalists- who strive to uphold their professionalism and ethics by eliciting the truth in cases like 'The Nirbhaya Murder Case'; that indeed have transformed the nation towards forming appositive opinion on media.

Key Words: Democracy, Press, Watch dog, News, Ethics

Introduction:

Indian democracy comprises of Legislature -that makes laws Executive - that executes the laws and Judiciary- i.e., the courts that decide if the law has been broken and how to deal with the subsequent damage. However, there exists a pivotal element that cautiously oversees all three branches of the government, ensuring their steadfast commitment in fulfilling their

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[3]https://www.indiatoday.in/information/story/world-press-freedom-day-2020-date-theme-history-importance-and-quotes-1673811-2020-05-03

responsibilities towards the citizens of this democratic nation –the Press. It forms the fourth pillar of Indian democracy, hand in hand with Legislative, Executive and Judiciary.

Media holds the status of the fourth pillar of democracy as it serves as a crucial basis of information regarding the requirements and circumstances of a nation's populace. It plays a crucial role in publicizing the knowledge about Social, Economic, and Political matters, and it also facilitates political parties in reaching vast audiences to educate them on important topics.

The media's role lies in disseminating various pieces of information and knowledge among the public. Presently, many individuals regard media as the sole authentic source of communication and information regarding events both within and outside the world. The media establishes a vital connection between the government and the public, effectively binding the two.

The freedom of press or media in India, as enshrined in Article 19(1)(a) of the Indian Constitution, grants individuals the right to express themselves, fostering independent journalism and bolstering democracy by allowing citizens to express their viewpoints on the actions of the other three pillars of constitution.

"In today's free world, freedom of the press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible on a large scale, particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate (Government) cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities."[4]

In the following article we will discuss about why Striking a Harmonious Chord Between Freedom and Regulation of Media as India's Fourth Democratic Pillar is necessary.[5]

[4] Supra Note 1
[5] Ibid

History:

Article 19(1) (a) of the Indian Constitution governs the nation's freedom of speech, which is recognized as a fundamental right of every citizen. Nevertheless, prior to Independence, these fundamental rights were non-existent. The influence of the press was nearly equivalent to that of an ordinary individual, and Journalism in India did not enjoy any particular privilege. Nonetheless, the progress of mass media to its current status owes much to the numerous pioneers who devoted their utmost labours to the field of Indian journalism.

The first real attempt to muzzle the press came in 1799 with Governor General Wellesley issuing a set of regulations. He wrote to the Commander in Chief, *"I shall take an early opportunity of transmitting rules for the conduct of the whole tribe of editors. In the meantime, if you cannot tranquilise this and other mischievous publications, be so good as to suppress them by force and send their persons to Europe."*[2]

In May 1799, subsequent regulations were implemented, requiring every newspaper to disclose the names of its printer, editor, and proprietor. These individuals were obligated to declare their identities to the Secretary of the government and submit all published materials for prior scrutiny. Violation of these rules carried the penalty of immediate deportation. The censor, who was then the secretary, had specific guidelines to follow, including prohibiting any news or commentary on the finances of the East India Company, troop movements, shipping updates, naval or military preparations, the movement of supplies, excerpts from European newspapers that could harm the image of British rule in India, any content that might provide information to the enemy, or statements regarding the likelihood of war or peace with an Indian power.

In the years that followed, several newspapers emerged, including publications like the *India Gazette*, the *Calcutta Gazette*, and the *Bengal Journal*, all of which played a role as significant as the *Bengal Gazette* in shaping the idea of a free press. In October 1818, James Silk Buckingham established the biweekly *Calcutta Journal*. His explicit aim in initiating this publication was to "remind the Governors of their responsibilities, vigorously caution the about their shortcomings, and convey unpleasant truths." Buckingham emerged as a vocal critic of the East India Company, and through his contributions to Indian journalism, he laid the footing for an independent and fearless press in India.

In the 18th century, there were no established legal regulations governing the press. Nevertheless, the government took punitive actions against newspapers that violated the rules,

including withholding postal services, pursuing libel lawsuits, expelling defiant editors, and implementing arbitrary pre-censorship measures. However, upon assuming office, Adam wasted no time and in 1823, he promptly introduced India's inaugural Press Ordinance. This regulation mandated that all newspapers, journals, pamphlets, or printed materials in any language must obtain a license from the Governor General-in-Council in order to be published. The authorities had the authority to revoke this license after providing notice. As a consequence of the 1823 Regulations, Buckingham's publishing license was revoked, ultimately leading to his deportation. The Calcutta Gazette also struggled to endure the persecution and soon faced insurmountable challenges.

Over time, numerous printing establishments came into existence. However, a noteworthy newspaper that contributed significantly to the endorsement of Freedom of Journalism in India was the Indian-owned newspaper, initiated by Gangadhar Bhattacharya in 1816 at Calcutta. The dynamic force behind this publication was the prominent social reformer Raja Rammohan Roy, who is also linked to the inception of Indian-owned publications in English, Bengali, and Persian. In addition to this achievement, Raja Rammohan Roy launched the religious periodical known as the Brahminical Magazine, which served as a rejoinder to missionary efforts.

During Metcalfe's liberal administration, the native press thrived and prospered. Every individual had the freedom to establish a newspaper without the need for prior permission. However, printing or publishing sedition or slander was strictly prohibited and carried the risk of severe punishment. The impact of this freedom became evident as nationalist fervour grew for the first time on the eve of the 1857 Revolt, after which a deep divide emerged, and the atmosphere was charged with racial animosity. On the Indian side, which was disheartened after their defeat, bitterness and anger found expression in the press Conversely, Anglo-Indian newspapers were unyielding in their criticism of Canning, perceiving his leniency towards the rebels. Refusing to yield to these attacks and choosing not to differentiate between Indian and European publications, Canning reintroduced licensing under the Act of 1857. Interestingly, this law did not distinguish between European and Indian publications and imposed a universal prohibition.

Then came the Registration of Books Act, 1867 and the Vernacular Press Act, 1878. The Vernacular Press Act sparked intense indignation and protest throughout the nation, ultimately achieving the unintended outcome of reinforcing public support for a free press. The objective of the Act, aimed at suppressing seditious writings and mandated that, all Indian newspaper

owners must provide a bond of 10,000 when registering their publications with the registrar. They were also required to commit not to publish any 'objectionable material.' This legislation introduced the concept of a security deposit, which could be seized, if the government deemed the commitment to be violative. To compound matters, publishers had no legal recourse to challenge an order of deposit forfeiture or confiscation of the 'objectionable material' in a court of law. Additionally, the Act granted the government authority to issue search warrants and access the premises of any printing press.

After centuries of striving for the right to express one's thoughts freely, a significant milestone occurred on December 13, 1946, when the Constituent Assembly of India adopted the historic Objectives Resolution. In this resolution, the Assembly made a resolute commitment to formulate a constitution that would guarantee, among other things, freedom of speech and expression. Subsequently, on August 29, 1949, the Drafting Committee was appointed to craft a constitution in alignment with the decisions of the Constituent Assembly, based on the reports submitted by various committees it had established. For having many exceptions, Article 13 (later to become Article 19) faced criticism from Dr. Ambedkaras *"The most criticised part of the Draft Constitution is that which relates to fundamental rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether"*[3]

Current Legal Framework:

In 1947, following the takeover by the Indian National Congress, India was declared an independent nation. The existing media regulations underwent scrutiny and received recommendations from the *Press Law Enquiry Committee* in 1947. In an effort to exert some control over the press, the *Press (Objectionable Matters) Act*, 1951 was enacted, although itwas later repealed in 1957. The establishment of the *Press Commission of India* in 1952 led to the formation of the *Press Council of India.*

However, the most significant moment in the history of media regulations came on January 26, 1950, when the Indian Constitution came into effect. India's colonial history helped its leaders recognize the crucial value of Freedom of the Press. Consequently, this freedom was enshrined in the Constitution to empower the press to inform the public, and the Constituent Assembly unanimously agreed to safeguard Freedom of the Press as a fundamental right. Although the Indian Constitution does not explicitly mention press freedom, it is evident that under Article 19(1), press freedom is encompassed within the right to free speech and expression.

Nevertheless, it's essential to note that this freedom is not absolute. Ultimately, it was determined that the government could only impose restrictions on press freedom through the indirect justifications permitted under Article 19(2). Reasonable restrictions.

It's worth noting that this right under Article 19(1)(a) extends not only to newspapers and magazines but also to pamphlets, leaflets, handbills, circulars, and any other forms of publication that serve as vehicles for information and opinion. In 1949, the *Press Trust of India* was established by the Indian and Eastern Newspaper Society to create independent news organizations. *The Newspaper (Price and Page) Act* of 1956 was introduced in an attempt to regulate newspaper pricing and curb unfair competition.

These are some of the many acts and laws that relate with freedom of media and its extent. There have been many amendments made to these and the media laws now have evolved to something more stringent and adaptable to the political correctness of today's society

In this era of media expansion, it's no longer sufficient to confine oneself to traditional media outlets. The sphere of media has significantly widened to encompass various aspects, including the ever-expanding field of online media. Consequently, a plethora of discrete laws now applies to these diverse media platforms.[4]

Since British era, certain regulations have been enacted to regulate media activities and to protect the freedom of media. Certain important laws are as follows:

First Press Regulation, 1799;

GaggingAct,1857;Press and Regulations of Books Act,1867;

Indian Press Act,1910;

Vernacular Press Act,1878;

Young Persons (Harmful Publications) Act,1956;

Parliamentary Proceedings Act,1956;

Press Council of India Act,1965;

Delivery of Books and Newspapers Act, 1954;

Prasar Bharati Act,1990.

Challenges to Media Freedom:

With the advent of technology and changes in political magnitude, the clear line between what to allow and what not to, became blur. The voice of the people, the media that kept people informed tuned into something much more than the Watch dog of Democracy. Some of the challenges faced by Media in India are:

Paid news

Paid news is an unethical practice within the media industry, where articles published in print and electronic media favour institutions that have paid for their placement. It essentially functions as a hidden form of advertising. Moreover, it qualifies as a malpractice as it has the potential to mislead citizens by withholding the true facts. The entire purpose of giving right information is lost with the interference of money.

(In the case of Smt. Umlesh Yadav v Election Commission of India (2013), the Election Commission disqualified Smt. Umlesh Yadav, a sitting MLA from Uttar Pradesh, for three years under Section 10A of the Representation of People Act, 1951, after she failed to furnish a correct account of her expenses under Section 77 of the Act. She took the matter to the Allahabad High Court, which affirmed the ECI's findings and barred her from running the office.)[6]

Cross-media ownership

Cross-media ownership occurs when a sole corporate entity possesses diverse forms of media ventures, including print, radio, television, film, and online media platforms. In our nation, a monopoly in media ownership has had a considerable influence on the quality of media freedom. This monopoly, that remains unexamined by the public and unregulated, calls for legal measures to establish equilibrium between broadcasting and distribution. Such measures are crucial to prevent sole control and ownership over both aspects.[7]

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[6] Supra Note 3
[7] Ibid

Media and individual privacy

The expansion of the media landscape has undeniably led to a reduction in an individual's privacy. While the right to privacy is not explicitly outlined in the Indian Constitution, the Supreme Court's verdict in the case of Justice K S Puttaswamy V. Union of India (2017) firmly established it as a fundamental right and as an inherent component of Article 21 of the Indian Constitution. However, the freedom of speech and expression guaranteed by the Indian Constitution allows the press to disclose information of vital public interest, often resulting in an intrusion into individuals' privacy. This Media Freedom, raises an important question- "Arewe withholding the rights of non-media personnel?"

Trial by media

When a critical issue goes to court, public interest surges and triggers media coverage known as investigative journalism. "Trial by Media" refers to; how this coverage can shape opinions before a court verdict, potentially compromising a fair trial and the accused's rights. Excessive pre-trial media focus can hamper justice and reputation rehabilitation, warranting contempt of court actions. However, despite the accused person's reputation is tarnished even if he does get acquitted in the end.

Defamation

Defamation is a pressing issue in journalism, requiring a solution. Cases like fabricated sting operations or media trials fuel claims of irresponsible journalism. The fear of legal consequences, including fines, hampers free and impartial news reporting, putting undue pressure on journalists and media outlets. Any changes to India's defamation laws should strike a balance between these concerns. Currently, civil defamation is under tort law, while criminal defamation is covered in Section 499 of the Indian Penal Code. These represent just a handful of challenges confronting a free media in India. Despite its indispensability, the media is not without its limitations. Tackling these concerns through effective regulation could open the door to a more accountable and liberated media environment in India. To quote Sebastian Paul, *"Press should be free and at the same time responsible the only permissible method of controlling the press is the enforcement of self-control."*[8]

Role of Media in Democracy

So far, we've explored the crucial significance of the four pillars of Indian democracy. These pillars, namely the Legislature, Executive, Judiciary, and Media, play a pivotal role in preserving the fundamental rights and freedoms of Indian citizens, all the while serving as checks and balances against any unlawful conduct. The strength of a democratic system relies on the vitality of each of its pillars and how effectively they cooperate with one another.

Frequently, the significance of media's role is either downplayed or manipulated. In modern-day politics and society, the media is indispensable for ensuring transparency and precision in democratic processes. If the media were to transform from its watchdog role over the government to becoming Lapdog, it would negate the very reason for its establishment as the fourth pillar of democracy.

The media possesses the potential to influence societal standpoint, yet the race for securing Television Rating Points (TRP) has led to a decline in transparency and confidence in consistently receiving reliable news. What we often witness on news channels nowadays is a departure from genuine reporting, as the focus shifts towards substance that can boost TRP, sometimes at the expense of fundamental journalistic principles such as "Seek Truth and Report it," "Act Independently," and "Minimize Harm." A prominent and recent illustration of this trend is the media's exclusive concentration on the Sushant Singh Rajput case, while critical issues like the pandemic, healthcare, Assam floods, India-China tensions, and border conflicts have been marginalized and overlooked.

Article 19(1) (a) of the Indian Constitution grants every citizen the right to freedom of speech and expression, a right that also extends to the media as a potent mass communication tool. While the Constitution doesn't explicitly mention freedom of the press, the provision for freedom of speech encompasses all individuals. However, it is imperative for a democratisation to ensure freedom of the press, which enables the dissemination and publication of ideas and opinions. Nevertheless, this freedom is not absolute and is subject to certain limitations. These limitations pertain to upholding the sovereignty, integrity, and security of the State, maintaining public order and peace, preserving democracy and moral values, and addressing defamation issues[9].

history-importance-

Undoubtedly, freedom of speech should include the liberty to critique the government or express ideas and disseminate the truth. Still, it must be subject to the same restrictions that apply to freedom of speech and expression, given that freedom of the press is an outgrowth of freedom of speech and expression. The freedom exercised by journalists may exert pressure on democracy to a certain extent.

Case Studies

Case 1[10]

In the 1960s, India faced a newsprint shortage, leading to the introduction of the Newsprint Control Order of 1962 under the Essential Commodities Act of 1955. This order, along with the Import Control Order of 1955, imposed several restrictions:

No New Newspapers: Companies with more than two newspapers, including at least one daily, couldn't launch new newspapers, even if their existing ones didn't request additional newsprint.

Page Limit: Newspapers were limited to a maximum of 10 pages, with no room for adjustments by trading between circulation and page count.

Newsprint Non-Swapping: Newspapers from the same publishing entity or different editions of the same paper couldn't exchange newsprint.

Page Count Increase Cap: Newspapers with less than ten pages were only allowed a maximum 20% increase in page count.

This case involved a five-judge bench, with four judges supporting the petitioners. They ruled that while the government had authority to control newsprint imports in case of scarcity, such control should be fair and equitable, rather than arbitrarily reducing pages, circulation, ads, and new newspaper editions, which violated Articles 14 and 19(1)(a) of the Constitution. The Court reasoned that it should not deny jurisdiction to provide relief when state actions impair the rights of both shareholders and the company, instead of solely focusing on technical aspects[11].

Case 2[12]

In December 2012, a horrific incident known as the 2012 Delhi gang rape and murder shocked

[10] Bennett Coleman v/s Union of India
[11] Ibid

In 2012, a 23-year-old woman and her male friend boarded a private bus where they were confronted by six men, including the driver. Tragically, the woman endured a brutal sexual assault, and her friend was subjected to a violent attack. The victim, after suffering for 11 days, was transferred to a Singapore hospital for emergency medical care. Sadly, she succumbed to her injuries and passed away just two days after receiving treatment. This appalling event **garnered global attention, sparking widespread condemnation both in India and from international communities.**

One of the most distressing aspects of the case was the delay in providing medical attention to the victim. When the Delhi Police were called to the scene where the victim was bleeding and in dire need of help, they wasted precious minutes arguing about which jurisdiction the crime fell under and where the first information report (FIR) should be filed.[1]

Numerous news reports placed the blame squarely on the police for this delay, inciting public outrage. It was in response to this issue that the concept of a "Zero FIR" was proposed by a committee led by JS Verma, a former Chief Justice of India.

In response to the Delhi gang-rape incident, the Justice Verma Committee was promptly formed, and its recommendations led to the enactment of the Criminal Law (Amendment) Act, 2013, widely known as the Nirbhaya Act. The Nirbhaya Act brought about significant changes to the legal framework, **recognising gender-based crimes like acid attacks and stalking**. It also imposed harsher penalties for aggravated rape and assault, including the provision for the death penalty in cases where the victim died or was left in a permanent vegetative state.[2]

This legal transformation was driven by a massive public outcry and media involvement, particularly in the wake of the victim's tragic death in Singapore just two days after the incident. The public's profound anger and outrage compelled the government to take swift action to address these serious issues. Indeed, the media played a pivotal role in ensuring that the Delhi gang-rape case did not fade into obscurity like many other incidents of sexual violence. In cases like these, we witness the vital importance of the media as a watchdog and a means of raising awareness. The media's relentless coverage and reporting on the brutality of the crime and the

subsequent public outcry demonstrated how it can be a powerful force for accountability and social change. It serves as a reminder of the crucial role media plays in shedding light on critical issues, sparking discussions, and pushing for justice in cases that might otherwise go unnoticed or unaddressed.[1]

Conclusion

As media can have both positive and negative effects on society, it is frequently called a "necessary evil". While it can be an effective tool for sharing information, holding people accountable, and increasing awareness, it can also be abused or sensationalised, which can have unfavourable effects.

The press, often referred to as the fourth pillar of democracy, plays a pivotal role in shaping public attitudes and beliefs. Therefore, it bears a significant responsibility in acting as a vigilant "watchdog" over the government, ensuring fair and transparent governance. A free press owes a profound sense of duty to its citizens and must maintain ethical standards while revealing the unvarnished truth.

Regrettably, this isn't entirely accurate in the present context, as media organizations have increasingly succumbed to external influences. Modern journalism has witnessed a decline in ethical standards, with a focus on sensationalism to boost ratings. Despite the proliferation of 24/7 news channels, the credibility and authenticity of the news have suffered a severe blow, raising doubts about its reliability. But also, amidst this gloomy landscape, a glimmer of hope remains in the form of a few dedicated journalists who continue to uphold professionalism and ethical standards, uncovering the truth in cases that have the potential to reshape public perceptions of the media for the better.