

Dichotomy Between Media's Right To Expression Vis-À-Vis Fundamental Rights Of An Individual In India

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Abstract

“Freedom of the press is a precious privilege that no country can forego. But if there is, as there should be, no legislative check save that of the mildest character, an internal, check such as I have suggested should not be impossible and ought not to be resented.”-M. K. Gandhi. In a vibrant democracy like India, the media is considered as fourth pillar of democracy. The primary objective of media is to make the people aware about the society and the issue prevalent in it. Therefore, it becomes extremely important that media should conduct their activities in a more responsible manner and they should avoid presenting biased opinions. It is also the responsibility of media to avoid the practice of yellow journalism. In order to make media as an independent body, the concept of self-regulation is being adopted in India. However, present scenario clearly shows that the self-regulation has failed to make any significant mark and to avoid the misuse of media. With the emergence of technology, the face of media has changed significantly with the time. Today is an era of technology and media being not untouched from the impact of technological advancement that led to the new vertical of media i.e. Digital Media Platforms. Digital Media Platforms has enormous power to influence the mind of millions of people as these platforms can share the content instantly. Instances of fake news inciting communal violence are very common. Hence, there is a demand for controlling the media. However, the advocates of free media feel that an independent media is a sine qua non for a sustainable democracy whereas others feels that any institution with unbridled freedom will lead to the creation of a Frankenstein monster. Thus, a combination of statutory and self-regulating bodies is the best way to protect the freedom of the content across all media, where India has made a start and still has a long way to go. This paper attempts to examine the existing legal framework that applies to various broadcast technologies that are currently in use in India and presents a critique of existing legal framework.

Keywords: Democracy, Press Council of India, News Broadcaster Association, Constitution of India, Broadcast Audience Research Council of India, WhatsApp, Intermediary, News Broadcasting Standards Authority.

I. Introduction

The concept of media is derived from the plural of the word medium, which means medium or vehicle, concept, information, education, etc. that takes place through the transfer of all kinds of information to individuals or communities. The term ‘Media’ can be closely associated with Journalism. The media is considered one of the four pillars of democracy. The media play a vital

role in forming society's opinion and are able to change the point of view through which people perceive various events. Presently the distinction between media and journalism is almost blurry. Both have become two sides of the same coin. For an example presently, all news channels run their own YouTube channels. Hence, it has become necessary that there must be regularization of digital media content. Concept and utility of media can be better understood by sneaking into

John Stuart Mill's theory of free speech. This theory¹ is grounded on three parameters: firstly, it helps to evolve the truth, secondly it helps to strengthen good governance and democracy, and thirdly it advocates for individual autonomy. Mill extended the liberal tradition of ideas commenced by Milton and Locke in the course of a broader notion of freedom of the press. Mill who got influenced by utilitarian beliefs stated that only free speech can inspire a society to challenge the traditional beliefs and notions so as to reveal the truth. The freedom of the press or media was derived from his concept of individual liberty as explained in his free speech theory. He had foreseen a reliable medium which is free from all coercion that could enable the public to know the performances of the government and the state. This press freedom under the aegis of freedom of expression facilitates full and open debate on all issues of public importance.² This liberty of communication and expression though guaranteed to the public, citizens in particular, it is through press and media that the information is disseminated in the form of news. Hence, it is universally accepted that media is the tool through which the freedom of speech and expression is attained.

1.1. Structural Framework of Media

Structural framework of Indian News Media can be classified in three branches:

- Print Media;
- Broadcasting Media or Electronic Media;
- Web-based Digital Media.

Since beginning Indian news media has been broadly dominated by print and electronic/broadcasting platforms however with the emergence of low cost internet and its accessibility through out every corner of the country, the web-based digital media acquired the dominating position in Indian News Media

Industry. Acceptance of Web-based digital media became more prominent during Covid-19 pandemic period. There are regulations for Print and Broadcasting media. However, Web-based digital media is one such domain wherein there is complete lack of regulations. In a simplest way, digital media can be understood as nothing but the transmission of data digitally with the use of internet. Under the this form, digital cables or satellites are being used to send binary signals 0s and 1s to devices that or converts them into video, audio, articles, advertisements, podcasts and other different modes. Every time when a person uses his computer, mobile phone or tablet for using web based applications, he is using digital media.

In the recent time, with the emergence of internet revolution providing low cost internet services across the country and Covid-19 induced lockdowns, the consumers have become more familiar with the use of digital media. digital media provides them the access of content as and when they need just with a click of one button. This easy accessibility of digital media has made it extremely popular among masses in India. With the advent of low-cost internet and COVID-induced lockdowns, digital news media has seen a spike in both, the number of users visiting its sites and the time they spend on them. According to a joint study by Broadcast Audience Research Council of India (BARC) and Nielsen India, News apps have seen a 41% spike in usage in 2020 during Covid induced lockdowns³. News apps saw 8% more users per week with an increase of 17% in time spent. This growth was led by non-English News apps with an increase of 87%. Study also revealed that soon after Covid induced restrictions, people have also increased their time spent on chatting with an increase of 23% and social networking with an increase of 25%. Almost all social networking apps -

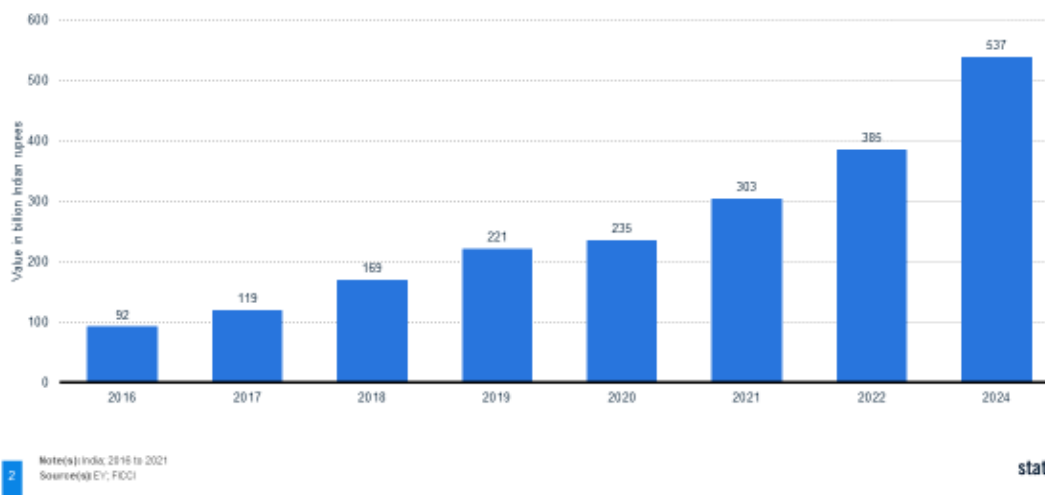
Facebook, Instagram and Tik-Tok - have seen significant increases.

In 2016, the value of Digital media market in India was 92 billion rupees. Whereas in 2019 just before Covid-19, industry's value was 221 billion Indian rupees. In 2021, India's digital media market was valued at over 300 billion Indian rupees with estimates projecting it to spike to 537

billion rupees by 2024. This growth trajectory of Digital media in India shows that it has grown rapidly⁴. Such upward trends have also led the government to reiterate the need for a framework to regulate this sector⁵.

Value of the digital media market across India from 2016 to 2021, with estimates until 2024 (in billion Indian rupees)

Value of the digital media market in India 2016-2024



*Value of the digital media market in India 2016-2024, available at [statista.com](https://www.statista.com).

From a democratic society's point of view, the media plays a pertinent role by providing information which is indispensable for two reasons. Primarily, it ensures that citizens formulate proper and updated views by analyzing the authentic and genuine facts as provided by media. Secondly, it provides information as a "checking function"⁶ by guaranteeing that the chosen government and its representatives act upon electoral promises and achieve the desires

of those who chose them. Media thus plays a central role since it is the single means through which public opinion is engendered.⁷ The stability of a country is assessed by the way the media report the news of that country. Thus, it becomes the obligation of the media to circulate only applicable and valid facts locally and globally. In some societies, there exists an

antagonistic relationship⁸ between press and administration that might persuade media to spread negative influences in the society.⁹ The role of media has been changing from what it was perceived.¹⁰

Every profession functions by certain standards and a set of standards applicable to media should also be developed. Media is a universally recognised pillar of democracy that is considered to act itself in maintaining certain practice of professionalism.¹¹ It is also labelled as watchdog since it checks and balances the power of the other three branches of government i.e., the executive, the legislature and the judiciary.¹² The free press facilitates the individuals to partake in all pertinent matters affecting them. It has been universally accepted that only an autonomous press or media can endow citizens with a diversity of information and views on matters of public significance. The liberty to impart information is vested with media.¹³ Freedom of expression and communication through mediums including a variety of electronic media or published materials is an application of the individual human rights principle on freedom of expression. Therefore, the freedom of the press or media is very essential since this enables the public to know the performance of the government, the state, financial system, social systems and other matters of public concern.

2. Role of Media in Vibrant Democracy

In a vibrant democracy like India, the primary responsibility of media is to provide a platform for informed communication. Communication is a fundamental human requirement and is the underpinning of all human dealings since it is the mode through which humans exchange information.¹⁴ Justice Blackstone while writing

on the freedom of press in England states, **“The liberty of the press, properly understood, is essential to the nature of a free State; but that this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matters when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press. But if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity¹⁵.”** The free trade of thoughts and learning happen when there is unhindered full-fledged communication. It is ensured through "freedom of speech and expression", the most valued fundamental right, as imagined under various international covenants and the greater part of the constitutions including the Indian Constitution. The right to freedom of expression has a wide ambit that incorporates the freedom to hold opinions, freedom to impart information, the freedom to receive information and even the freedom to disagree against the democratically chosen administrations of the day. It is also related to freethinking, creative mind and consultation, which are essentials for an individual's self-acknowledgment. Additionally, it's a vital right to frame a decent democratic government where citizens all around are educated about political happenings. Speech, according to many scholars, serves a self-fulfilment function.¹⁶ According to Joseph Raz, communication – oral, pictorial, or musical communication of speech - is an essential right involving people to contribute in civic activities.¹⁷ Professor Edwin C Baker stated that speech is the realisation of an individual's earnest desires and competence. The potentiality of each human being is very exclusive and differs from

person to person.¹⁸ The jurist Wellington states that the freedom of speech is not a self-defining phrase - what cannot be abridged is what is protected.¹⁹

In the present scenario role of media is not just to disseminate the information rather onus on the media is to provide accurate and correct information. Democracy is the people's rule, a system that relies on three powerful pillars. But as Indian society became somewhat unstable in the three tranches: the executive, the legislative and the judicial, the guarantee of Article 19 (1) (a) gave rise to a fourth pillar called the media or the press. It plays the vital role of conscious guardian, guard dog of society officials and tries to remedy the errors of our system by bringing them to the knowledge of all, in the hope that they will be corrected. It is undeniable that in many areas the unprecedented media revolution has allowed the general public to advance by leaps and bounds. Even the state judicial wing has benefited from ethical and courageous journalism and has taken suo-moto cognizance in many cases after relying on reports of serious human rights violations. Contribution of media in progressive society can be extremely useful provided media should respect its freedom of speech and expression. Constitution of India recognizes the concept of freedom of speech and expression extremely vital for humankind and society.

In *Romesh Thapar v. State of Madras*²⁰, Justice Patanjali Shastri observed that **“Freedom of speech and of the press lay down the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible”**. Article 19 of Indian Constitution provides for freedom of speech and

expression and freedom of press is imbibed under this article. The Hon'ble Supreme Court through Justice A. M. Ahmadi has acknowledged the role of independent media by observing, **“freedom of speech and expression must be broadly construed to include the freedom to circulate one's views by word of mouth, or in writing, or through audiovisual media. This includes the right to propagate one's views through print or other media. Freedom to air one's view is the lifeline of any democratic institution and any attempt to stifle, or suffocate, or gag this right would sound a death knell to democracy and would help usher in autocracy or dictatorship”**²¹. The Hon'ble Supreme Court in *Indian Express Newspapers (Bombay) Private Ltd. v. Union of India*²² highlighted the significance of free media. Justice Venkataramiah, E.S. described freedom of press as **“heart of social and political intercourse”**. While delivering the judgement, Justice E.S Venkataramiah expressed his judicial opinion in the following words – **“The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate 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”**. The freedom of press significantly contributes towards strengthening the democratic principles. First Amendment to US Constitution also refers to the freedom of press²³. This first amendment to US Constitution was challenged in *New York Times Co. v. United States*²⁴, but the US Supreme Court protected it by observing, **“Only a free and unrestrained press can effectively expose deception in government.”**

The positive impact of media on Indian society is undeniable. Nobody can forget the horrific incident of Nirbhaya gang rape wherein 16 year old girl was being raped by group of people. This cruel act triggered the feelings of society to make rape laws more stringent & brought the strong wave of protest across the country. It was only because of media coverage, the parliament brought Criminal Law (Amendment) Act 2013 and provided for death penalty for repeat rape offenders. Further responding to public outrage on the the Kathua gang rape, wherein an eight year old girl was being raped for days, the government cleared the Criminal Law (Amendment) Ordinance 2018. The ordinance provided for death penalty for rape of a girl below 12 years of age. India has witnessed the positive force of media in various high profile cases such as Jessica Lal and Priyadarshini Mattoo case, wherein accused persons were highly influential and they used their influence to derail the process of justice however, their convictions were secured because of media's contribution and constant coverage for justice.

3. Misuse of media and its impact on society

In a democracy, media plays a crucial role as it circulates the information among the masses and people frame their opinion based on information they receive. During early years of Independent India, media performed its functions with more responsibility and in much more principled way. Since there was no rat race of breaking the news first and making it as sensational as it can be as we see in the present scenario. There can be various reason behind balanced approach of media during early years of independent India such as majority of newspapers, periodicals and magazines were owned by editors, who were part of India's freedom struggle and they were fairly aware about the contribution of print media

towards healthy democratic society. It also appears that during that time news media was not considered purely as source of business and for earning money rather it was a medium of contribution towards society. Now a days media has emerged as one of the most profitable industry and lucrative business. This loophole became evident in the case of Sudarshan TV, wherein Sudarshan TV aired few episodes of a programme titled "Bindas Bol". In that programme, the Editor in Chief and Anchor of Sudarshan TV Mr. Suresh Chavhanke targeted the entire muslim community. He raised a question mark on sudden increase of muslim candidates in civil services. Not only this, he termed this phenomena as "UPSC-Jihad". The content of the show was highly objectionable and petition was filed²⁵ in the Hon'ble Supreme Court for refraining the said TV channel from broadcasting the show. while stay the telecast of remaining episodes, the bench comprising Dr. DY Chandrachud, Indu Malhotra and KM Joseph, JJ observed that "**Any attempt to vilify a religious community must be viewed with grave disfavour by this Court as the custodian of constitutional values. Its duty to enforce constitutional values demands nothing less.**" During the court proceedings, NBA clearly stated that it can not take any action against the news channel since the news channel is not a member of NBA. It clearly reflects the flaws in self-regulatory mechanism for broadcasting media. Though there are provisions under the Cable Television Networks (Regulation) Act, 1995, wherein even if a particular news channel is not a member of NBA but still the government can take action against such news channel for unethical and unlawful content. The Electronic Media Monitoring Cell was set up in 2008 to check the violation of Programme and Advertisement Codes enshrined in Cable TV Networks (Regulation) Act 1995. The Government has a

right to impose a ban on any channel if it violates the programme and advertisement codes enshrined under the Cable Television Networks (Regulation) Act, 1995²⁶. Such programme can also be banned on the grounds mentioned under Article 19(2) of Constitution of India²⁷. However so far the monitoring committee has failed to establish its credibility by not taking considerable efforts in this regard.

If we talk about digital news media, almost everyone is using the platforms like WhatsApp, Facebook, Twitter, YouTube etc. There are over 487 million WhatsApp users in India alone, making it the leading country in terms of WhatsApp audience size. Second-ranked Brazil had 118.5 million WhatsApp messenger users. WhatsApp is one of the most used messaging services worldwide²⁸. There are instances that various fake news are being circulated on these platforms which is resulting into communal violence. We have seen that during riots, these digital platforms are being used to spread communal violence and hatred among society. One can imagine the impact of such platform. Still these platforms and intermediaries cannot be held liable for any illegal or unlawful content being circulated on their platforms. These intermediaries gets the safe harbor by virtue of The Information Technology Act 2000. The IT Act 2000²⁹ provides that any social media intermediary will not be in the radar of legal action for any third party information, data, or communication link made available or hosted by him. It further reveals that the available protection shall be applicable if the said intermediary does not in any way, initiate the transmission of the message in question, select the receiver of the transmitted message, and do not modify any information contained in the transmission. It means that if any intermediary or social media only acts as a facilitator or acts as a

bridge to carry a message from one user to another user without any interference, then such social media platform or intermediary will not be liable for any legal action. It clearly shows the lack of required law to deal with this situation. There are no concrete laws for regulating these platforms.

4. Concept of Self-Regulation of media

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 press freedom and the type of regulation followed in a country. Emphasizing on the need of self-regulated media, Mahatma Gandhi observed **“the sole aim of journalism should be service. The newspaper press is a great power, but just as an unchained torrent of water submerges whole country sides 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 profitable only when exercised from within”**³⁰. While making the statement, Mahatma Gandhi stressed clearly stated that if self-regulation of media fails to serve the purpose than it would be more poisonous than want of control.

The principle of self-regulation entails regulation by itself where the media does not have a regulatory body under it. Theoretically speaking, leaving the regulation 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. In the year 2013, Country witnessed the Radia tapes highlighting a nexus between

politicians, large corporate groups and journalist. The Press Council of India through its Chairman addressed this issue; however, no stringent measures had been taken. That depicts the incapacity of Press Council of India. It cannot suspend the journalists for the unfair work they do.³¹ It appears that the Press Council of India has become an old & helpless watchdog.

Presently, there is no qualification prescribed by the Press Council for journalists. The Press Council does not have any power beyond warning or censuring³² delinquent journalists. Thus in India, there is no self-regulation in reality. 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. 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.³³ Now, it is high time to mull over whether the failure to evolve a code of conduct is the fault of any competent authority or of journalists themselves.

Media play an essential task in intensifying awareness in all people about human affairs in a society.³⁴ The right to freedom in article 19 of the Constitution of India guarantees the freedom of speech and expression, as one of six freedoms. Although article 19 does not expressly provide for freedom of press, the fundamental right of the

freedom of press is implied in the right to freedom of speech and expression.³⁵ The media being in the vocation of gathering and circulating information is supposed to hold dominant position, a position that makes it very responsible and answerable to public at large.³⁶ The scheme of media accountability also embraces an assortment of methods that are not openly linked to determining complaints from viewers.³⁷ For instance in Canada- ethics codes to guide journalistic behaviour are one such means, and numerous Quebec news institutes have moral codes.³⁸ At the same time it is analysed that the media sector has become increasingly professional in recent years and impact assessment methodologies became sophisticated and effective.³⁹ In several countries, assessments are made by non-state institutions and these decisions are taken into account or overseen by media authorities. Some countries have applied systems which would look like coming under the working description of co-regulation, several are organising the switch from traditional command and control to novel forms of authority.⁴⁰ Take the example of the broadcast regulatory bodies of Britain, New Zealand or Canada. These regulatory authority has come up with guidelines relating to subject matters such as aggression, obscenity, advertisements and bogus claims.

The general notion was that press should not be given complete freedom since it could generate mischief afterwards. Hence, a need for a correctional mechanism was felt. The idea of regulation arose from that logic. In general, there are four types of regulation. The first one is complete regulation wherein no freedom is given to media and the government keep checking its contents and can ask for amendments in media reported. This is seen in Turkey or United Arab

Emirates or China. The second one is co-regulation wherein a non-state regulatory system links up with state regulation similar to the one developed in Australia much early. Then comes statutory regulation wherein there are specified regulations being administered and enforced by the state through the statutes. India, having the Press Council Act claims to be following statutory regulation. However the Press Council of India has a limited role and therefore India is often listed in the self-regulation list. There comes the explanation of the fourth type of regulation that is self-regulation which involves regulations being administered and enforced by the bodies themselves through internal policies.⁴¹ In the first two cases, there are such situations where the regulations governing reporting are made as per the serving governments' convenience. Further, the concerned officials are not obliged to give an explanation or interpretation to why certain news is regulated. In such instances, journalists would have no idea what is permissible and what is not. Self-regulation involves self monitoring of the work one does where the working body comes up with its own rules and regulations. The well-acknowledged sites of this method of self-regulation in Europe are the press councils that may be seen in mainstream EU member countries today. This can be achieved through various ways such as co-operative regulation,⁴² delegated regulation, devolved regulation and facilitated regulation. It has norms made and decided by the persons and organization to which they will be relevant and the development of procedures and mechanisms for enforcing them.

The general postulation was that if the press came under government control, it would intervene or interfere with media independence and autonomy. To avoid that, self-regulation was considered to be the most desirable option for

India. Apparently, this is a universal phenomenon seen in almost all democratic countries, starting with Sweden in 1916, Britain⁴³, in 1953, and India⁴⁴, in 1966, began to establish a self-regulatory organisation called the Press Council. In India, a statutory body -- the Press Council of India (PCI) -- governs the conduct of the print media. The chairman, a retired judge of the Supreme Court of India, heads the PCI. It is a statutory, quasi-judicial institution that works under the aegis of the Press Council Act of 1978. Regarding complaints against authorities by the press the study shows that there is a steady increase in such complaints.⁴⁵ The complaints are disposed of mainly in two ways, either dismissed or adjudicated. The complaints which may appear to be serious are taken up for adjudication. But when the inquiry committee further examines the complaint it may drop it owing to many reasons. Sometimes the complaints may lack substance at a closer examination. Further, a complainant may not show much interest to pursue it. The respondent may make some settlement with the complainant outside the council. Moreover, the noncompliance of formal statutory requirements by either of the parties may make the council drop the case.

However, it does not have any legal powers vested in it and therefore it proved unsuccessful in developing a system of journalistic rules. The government does not need to comply with its recommendations. Neither is it representative of the views of the media, nor does it have any legal power to take any penalising or remedial act against publishers providing wrong news. It has merely been an authority that brings out reports analysing the behaviour and working pattern of the media. These reports are published as government documents which are not adopted.

Thus it exists as a merely superficial body in the present day.

The electronic media has to comply with 'The Central News Media Accreditation Guidelines, 1999' which says that if a media organisation is held to have provided any false or fraudulent or forged details or documents the representative media organisation shall be debarred from accreditation up to a maximum of five years but not less than two years, as decided by Central Press Accreditation Committee (CPAC).⁴⁶ Likewise, there is pre-publication substantiation done by editors in news papers and media prior to the news assigning to public domain. Apart from that, an internal mechanism for adherence to authenticity of information is sought to be ensured through mechanisms such as Media Council of Peers and Media Watch Groups,⁴⁷ Readers Editor or Internal Ombudsman,⁴⁸ 'letters to the editor',⁴⁹ all of which are intended to highlight and address the wrongs done by media-persons, reporters or the management.

5. Need for infusing regulatory mechanism for web based media platforms

Media ethics is a topic of grave apprehension in general. There has to be an unequivocal thought process on what issues are to be dealt with in the legislation of the Press Council of India (PCI Act) since not all areas of journalistic rights are a theme of legislation. Further, equilibrium is to be maintained as to editorial liberty and the liberty of journalists so as to adopt editorial decisions. The need of the time is to draft a common code of conduct for journalists - reporters and editors - separately taking ideas from working journalists across print, TV and web, retired veteran journalists, and those affiliated with media. instances like Sudarshan TV case clearly shows

the need for effective regulatory mechanism which can be equally applied to the whole media industry. In the present scenario, competition has led the media to turn out to be increasingly working solely for public attention and rating points. Self-regulation would be workable only if due acceptance is given to it by the press and it should remain committed to it. Only such commitment and acceptance will give the Press Council some teeth. Press councils and such regulatory bodies across the world have played a more proactive role in setting industry standards, undertaking regular studies, organising regular public consultations and also empowering readers.

The existing model of PCI is, therefore, an ineffective comparison or benchmark for ongoing discourse on regulating broadcast content. Any self-regulatory system needs to be prompt, proactive, participatory and, above all, one to which the newspaper and magazine publishing sector is committed and accountable. There is a clear need to re-look at accountability systems across media, including print. It is a shocking revelation that from 2003 to 2016 PCI received more than 7000 complaints while from 1990-2000 it received more than 9000 complaints. Of the complaints received most (average 70%) complaints are against the press. Roughly 25% are adjudicated upon, and around 60-70% are dismissed. While many cases keep awaiting their chance as the council takes inordinate amount of time over its interventions. This also happens because the council is largely Delhi-based. These are some of the factors that may account for these successes and failures.⁵⁰ The Indian media in the last seventy years has transformed rigorously. The transformation can narrowly be classified into two categories- the positive

accomplishments of the media and negative impact the media had created.

In February 2021, the Central Government of India announced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 commonly known as IT Rules 2021. While explaining the object of new guidelines for digital media, I&B Minister Prakash Javdekar and IT minister Ravi Shankar Prasad stated that we understand the importance of free media but there must be some reasonable restrictions. We have seen undisputedly the darkest period of Indian Democracy, when National Emergency was invoked in the nation and media houses and journalist were not allowed to write and publish. Even if they want to publish, they were directed to take the prior permission from the government. It was considered as the biggest jolt on the fundamental right of freedom and expression of news channels and journalists.

Now a debate is whether these new IT rules are meant for maintaining the accountability of social media platforms or for increasing excessive government control over the freedom of media. The IT Rules 2021 are being criticized on the following grounds:-

- 1) **IT Rules 2021 being ultra-vires to the IT Act 2000** – generally the framing of rules by the government under any Act is considered as an executive act, which can not go beyond the scope and ambit of the parent legislation. The IT Act 2000 applies to intermediaries and governmental agencies. Both intermediaries and governmental agencies does not create its own content however the IT Rules 2021 provides a mechanism for control over “Digital News Platforms”, which creates its own content. Hence, application of IT Rules 2021 on Digital news platforms appears to be ultra-vires to the parent law i.e. The IT Act 2000.

- 2) **Extension of Section 69-A to Digital News Platforms** – it appears that Section 69-A gives arbitrary power to the to the government to suppress the right to speech and expression as this provision allows government to block the access to an intermediary, govt. agencies and now digital news platforms as well. Section 69-A allow government to direct platforms to remove content without any hearing.
- 3) **Disclosure relating to first originator of objectionable content** - Government wants social media platform to disclose the first originator of such mischievous message or content. The govt. will use it in the matters sovereignty, security & integrity of India as well as for serious offences like rape. Though the Govt. says, we are not interested in the content of message but without looking into the content how the platform will determine that who floated the content first. Now the real problem lies in the compliance of these rules by various social media intermediaries like WhatsApp, Facebook & Telegram. Social media platforms like WhatsApp, Telegram follows the practice of end-to-end encryption. As per the regulation in order to provide the information to government. These platforms will be forced to break encryption in India. Earlier these platforms used to deny the information by saying that it is end to end encrypted but after the new regulations, can they deny anymore? The answer is no, in case if the intermediary deny the information, they will be held liable for such illegal third party information that is made available by these intermediaries on their platforms. Such denial of information may result into closing down their operation. It appears that tracking first

originator will lead to compromise with the privacy of users. Hence, the implementation of this rule will be difficult because the Hon'ble Supreme Court has already recognized the Right to privacy as fundamental right under Article 21 of Constitution of India.

So far it has been observed that the IT Rules 2021 passed by the central government has seen a strong resistance from the side of various Digital News Platforms such as Livelaw, leaflet etc. various high courts such as Kerala, Bombay, Madras and Delhi High Court have passed interim orders in various petitions challenging IT Rules 2021.

6. Conclusion

No human activity is feasible without some type of control. No institution can work logically in the event that it is self-controlled. Essential to self-guideline is the hypothesis of expected similarity. The self-administrative bodies can't work except if it is free from bureaucracy, industrial and specific interests; except if an arbitrary check is done inside the institution; except if it has the power to oblige good grant, for example the publication of an amendment or a requesting for forgiveness. In the light of these, it should be examined with respect to how far self-regulation for media is justified. Accordingly, the supposition that will be that simply leaving the guideline to the media itself would make the likelihood that it might subvert regulatory objectives to its own business objectives. It is the need of great importance that our govt. bump proprietors to put resources into training for media journalists. For the reason of the significance of media freedom, as of now western governments have offer workshops to train journalists. Media responsibility through self-regulation can be accomplished when reporters and the management join to frame norms of journalistic lead subsequently guaranteeing that these principles are consented

to. As a part of this, there ought to be mechanism created to offer a methods by which aggrieved people because of any news or data thing can approach a fair trial. An voluntary accord of media experts, writers and the board or broadcasting group should hence give to create magnificent journalistic standards to stay away from any kind of burden to open for whom they spread news. It is much the same as following the proverb, Prevention is better than cure. The government has to devise a mechanism to make the self-regulation mechanism more robust & effective and may provide external regulation provided such regulation shall not curtail the freedom of speech and expression of various Digital News Platforms.

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⁴⁷ Example is a progressive media critique organization by name Fairness and Accuracy In Reporting (FAIR) as present in New York, America.

⁴⁸ It denotes any neutral administrator or practitioner within the newspaper institution who provides confidential assistance in resolving the news related concerns serving like a counsellor. Example- Star newspaper in South Africa has internal ombudsman

⁴⁹ Letter to the Editor connotes letter addressed about issues of concern about published pieces from its readers that could be on any editorial or commenting about any news items published or commenting about the news that was factually wrong or any critical analysis of any recent topic.

⁵⁰ Available at: http://presscouncil.nic.in/Content/WhatNew/7_WhatNew.aspx