

**GOVERNMENT OF INDIA  
LAW COMMISSION OF INDIA**

**CONSULTATION PAPER ON MEDIA LAW**

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# LAW COMMISSION CONSULTATION PAPER ON MEDIA LAW

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## 1. Introduction

- 1.1. The freedom of speech and expression has been characterised as “the very life of civil liberty” in the Constituent Assembly Debates.<sup>1</sup> The freedom of the press, while not recognised as a separate freedom under Fundamental Rights, is folded into the freedom of speech and expression.<sup>2</sup> The Supreme Court has described this freedom as the “ark of the covenant of democracy”.<sup>3</sup>
- 1.2. The freedom of the press serves the larger purpose of the right of the people to be informed of a broad spectrum of facts, views and opinions. It is the medium through which people gain access to new information and ideas, an essential component of a functioning democracy. Thus, “[t]he survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press.”<sup>4</sup>
- 1.3. The media is vital in the role it plays in uncovering the truth and rousing public opinion, especially in the face of wrongdoing and corruption. Numerous examples exist where the media has played a central role in revealing corrupt practices and shaping the demand for accountability and good governance.
- 1.4. The importance of media in a democracy becomes particularly evident when it comes to challenges surrounding media and the elections. The Law Commission, while considering issues related to electoral reforms, increasingly felt the need to address media-related issues connected to elections, such as the phenomenon of paid news and opinion polls. However issues relating to the media are not solely limited to elections.

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<sup>1</sup> Constituent Assembly Debates: Official Report, (Delhi, 1946-1950), VII, p. 18.

<sup>2</sup> *Brij Bhushan and Another vs. The State of Delhi*, AIR 1950 SC 129; *Sakal Papers (P) Ltd vs. Union of India*, AIR 1962 SC 305.

<sup>3</sup> *Bennett Coleman & Co. v Union Of India*, AIR 1973 SC 106.

<sup>4</sup> Amartya Sen, “The glory and the blemishes of the Indian news media”, *The Hindu*, April 25, 2012

Thus this Consultation Paper puts forward several wide-ranging issues relating to the media generally to elicit responses thereon.

1.5. In India today, we have every reason to celebrate our news media. However, as society evolves, new challenges are constantly thrown up that require consideration. Technology has expanded our horizons, but also brought with it new concerns. Recent events related to the news media, such as the proliferation and subsequent curbing of social media, the paid news phenomenon, fake sting operations, trial by media, breach of privacy, etc. pose a set of anxieties. As Lord Justice Leveson wrote in his path-breaking report on ‘Culture, Practice and Ethics of the Press’ in Great Britain,

“With these rights (of press freedoms) come responsibilities to the public interest: to respect the truth, to obey the law and to uphold the rights and liberties of individuals.”<sup>5</sup>

1.6. To this end, the Consultation Paper raises some select concerns, and poses a set of questions that will help foster a larger public debate amongst stakeholders and the citizenry to shape the approach which should be adopted in tackling these issues.

## **2. Previous Reports and Recommendations**

2.1. There have been a number of reports on specific issues related to media regulations, authored by various government and self-regulatory entities. The following is a snapshot of the content of the reports published so far.

2.2. One of the main issues with regard to media regulation has been the question of the nature of regulatory authorities. This has led to proposals for a Broadcasting Regulatory Authority of India. In 2007, a Consultation Paper by the Ministry of Information and Broadcasting sought views from stakeholders on the proposed draft of the Broadcasting Services Regulation Bill. The proposed draft of the Bill is available on the website of the Ministry of Information and Broadcasting. The PCI, in 2012 also recommended that electronic and social media be brought within its regulatory framework and the institution renamed Media Council.

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<sup>5</sup>Lord Justice Leveson, ‘An Inquiry into the Culture, Practices and Ethics of the Press’ (Leveson Inquiry Report, London: November 2012).

- 2.3. With respect to media and elections, in December 2010, the Committee on Electoral Reforms constituted by the Ministry of Law and Justice, Government of India submitted a Background Paper on Electoral Reforms co-sponsored by the Election Commission of India highlighting key issues in the electoral system. They dealt, *inter alia*, with issues related to media and elections. The Committee examined the recommendations made by the Election Commission of India in its Proposed Electoral Reforms in July 2004 regarding restrictions on publishing of poll surveys and observed the need for examining restrictions on opinion polls.
- 2.4. Another issue that has received a great deal of attention from various sources is that of paid news. In its report on paid news dated 30.07.2010, the Press Council of India (PCI) recommended self-regulation on this issue, and that the PCI be empowered to adjudicate complaints on paid news. In May 2013, the Parliamentary Standing Committee on Information Technology (2012-2013) in its forty-seventh report examined issues related to paid news and recommended that either there be a statutory body to look into content from both print and electronic media or that the PCI be revamped with powers to tackle paid news and a similar statutory body be set up for electronic media. The Committee observed that there was a need to evolve a comprehensive definition of paid news so that 'news' and 'advertisement' could be demarcated. The Committee noted that the phenomenon of Private Treaties gave rise to Paid News and recommended strict enforcement of existing guidelines and codes to bring transparency in Private Treaties.
- 2.5. The same Report also raised the issue of cross-media holdings, which has been examined in detail earlier by the Telecom Regulatory Authority of India (TRAI). TRAI in its Report dated 26.02.2009 recommended that there should be necessary safeguards in place to ensure that diversity is maintained across the 3 media segments i.e. print, television and radio. TRAI also recommended that a detailed market study be conducted for identifying safeguards. In pursuance of TRAI's report dated 26.02.2009, the Ministry of Information & Broadcasting awarded a study to Administrative Staff College of India (ASCI) to study the nature and extent of cross media ownership, existing regulatory framework, relevant market and international experience. The ASCI Report released in July 2009 recommended that cross media ownership rules be put in place by an appropriate market regulator based on a detailed market analysis. Taking into account the Administrative Staff College of India's report, on 15.03.2013, TRAI

released a consultation paper seeking to examine the need and nature of restrictions relating to cross media ownership.

2.6. On regulation of government owned media, on 28.01.2013, The Ministry of Information & Broadcasting constituted an Expert Committee for the purpose of reviewing the institutional framework of PrasarBharati including its relationship with Government. The Expert Committee submitted its report on 24.01.2014 suggesting recommendations to make PrasarBharati administratively and financially autonomous of Government.

2.7. Other issues related to the media have also been addressed in various reports. In 2006, the Law Commission's two-hundredth report on Trial by Media recommended the amendment of the Contempt of Courts Act, 1971 to include more stringent provisions for prejudicial reporting by the media. The Law Commission Consultation Paper (undated) on sting operations, while referring to the observations of the Committee on Petitions of Rajya Sabha in its report dated 12.12.2008, observed that there was a need to evaluate the misuse of the sting operations and their impact on privacy. In February, 2014, the Parliamentary Standing Committee on Information Technology (2013-2014) submitted its fifty second report on Cyber Crime, Cyber Security and Right to Privacy wherein the Committee recommended that in view of the recent uproar over Section 66A of Information Technology Act, 2000 there should be a system of periodical review of the existing provisions of the Act. The Committee also observed that there was a need for a comprehensive policy to protect the privacy of a citizen in the absence of a legal framework on privacy.

### **3. Methods of Regulation**

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

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

- 3.3. Instead, the broadcasting sector is regulated by the Telecom Regulatory Authority of India (TRAI), which notifies rules from time to time on matters such as streamlining of the distribution of television channels to platform operators. Additionally, the Electronic Media Monitoring Centre established by the Ministry of Information & Broadcasting monitors the content of all TV channels up linking and down linking in India to check the violation of the Programme and Advertisement Code. It also monitors content of Private FM Radio Channels.
- 3.4. Guidelines and regulations are issued from time to time by these regulatory authorities. The Ministry of Information & Broadcasting, for example has issued Policy Guidelines for Uplinking of Television Channels from India, the latest in 2011, which include mandatory compliance of the Cable TV Networks (Regulation) Act 1995. The Guidelines introduce the three-strikes and five-strikes rules, whereby permission to broadcast, and renewal of such permission, is revoked upon three or five violations of the Guidelines respectively.
- 3.5. Self-regulation of content in the broadcast media is conducted through a two-tier mechanism of self-regulation by individual broadcasters as well as industry level regulatory bodies. Regulation of content is divided into news and non-news sectors. For the non-news sector, industry level regulation is enforced by the Broadcasting Content Complaints Council (BCCC) within the Indian Broadcasting Foundation (IBF) that oversees channels other than the news and current affairs channels. The BCCC is an independent council comprising a thirteen member body consisting of a Chairperson being a retired Judge of the Supreme Court or High Court and 12 other members including broadcaster and eminent non-broadcaster members.
- 3.6. The BCCC hears complaints and may issue directions to the channel to modify or withdraw the objectionable content, and can further fine the channel up to Rs. 30 lakhs. If the direction is defied, the matter may be referred to the Ministry of Information and Broadcasting for further action, including revocation of permission to broadcast.
- 3.7. The self-regulatory body for news and current affairs channels is the News Broadcasters Association (NBA) which has set up the News Broadcasting Standards Authority (NBSA) to adjudicate complaints in relation to broadcast content on news channels. The NBA consists only of organizations that are members and submit

themselves to regulation by the NBA. Therefore, the jurisdiction of the NBSA is restricted only to members.

- 3.8. The NBA has in place a Code of Ethics to regulate television content. The NBSA is empowered to warn, admonish, censure, express disapproval and fine any broadcaster in violation of the Code a sum upto Rs. 1 lakh.
- 3.9. Print media in India is governed by The Press Council Act, 1978 that establishes the Press Council of India (PCI). The Council comprises a Chairman and 28 other members. The Chairman is to be nominated by a Committee constituting of the Chairman of the Council of States (Rajya Sabha), the Speaker of the House of the People (Lok Sabha) and a person elected by the members of the Council.
- 3.10. The PCI is statutorily empowered to take *suomotu* cognizance or entertain complaints against newspapers and journalists accused of violating standards of journalistic ethics or offending public taste and censure. It may summon witnesses and take evidence under oath, and issue warnings and admonish the newspaper, news agency, editor or journalist. However the PCI does not have the power to penalize any entity for violation of its guidelines.
- 3.11. With the advancement of Internet technology, the Information Technology Act, 2000 was introduced as the first Act to govern cyber law provisions. Section 66A was inserted in the Act by an amendment in 2008 under which sending offensive or false messages through a computer device is a punishable offence. However, no guidelines have been laid down for identification of offensive messages. The Information Technology (Intermediary Guidelines) Rules, which direct intermediaries to identify and remove objectionable content, were introduced in 2011. Section 66A is currently under challenge<sup>6</sup> as being violative of free speech as it has often been said to have been invoked arbitrarily or with political motive to block access to content allegedly objectionable.
- 3.12. Media regulation in India is therefore not unified, and has a multiplicity of regulatory bodies. Further there are issues surrounding the enforceability of decisions of such bodies. An independent broadcasting media authority along the lines of TRAI was first suggested by the Supreme Court in *Secretary, Ministry of Information and*

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<sup>6</sup>*Shreya Singhal v. Union of India*, W/P (Civil) No. 167 of 2012 (pending before the Supreme Court).

*Broadcasting v. Cricket Association of Bengal.*<sup>7</sup> Thereafter, the Ministry of Information & Broadcasting has made various attempts, the latest in 2007, to draft a Broadcasting Services Regulation Bill in order to set up a Broadcasting Regulatory Authority of India (BRAI).

3.13. In *Indraprastha People v. Union of India*<sup>8</sup>, the Delhi High Court recommended that an independent statutory body be set up under the Cable Television Networks (Regulation) Act, “consisting of men and women of eminence.” Further they said, “security of tenure of a kind should be provided for the Members of the Board so that they are free from Government interference.” Till this comes into force, the BCCC, according to the Court should be recognised by the Government of India as competent to decide complaints on violation of the law by broadcasters. Its decisions shall be treated by the Union of India as the foundation to take appropriate action against the offender.

3.14. Recently, the Supreme Court of India, in Writ Petition (Civil) No. 1024/2013, agreed to hear a Public Interest Litigation praying for an independent regulatory authority to govern broadcast media alleging that the Information & Broadcasting Ministry had failed to constitute sufficient infrastructure to ensure quick decision-making against offending channels and in not imposing deterrent penalties as provided by law. The Court tagged the case with another pending matter, Writ Petition (Civil) No. 963/2013, seeking guidelines to regulate the content of television channels.

3.15. In 2012, the PCI passed a resolution urging the government to bring electronic and social media within the PCI’s regulatory framework and to rename it the Media Council – a resolution that met with much opposition. Though the Print and Electronic Media Standards and Regulation Bill, 2012 proposed the establishment of an overall media regulatory authority, the Bill did not get introduced. This was especially as statutory regulation of this nature led to widely expressed fears of censorship and state suppression of free media. Thus the PCI continues to be the regulatory institution for print media, albeit without adequate powers of enforcement.

3.16. Similar concerns have been voiced and addressed in other jurisdictions, most notably in the United Kingdom where, following a series of media scandals, a

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<sup>7</sup>AIR1995 SC 1236.

<sup>8</sup> WP (C) No.1200/2011, (Del. HC)

committee headed by Lord Justice Brian Leveson was set up to inquire the ‘culture, practice and ethics’ of the press, including the media’s relations with politicians and the police. The report recommended a strong and independent regulator be set up to replace the existing Press Complaints Commission.

3.17. Whether media accountability is better served by such self-regulatory institutions which are diverse and widely viewed as lacking powers of enforcement or replaced by statutory regulations enforced by one or multiple regulators has been a vexed question in recent debates surrounding media reform. Even for social media which currently does not have a dedicated regulator, the key question is whether to regulate and if so, which model of regulatory institution to adopt.

3.18. In this context, the following questions arise:

1. Do the existing self-regulation mechanisms require strengthening? If so, how can they be strengthened?
2. In the alternative should a statutory regulator be contemplated? If so, how can the independence of such regulator be guaranteed? Specifically:
  - a. How should members of such regulator be appointed?
  - b. What should the eligibility conditions of such members be?
  - c. What should their terms of service be?
  - d. How should they be removed?
  - e. What should their powers be?
  - f. What consequences will ensue if their decisions are not complied with?
3. Should any such change be uniform across all types of media or should regulators be medium-specific?

#### **4. Paid News**

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

- 4.2. The issue was extensively dealt with by the Press Council's sub-committee report on 'Paid News' in 2009. The report talked about the way in which the illegal practice has become organised, with 'rates' for the publication of 'news items'.<sup>9</sup> Further, the Parliamentary Standing Committee on Information Technology, in 2013, has brought out its forty-seventh report on the phenomenon of paid news, where it has highlighted the 'dangerous trend' of presenting paid-for information as news, that has spread at 'remarkable pace' in some parts of the media.<sup>10</sup> The Report also outlined the practice of 'Private Treaties', where a non-media company transfers shares to a media company in exchange for advertisements, space and favourable coverage.
- 4.3. Guidelines are present both in print and broadcast media that call for clear demarcation of advertisement and news content. These take the shape of norms under the Press Council of India Act, and the Programme and Advertisement Codes under the Cable Television Networks (Regulation) Act. However, these guidelines are either subverted or ignored altogether.
- 4.4. Particularly with respect to elections, Section 127A of the Representation of People Act, 1951 make it mandatory for the publisher of an election advertisement, pamphlet or other document to print the name and address of the publisher as well as the printer. However, paid news is not expressly defined or included as an electoral offence.
- 4.5. To curb paid news, the Election Commission has constituted District level Committees to scrutinise newspapers for such items. Given the state of the current law, however, the Commission can only issue notices to show cause why paid news expenditure should not be included in a candidate's election accounts. Complaints are also forwarded to the PCI and NBA for necessary action. However, it has been admitted by the concerned bodies that enforcement mechanisms currently lack teeth and are insufficient to meet the challenge.
- 4.6. In this context, the following questions arise for consideration:
1. Should paid news be included as an election offence under the Representation of the People Act, 1951? How should it be defined?

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<sup>9</sup>Press Council of India, Sub-committee Report on Paid News, <<http://presscouncil.nic.in/OldWebsite/Sub-CommitteeReport.pdf>>

<sup>10</sup>Standing Committee on Information Technology, 15<sup>th</sup> Lok Sabha, 47<sup>th</sup> Report on 'Issues related to paid news', para 1.2

2. What enforcement mechanisms should be put in place to monitor and restrict the proliferation of paid news?

## 5. Opinion Polls

5.1. Opinion polls conducted by polling agencies and disseminated widely by television channels and newspapers are an endemic feature of elections in India today. Several concerns have been raised about such polls, including bias in choosing sample sizes, the possibility of them being manipulated to favour particular political parties and the inordinate influence that they exercise on voters' minds especially in multi-phase elections, under the guise of an objective study. Equally, constitutional concerns have been raised about banning such polls. In an opinion on 8<sup>th</sup> April, 2004, Soli Sorabjee, Attorney General of India (as he then was) opined that banning opinion (and exit) polls would be violative of Article 19(1)(a) of the Constitution, specifically the public's right to know, which has been held by the Supreme Court to be part of the freedom of speech (*Indian Express v. Union of India*<sup>11</sup>).

5.2. Currently opinion polls are barred from being published in electronic media for 48 hours prior to an election in that polling area under Section 126(1) of the Representation of People Act, 1951 ("RP Act"). No other restriction exists. However the Election Commission of India has strongly argued for further restriction on publication of opinion polls. Political parties unanimously agreed that publication of opinion poll results should be prohibited from the date of notification of elections till the end of the elections as is evident from the Election Commission's letter dated 20<sup>th</sup> October, 2010 to the Ministry of Law and Justice, Government of India. The constitutionality of a modified version of this provision was endorsed by an opinion of Goolam E. Vahanvati, the Attorney-General of India on 13<sup>th</sup> June 2013. In his opinion, the learned Attorney-General opined that since there is no real basis for distinguishing between opinion and exit polls, opinion polls could also be prohibited from being published from 48 hours before the first phase of an election till after the last phase of polling is completed, analogous to the restriction on exit polls under S. 126A of the RP Act.

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<sup>11</sup>(1981) Supp SCC 87 at 825).

- 5.3. The Press Council of India in its “Guidelines on ‘Pre-Poll’ and ‘Exit-Polls’ Survey” has similarly mandated that opinion polls cannot be conducted 48 hours before the first phase of polling in a multi-phase election. Further details of the methodology, sample size, margin for error and background of the organisation conducting the poll would have to be indicated whenever such polls are published. Guidelines for Publication of Opinion and Exit Polls were notified by the Election Commission in 1998. However because of doubts about the jurisdiction of the Election Commission to notify and enforce these Guidelines, they were subsequently withdrawn in 1999.
- 5.4. Any move to extend the time period for barring opinion polls has met with resistance from psephologists who have defended the scientific merits of opinion polls and media houses who have underlined their free speech rights in broadcasting them. Further, questions of constitutionality of such restrictions remain open as there has been no authoritative pronouncement on this matter yet by the Supreme Court.
- 5.5. In this context, the following questions arise for consideration:
1. Do opinion polls require any kind of regulation? If so, what kind?
  2. What are the reasons for seeking such regulation, if any?
  3. Will such regulation be constitutionally valid?

## **6. Cross Media Ownership**

- 6.1. Monopolies in the field of media ownership have a severely negative impact on the quality of media freedom and plurality in the country, specifically with respect to news coverage. Issues related to ownership of media entities have been raised repeatedly in the last few years by both private observers and government bodies. The overarching concern is that media ownership does not receive sufficient public scrutiny and is under-regulated.
- 6.2. On the other hand, hastily imposed regulations in this space could infringe on the freedom of the media, and pave the way towards unwarranted state control. Any regulation on vertical integration, which connotes ownership of both broadcast and

distribution, and on horizontal integration, that takes the shape of cross-media holdings, must balance these two competing considerations.

6.3. A further issue requiring attention is the consolidation of market share by a single media entity in a given geography. Studies have shown that there are clear examples of market dominance by media entities, making it necessary to address the question of regulation.

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

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

6.6. In this context, the following questions arise for consideration:

1. Is there a current need for restrictions on cross control/ownership across the media sector? If so, what shape should such restrictions take?
2. Are mergers and acquisitions guidelines necessary for the sector to regulate concentration of media ownership? If so, what are the key factors such regulations must capture?
3. Do mandatory disclosure norms need to be imposed on media entities?
4. Should certain categories of entities be restricted from entering into broadcasting activities?

## **7. Media and Individual Privacy**

- 7.1. The exponential growth of media, particularly electronic media, has resulted in a corresponding decline in an individual's privacy. The right to privacy, not specifically enshrined in the Constitution of India, has been held to be implicit in Article 21.<sup>12</sup> Though the freedom of speech and expression, as guaranteed in the Constitution of India, empower the press to disclose information vital to public interest, it often results in intrusion of privacy. In 2012, a news channel aired the molestation of a girl in Guwahati, filmed by one of its reporters. In several instances, sting operations have been used as a medium to exact retribution or have sought to expose information within the realm of an individual's private domain having no bearing on public interest. In 2008, the Delhi High Court took *suomotu* cognizance of a manipulated sting operation on a schoolteacher resulting in her suspension and assault by a mob and directed the government to consider adopting guidelines for sting operations.<sup>13</sup>
- 7.2. At present, the NBA has principles of self-regulation and a code of ethics. The regulations also provide for a complaint mechanism to the NBSA. Recently, the News Broadcasting Standards Authority imposed a fine of Rs. 1 Lac on a television channel for broadcasting truncated footage of an incident involving young college students alleged to be drunk, observing that there was no verification of facts. The Authority observed that there was no impartiality or objectivity in reporting the incident and that the broadcast intruded into the privacy of the students. The channel was also directed to air an apology for three days expressing regret over the telecast. Since the NBSA is not a statutory body, the scope of its regulation is limited as being restricted only to members. In 2009, a news channel withdrew its membership after being fined for violating guidelines.
- 7.3. Additionally, EMMC under the I&B Ministry has a set of self-regulatory guidelines for broadcast service providers including guidelines that channels should refrain from using material related to a person's private affairs unless there is an identifiable larger public interest. The Content Certification Rules 2008 under the Cable Television Networks (Regulation) Act define "identifiable larger public interest" to include revealing or detecting crime or disreputable behaviour; protecting public health or safety, exposing misleading claims made by individuals or organizations or disclosing significant incompetence in public office for the larger public interest.

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<sup>12</sup>*Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378.

<sup>13</sup>(2008) 146 DLT 429.

Despite the presence of such norms, sting operations invading personal privacy by the media is a fairly common occurrence. The Right to Privacy Bill, drafted as a possible antidote, is yet to be introduced.

7.4. In this context, the following questions arise for consideration:

1. Should a statutory body have powers to adjudicate complaints of false sting operations? Should there be a specific statutory provision for treating false sting operations as a punishable offence?
2. Should the existing framework of laws be suitably amended to include specific guidelines governing disclosure of private information by the press?
3. Is there a need for detailed guidelines on reporting of *sub judice* matters?
4. Is the current definition of “Identifiable larger public interest” under the Cable TV Networks (Regulation) Act, 1995 comprehensive?

## **8. Trial by Media and Rights of the Accused**

8.1. There is a widespread view that the difference between an accused and a convict and the basic underlying principle of ‘innocent until proven guilty’ are regularly overlooked by sections of the media in its coverage of ongoing trials. By conducting parallel trials, the media, it is felt, not only puts undue pressure on the judge but also creates pressure on lawyers to not take up cases of accused. Further once a matter comes under intense media glare, there is an added pressure on the prosecution to secure evidence which must incriminate an accused, lest the media build negative public opinion against the prosecution. A fair trial and investigation, which are foremost constitutional guarantees, are as much a right of the accused as they are of the victim.

8.2. The exponential growth and reach of media has shown unhealthy trends of competition, leading to sensationalised reporting giving the well-established rule of *sub-judice* a go-by. While this is certainly not true across the board to all media publications, the problem is certainly extensive. Some form of restriction on such

media trials has been suggested so as to preserve the administration of justice as also to protect privacy of individual.

8.3. In response, the Supreme Court in *Sahara India Real Estate Corporation v. Securities and Exchange Board of India*,<sup>14</sup> gave judges the power to order postponement of publication on a case-by-case basis, the test being, ‘where there is a real and substantial risk of prejudice to fairness of the trial or to proper administration of justice’. However, this is a very general test which does not clarify what publications would fall within this category, leaving it entirely contingent on the content and context of the offending publication. This leaves the higher judiciary with wide discretionary powers to decide what amounts to legitimate restraints on media reporting. Due to the possibility of such subjective interpretation, postponement orders could be used by influential parties as a tool to abuse the process of law. Therefore, the jurisprudence of postponement might be transported into defamations suits, when the application of such order should be sought strictly as a constitutional remedy.

8.4. In this context, the following questions arise for consideration:

1. What form of regulation, if at all, is required to restrict media reporting of *sub-judice* matters?
2. Should the application of postponement orders be narrowed down by introducing guidelines/parameters such as kinds of publications to be covered, categories of proceedings which may be covered?
3. If some form of media regulation is required in reporting of matters which are *sub-judice*, should the same be in the form of a self-regulated media or should the Courts apply the present law of contempt to check such prejudicial publications?

## **9. Defamation**

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

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<sup>14</sup>(2012) 10 SCC 603.

and publishing houses. Any change to the laws on defamation in India must balance these two considerations.

9.2. Currently, civil defamation is dealt with under the law of torts whereas criminal defamation is an offence under Section 499 of the Indian Penal Code. A journalist has no special status under defamation laws in India. Although the press enjoys the freedom of speech and expression under Art. 19(1)(a) of the Constitution, defamation is a ground for a reasonable restriction to this freedom under Art. 19(2).

9.3. Demands have been made in the past by entities such as the Editors' Guild of India, to decriminalise defamation as it pertains to journalists. The proposal has been noted by the Law Ministry as well. In 2003, the newspaper The Hindu mounted an unsuccessful challenge in the Supreme Court against the use of the criminal code for defamation, on the ground that it violates the press freedom guaranteed by the Constitution. Therefore, a comprehensive review of laws regulating the media must consider the question of defamation laws as well.

9.4. To that end, the following question arises for consideration:

1. Should there be modifications in the law of civil and criminal defamation as it applies to journalists? If so, what should these modifications be?

## **10. Publications and Contempt of Court**

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

10.2. The law of contempt is one of the grounds for reasonable restrictions under Article 19(2) to the freedom of speech and expression. While civil contempt refers to the wilful disobedience to any judgment, or order of a court, criminal contempt is an offence under Section 2(c) of the Contempt of Courts Act, 1971, and is punishable by imprisonment of up to six months. It is defined as the publication of any matter which lowers the authority of any court, or scandalises or tends to scandalise, prejudices or tends to prejudice, or obstructs or tends to obstruct any judicial proceedings, or the

administration of justice. It is evident that this definition is extremely wide, particularly as it is unclear what the words “tends to” encompasses.

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

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

10.5. In this context, the following question arises for consideration:

1. What are the further legislative or Constitutional amendments necessary to the law on contempt of court to ensure freedom of the press?
2. Should scandalising or tending to scandalise the Court continue as a ground for contempt of court?

## **11. Regulations surrounding government owned media**

11.1. Media in India is owned both by government as well as the private sectors. Government-owned media such as All India Radio, Doordarshan, Directorate of Field Publicity, Press Information Bureau, etc., have a significant role to play as the matters they address are not extensively covered by large sections of privately-owned media. Government-owned media is not only a channel through which news about developmental initiatives is passed on to the common man but can also be an

independent filter shaping the common man's perception of government policies and their implementation.

11.2. However, government owned media is not seen as adequately independent of the government. Hence, the credibility of the development stories they produce may be questioned, especially if they focus exclusively on describing governmental initiatives rather than using their independent judgment on the efficacy of initiatives. Further, issues also arise regarding the quality of such government media when compared to private media.

11.3. In India, PrasarBharati is India's public broadcaster, which is an autonomous corporation of the Ministry of Information and Broadcasting and comprises the Doordarshan television network and All India Radio. Doordarshan, the public television, operates multiple services, including flagship DD1, which reaches about 400 million viewers.

11.4. There are over 250 FM (frequency modulation) radio stations in the country (and the number is likely to cross 1,200 in five years). Curiously, India is the only known democracy in the world where news on the radio is still a monopoly of the government. Any information broadcast by radio should adhere to the government's codes, and should not have any political content. Print and TV media, in contrast, have self-regulating bodies. Radio still has the highest reach across the country; the illiterate poor as well as people in remote areas rely on it for information. But the only news available to them is that of the government owned and controlled AIR.

11.5. In January 2013, the Ministry of Information & Broadcasting constituted an Expert Committee for the purpose of reviewing the institutional framework of PrasarBharati including its relationship with Government. The Expert Committee submitted its report on 24.01.2014 suggesting recommendations to make PrasarBharati administratively and financially autonomous of Government.

11.6. In this context, the following questions arise for consideration:

1. What regulations can be introduced to ensure independence of government-owned media?
2. How should such regulations be enforced?

## **12. Social Media and Section 66A of the Information Technology Act, 2000**

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

12.2. At the same time, social media has often been used as a conduit for instigating ethnic and communal violence such as false rumours online in August 2012 that led to an exodus of North-eastern migrants from South India. In 2013, the Election Commission introduced guidelines to regulate internet campaigns given the vast use of social media by political parties. Though, the Print and Electronic Media Standards and Regulation Bill, 2012 proposed the establishment of a media regulatory authority, the Bill did not get introduced. Under the present Act, the Cyber Appellate Tribunal is empowered to deal with complaints under the Act but is largely confined to cases of fraud and hacking.

12.3. In this context the following issues arise for consideration:

1. Should the existing law be amended to define what constitutes "objectionable content"?

2. Should Section 66A of the IT Act be retained in its present form or should it be modified/ repealed?

3. Is there a need for a regulatory authority with powers to ban/suspend coverage of objectionable material? If yes, should the regulatory authority be self-regulatory or should it have statutory powers?