



**THE LOST ESSENCE OF MEDIA- AN  
EXASPERATING FERRAGO OF  
DISTORTIONS,  
MISREPRESENTATIONS AND  
OUTRIGHT LIES**

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**INTRODUCTION**

Freedom of speech and expression pumps the blood into the democracy of our country. If that is supposed to be our greatest strength then media which is the vocal representation of the people of this country is rightly called the fourth pillar of democracy. Media proudly takes up the responsibility to bridge the gap between what is happening around in this world and what about that is known to a layman sitting in front of his television or the one reading his morning newspaper with an intention to know it all. It is truly said that with great power comes great responsibility and it aptly goes with the role of media in this country.

The problem has been arising in the recent past and is certain to continue in future because the media is not weighing the powers and responsibilities equally. On one hand where our constitution makers gave all the powers of speech and expression to the media as is given to a citizen of this country they also expected it to be independent of any political or commercial control on the other hand. The problem becomes bigger when the media shifts responsibility from bringing the true picture in front of people to misrepresenting them by becoming

endorsement forums for various political parties.

Corruption in media houses is the ultimate point of concern at this phase of developing India.<sup>1</sup> The phrase ‘pen is mightier than the sword’ losing its spirit when the pen itself is becoming the sword used for slashing the essence of media and turning it into a brothel where the prostitution of journalism is the only candour. By becoming a puppet in the hands of anyone who offers money or by fearing anyone who demonstrates power, media has come down to be violence by words.

The transformation of media houses into corporate hubs is increasing the misery multiple number of times. Media and free press being the torchbearer of the free speech of the people must have its independence. However, the current mainstream media is trapped in the shackles of corporatization and commercialization. In the present era, media has become a corporate hub where news is sold depending upon the sensitization that it creates. The essence of media is lost the moment truth vanishes and favouritism takes over.

Media is now becoming dishonest not only to itself but to the millions of people of this country who vest their faith into it.<sup>2</sup> It is sad to see how the bitter reality and true sufferings of this country escapes from the eyes of this media and how a small political stunt by a political party is exaggerated for months to influence the vote bank.

<sup>1</sup>Essel Infraprojects limited v Sanjeev Srivastava & Abhimanyu (2014) SCC Online Bom 1780

<sup>2</sup>Rajdeep Sardesai v State of Andhra Pradesh & Others (2015) 8 SCC 239



It also needs to be understood that the Honourable Supreme Court provides Right to Privacy as a fundamental right. Therefore, the sting operations that include a lot of undercover work and are done by private media houses certainly become the debate of media ethics and authority. The sting operations are not only intrusion on someone's privacy but also unethical and indecent. The media recording anything that transpires in a closed room between consenting adults without their knowledge or permission can never be justified as Freedom of Press and Media.

The media of this country has evidently come down a long way towards hypocrisy and is losing its essence along with the faith of the people. It is high time analyse and makes things as they ought to be before it gets too late.

### **CONSTITUTIONAL AUTHORITY OF PRESS AND MEDIA**

Article 19 (1) (a) of the Indian constitution guarantees the freedom of speech and expression.<sup>3</sup>Freedom of Speech and expression means the right of a citizen to express his opinions freely by words of mouth, pictures, printing, writing or any other mode. It thus includes the expression of one's ideas through any communicable medium or visible representation, such as gestures, signs and the like. <sup>4</sup>The expression also implies publication and therefore freedom of press and media is included in this category. Unlike the Constitution of U.S.A, the Indian Constitution does not expressly proffer the freedom of press and media. It is so because in the constituent assembly debates Dr.

Ambedkar stated that a separate law for freedom of press is not necessary as he considered press and individual (i.e. citizen) to be one and the same as far as exercising the right of free speech and expression is considered. Even though there is no separate provision for freedom of press and media in the Indian Constitution yet its existence in Article 19 (1) (a) is intrinsic and adds value to the right of freedom of Speech and Expression.

In the case of Romesh Thappar V State of Madras<sup>5</sup> and Brij Bhushan V State of Delhi<sup>6</sup> the Supreme Court presupposed that freedom of press is a vital and indispensable part of right to freedom of speech and expression.

Thus, it is established that the right to freedom of speech and expression contains in itself the right to spread and circulate one's ideas and opinions freely and without any hindrance by employing all modes of publication. However, this right is not absolute. There are certain restrictions imposed on this right under Article 19 (2) which empowers the Government to put reasonable restrictions on the exercise of right to freedom of speech and expression on the following grounds, e.g., security of the State, friendly relations with foreign States, public order, decency and morality, contempt of court, defamation, incitement to offence, and integrity and sovereignty of India.<sup>7</sup>

### **CORRUPTION IN MEDIA HOUSES – PRINT & TV MEDIA**

The phrase 'pen is mightier than the sword' lost its spirit when the pen itself became the sword used for slashing the essence of media

<sup>3</sup> LIC v Manobhai D Shah (1992) 3 SCC 637

<sup>4</sup> Lowell v. Griffin, ( 1939) 303 US 444

<sup>5</sup>Romesh Thapar v State of Madras 1950 SCR 594

<sup>6</sup>Brij Bhushan v State of Delhi 1950 SCR 685

<sup>7</sup>Shreya Singhal v Union of India (2015) 5 SCC 1



and turning it into a brothel where the prostitution of journalism is the only candour. Newspapers which once proved to be the voice of the people and helped the freedom fighters in propagating their ideologies and nationalist feeling are now reduced to be a bunch of papers advertising about a particular political party and the only effect that it now has is of creating controversies and adding fuel to the existing ones. Press is called the fourth pillar of democracy, with its other three pillars drenched in the sludge of corruption it is expected out of press to execute its duties with a sense of responsibility and live up to its glorious past. However, the media nowadays has miserably failed in understanding the meaning of the term 'responsible journalism' and has molded it to its own personal benefit.<sup>8</sup> Responsible Journalism is not just a term instead it is the reason why press is called the fourth pillar of democracy. Media is like a mirror of the society which shows the people as to what is going on in the society. It has an obligation to communicate to the people the correct information relating to political, social, economic, cultural and other activities going on in the country. It is the responsibility of the press to act as the watchdog against the arbitrariness of the government or any of its organs. It is said that a responsible media can lift the nation to great heights but an irresponsible media can bring it down to mud. People tend to have a faith in media as it is believed that it projects the real face of the society that is hidden behind the mask of sophistication. However this belief was destroyed when Indian media was ranked second most untrusted institution in a

survey conducted by Edelman Trust.<sup>9</sup> This did not come as a shock because with the emergence of spreading of fake news, creating false propaganda for the TRP, exaggerating unimportant issues, conducting unintelligent debates over religious matters which creates unrest; media somewhere lost its reliability.<sup>10</sup> A flagrant example of corruption of media would be not covering the mysterious death of Justice B.H. Loya who was presiding over the Sohrabuddin Sheikh case.<sup>11</sup> Even though it was supposed to be national news yet none of the news channels bothered to cover it because of the risk involved in it. It was only after the Indian Publication 'The Caravan'<sup>12</sup> that published the story of the mysterious demise of the 48 year old justice, the other big news channels reported on it and that too, to create more confusion than before.

It is very unfortunate to note that apart from an online news website none of the other news channels dared to report on how the company of Jay Amit Shah (son of Amit Shah) increased its turnover by 16,000 times after the Bhartiya Janta Party (BJP) came into power following the general elections of 2014.

Earlier corruption in media was limited to page 3 and Bollywood but now it has disseminated to political arena as well. There is a record of people admitting that representatives of newspapers like Dainik Jagran, Eenadu and Dainik Bhaskar created the news in their favour in exchange for money. There was an allegation against the newspaper Eenadumade by P Kodanda Rama

<sup>8</sup> Common Cause v Union of India & others (2018) 13 SCC 440

<sup>9</sup><https://www.edelman.com/research/2017-edelman-trust-barometer>

<sup>10</sup> Advocates Association v UOI (2013) 10 SCC 611

<sup>11</sup> Rubabuddin Sheikh v Amit Anilchandra Shah 2015 SCC Online Bom 7806

<sup>12</sup><https://caravanmagazine.in/tag/bh-loya>



Rao, a candidate of the party Loksatta of Andra Pradesh who accepted that he paid Rupees 50,000 to the newspaper for publishing an article in his favour.<sup>13</sup> However, this is a mere allegation but the significance of such an allegation cannot be completely overlooked.

### **MEDIA TURNING INTO CORPORATE HUB**

The essence of democracy lies in the freedom of speech and expression. Media and free press being the torchbearer of the free speech of the people must have its independence. However, the current mainstream media is trapped in the shackles of corporatization and commercialization. In the present era, media has become a corporate hub where news is sold depending upon the sensitization that it creates. The role of media in making the people aware is long gone instead it is replaced by providing entertainment. Today, news channels have become a medium of entertainment where one can witness the ridiculous exaggeration of a doltish piece of information over which the anchor rattles continuously for hours. For instance, instead of reporting on the verdict of the Salman Khan's Blackbug poaching case<sup>14</sup> most of the journalists were more concerned about the disappointment that the verdict brought among his fans. There were journalists outside the court interviewing the so called fans of Salman Khan and asking illogical questions like "Kaisa lag raha hai aapko bhai jaan ko jail jaate dekh ke?" Such mindless journalism arose a tinge of sympathy in the hearts of the general public for a convict like Salman Khan and diverged the issue from his

conviction to how great his fan following is. The most relevant question for media from past ten years is as to when and who Salman Khan will marry! This shows the level commercialization of media in the present scenario.

Earlier corporate houses and media houses were two very distinct and separate institutions. The only role of corporate houses in mainstream media was just to provide them the revenue in return of the advertising of their business. The media was unbiased but with the conglomeration of the two institutions, the media has lost its neutral foot. With the entrance of big corporate moguls in the ownership of media houses, the impartiality of the news is somewhere lost.<sup>15</sup> Therefore, news which hampers the reputation or is not favourable to those businessmen who happen to own the media houses or is main source of revenue of such media houses, does not see the light of the day. Thus, even if the constitution has provided the freedom of press and media, these big businessmen have imposed self-ruler restrictions on the broadcasting of unbiased and neutral news which does not allow them to broadcast a genuine piece of news if it conflicts with the objectives of such corporate media houses. Thus, it can be said that there is a lot of corporate influence on media which is a barrier in the transmission of correct and relevant information. There are many instances of such influence where genuine information was suppressed from being published like Hindustan Times tried to keep itself away from publishing the news regarding the involvement of Kumar

<sup>13</sup><http://news.rediff.com/interview/2010/apr/16/corruption-in-media-from-page-3-to-politics-now.htm>

<sup>14</sup> State of Rajasthan v Salman Khan (2015) 15 SCC 666

<sup>15</sup> Naveen Jindal & Another v Zee Media Corporation limited & Others (2014) 5 HCC Del 172



Mangalam Birla in CBI's Colgate investigation. Similarly, the Sahara group did not broadcast the arrest of Subrat Roy on any of its news channels. Mr. Vineet Jain, the Managing Director of BCCL stated in one of his interviews to Ken Auletta "We are not in the newspaper business, we are in the advertising business, and if ninety per cent of your revenue comes from advertising you are in the advertising business."<sup>16</sup> This statement proves how the mission of media has changed from providing people the unbiased, correct and relevant information to fulfilling the interest of its advertisers.

The whoredom of media did not stop just here; it was taken to new heights when the face of Indian media took a one eighty degree turn with the introduction of strategies like "Medianet" and "private treaties". The credit of conceptualizing and introducing the strategy of medianet goes to one of the biggest conglomerates in media industry called the BCCL (Bennett Coleman Company Limited) which is the publisher of Times of India (TOI), one of the largest selling English Newspapers in the country. In thirst of making profits it started the policy of medianet which in actuality is a kind of paid news service. Under the fancy tagline of Medianet, the media house openly put forwards the deal of covering product launches and personality related events for a price. When questions were raised about such malpractice, the owners of the media house took the defence that journalists in any case were "bribed" by the public relations firms for ensuring the coverage of their clientele and that theirs was a noble attempt towards

the elimination of the intermediates. Other such brazen defence taken by the media house was that these kinds of paid content were published only on the city editions and not on the main edition. The idea of medianet may not look immoral on the face of it but it is one of the many species of paid news and therefore is a clear violation of the ethical standards of journalism.<sup>17</sup> Ashok Chavan, is a former Chief Minister of Maharashtra whose use of funds for paid news was questioned by the Election Commission of India in 2010.<sup>18</sup>

Another such tactic adopted by media houses which again was introduced by BCCL was entering into "*private treaties*" with non-media companies.<sup>19</sup> Apparently the motive of BCCL (Bennett Coleman Company Limited) behind such a venture was to reduce competition to the Times of India. Private treaties are a kind of arrangement or understanding between the media houses and non-media companies wherein the media house gives an 'advertising space' to the company and in return it gets share in equity of that company. This is mechanism of quid pro quo devised by the media house for earning more profits. Thus, by entering into a private treaty with a corporate organization, such media house becomes a part-owner of that organization. The New York Times described "private treaties" as an example of the commodification of business news.<sup>20</sup> An older report by media critic The Hoot identified how "private treaties" influence

<sup>16</sup><https://ultra.news/d-r/8209/trai-details-corruption-in-indian-media>

<sup>17</sup><https://ethicaljournalismnetwork.org/resources/publications/untold-stories/india>

<sup>18</sup><https://www.thehindu.com/archive/>

<sup>19</sup><https://www.livemint.com/Politics/3ELPLCt9OgGceFmZSejpIJ/Jindal-distributed-CDs-of-the-sting-operation.html>

<sup>20</sup>[https://www.nytimes.com/2010/05/08/world/asia/08iht-letter.html?\\_r=0](https://www.nytimes.com/2010/05/08/world/asia/08iht-letter.html?_r=0)



reporting.<sup>21</sup>Such Private treaties provide threefold benefit to the corporate companies entering into this kind of arrangement with media houses;

- i) The media house entering into such a treaty with a company not only publishes 'advertorials' or rather 'editorials' in favour of such corporate organization but also suppresses or censors any news item which is not in the favour of that company.
- ii) Private Treaties between a corporate entity and a media house more often than not restricts such entity from investing for advertising in other rival media houses which results in blocking of the revenue of those media houses and in turn creating a kind of oligopoly in the media industry.
- iii) A media house entering into a private treaty with a corporate organization is under an obligation to lie in favour of that organization. It would be unreasonable to expect from a media house to publish or speak ill about a company in which it has a stake or of which it is a part owner.

These undue advantages are given to corporate houses by means of private treaties by slaughtering the spirit of ethical journalism and killing the essence of what is called as 'news' because what these media houses publish or broadcast is mere advertisements camouflaged as news. A New Yorker article says that the Times of India "have been dismantling the wall between the

newsroom and the sales department" with Times MediaNet.<sup>22</sup>In one of its reports the Press Council of India (PCI) expressed its concern over the growing prominence of private treaties under which the media houses (both print and broadcasting) enter into an agreement whereby these media houses help in building the goodwill or the so called 'brand' of a listed company or which is coming out with a public offer through maximum media coverage, publishing articles, news editorials and various other means and in exchange of stake in the company.<sup>2324</sup>This fake news cum advertisements misleads the investors and keeps them in dark as to the actual position of the company in which they have invested their money. One such instance was the 2008 recession which the media houses termed as "temporary slowdown" of the economy in order to prevent the stock prices from falling of those companies of which they technically were a part off. Thus instead of making the country aware of the economic situation of the country these media houses led people believe that it is a minor slowdown in the economy in order to protect their interests.<sup>25</sup>Making the situation worse the CEO designate of Times private treaties, in an interview with MediaNama, justified the practices as "there are two currencies for advertising – cash and treaties."<sup>26</sup>

Paid news is one of the biggest problems that the media of this country is facing from a

<sup>21</sup><http://asu.thehoot.org/web/home/story.php?storyid=3174&sectionId=4>

<sup>22</sup><https://www.newyorker.com/magazine/2012/10/08/citizens-jain>

<sup>23</sup><http://www.presscouncil.nic.in/OldWebsite/CouncilReport.pdf>

<sup>24</sup>[http://www.indiatogether.org/uploads/document/document\\_upload/2147/PCIs-mnetsebi.pdf](http://www.indiatogether.org/uploads/document/document_upload/2147/PCIs-mnetsebi.pdf)

<sup>25</sup> <https://ultra.news/d-r/8209/trai-details-corruption-in-indian-media>

<sup>26</sup><http://www.medianama.com/2008/06/223-there-are-two-currencies-for-advertising-cash-and-treaties-were-not-buying-to-sell-s-sivakumar-ceo-designate-tim>



long time.<sup>27</sup> It is like rust that is eating up all the ethics and morals of journalism in India. There are many instances where media can be seen making fake news or adding colour to an original piece of information because it has been paid to do so.<sup>28</sup> Paid news are mere advertisements for which the media houses are paid in big lumps but these advertisements are published or broadcasted (as the case maybe) as news because even though they are advertisements which favours any corporate organization or political party or a leader of any such party but these advertisements are circulated without an advertisement tag and are masqueraded as news. The election commission has detected multiple numbers of such cases.<sup>29</sup> Today, the scenario is such that the journalists have forgotten the difference between the front page and the editorial page as on both pages the readers can find the one sided opinion of the writer which is in favour of someone who has paid to get such favouritism. The media of the country set a new benchmark of immorality and corruptness when it stooped down to extortion and blackmail. One such instance of blackmail and extortion was revealed by Jindal Steel and Power Limited through a reverse sting operation conducted on the senior editors of ZEE News in which they were allegedly seen asking for 100 crore rupees from the company in the appearance of advertisements in exchange for

suppressing the campaign against the company in relation to coal allocation scam.<sup>30</sup> There have been other instances where a political party used fake/paid news in order to defame the other political party and create unrest in the country. For instance, in recent past a communal clash had broken out in West Bengal. Instead of using media to maintain peace in the state one of the political parties used newspapers as a medium to spread its fake news which escalated the clash in the State. In another such instance of paid news the COO of Sun TV, Hansraj Saxena had confessed on affidavit that his channel had fashioned a morphed video of holiness Paramahansa and Nithyananda and actress Ranjitha with the motive of extortion.<sup>31</sup> Times Now, one of the leading news channels was slammed with a suit of 100 crore for airing a false news on 10<sup>th</sup> September 2008. The matter went to Supreme Court and the channel was asked to deposit the money.<sup>32</sup> One of the biggest instances of paid news in the history of India was when Kannada news channel Samaya TV and its reporter was held guilty by the U.S court for civil conspiracy and defamation. It was established before the court that had conspired with a child molester Vinay Bharadwaj to attack against Paramahansa Nithyananda. In the process the channel also launched defamatory news programs against the U.S. mission of Nithyananda for which they were fined \$5million which is equal to

<sup>27</sup><https://www.scribd.com/document/35436631/The-Buried-PCI-Report-on-Paid-News>

<sup>28</sup><https://www.theguardian.com/media/greenslade/2011/feb/20/press-freedom-india>

<sup>29</sup><https://www.scmp.com/comment/insight-opinion/article/1274036/media-collusion-politicians-business-weakens-indian>

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<https://ethicaljournalismnetwork.org/resources/publications/untold-stories/india>

<sup>31</sup><https://hinduismnow.org/blog/2016/02/17/nithyananda-video-is-a-fake-sun-tv-coo-hansraj-saxena-confesses/>

<sup>32</sup><https://timesofindia.indiatimes.com/india/SC-asks-Times-Now-to-deposit-Rs-100-crore-before-HC-takes-up-its-appeal-in-defamation-case/articleshow/10734614.cms>



32 crore rupees.<sup>33</sup>The Election Commission is reported to have identified more than 1,400 cases of paid news between 2009 and 2013 during which elections were held in 17 states of India.<sup>34,35</sup>

### **EXAGGERATION AND MISREPRESENTATION BY MEDIA**

If we observe (even from far) we will understand that the current Indian media industry survives on just three things, i.e. Entertainment, Entertainment and Entertainment. So much so that soon there will be a need to create a separate category called 'newstainment' in order to protect the integrity of the actual news channels (if any left by then). We Indians are very fond of 'masala', be it in our food or our lives. Anything that is spiced up attracts our interest and that is the reason of growing *yellow journalism* in the country. Yellow journalism is a concept that was started by Joseph Pulitzer in 1890's in order to get advantage over William Randolph Hearst's New York Journal<sup>36</sup>. In yellow journalism a simple piece of information is presented to the viewers/readers in the most sensationalized and scandalized manner in order to attract their attention. As a profession journalism does not only mean reporting any bare piece of information without giving a second thought to its significance instead it is a process which involves a series of steps i.e. collecting of information through a reliable source or medium, segregating the valuable

information from non-important ones, editing those valuable information and presenting them in the purest way possible. Unfortunately, this kind of responsible journalism is unknown to the current Indian media houses.<sup>37</sup> Today's journalism is nothing but an exaggerated and the most perverted version of insignificant events displayed as breaking news.<sup>38</sup> Anything that is scandalous deserves the prime time is the motto of most of the news channels and perhaps this is the reason why Pratyusha Banerjee's suicide became the favourite breaking of news of most of the news channels that none of them bothered to cover the Assam floods that took place at the same time. Apparently media has quite a fascination for murder mysteries, be it the excessive coverage of Aarushi murder case<sup>39</sup> or the controversial murder mystery of Sheena Bohra<sup>40</sup>, media has always been at its toes to cover anything related to such sensational issues even at the cost of violating the fundamental right to privacy of the people involved in it. However, increasing suicide rates of the farmers or struggle of the people stuck in Assam floods is not so exciting for the media to give it the required coverage.

If there would be a contest of perverted journalism we will have a cut throat competition. The Hindi news channel 'AajTak' has managed to cross all levels of absurdity and is continuing to do so with all its dedication and did not give a second

<sup>33</sup> Life Bliss Foundation v Samaya TV, RSM Broadcasters Private Limited & Others (CIVRS 1410615)

<sup>34</sup><http://www.lensonnews.com/lensonnews/1/59/4820/1/1/ec-detected-over-1400-paid-news-cases-during-assembly-polls.html>

<sup>35</sup><http://archive.indianexpress.com/news/congress-goes-buying-reporters-in-chhattisgarh-offers-ours-rs-25000/1207579/0>

<sup>36</sup> <https://medium.com/legalnow/is-indian-media-plagued-by-sensationalism-3f71a5929a0c>

<sup>37</sup>Jagran T.V. Private Limited v Union of India (2016) 158 AIC 763

<sup>38</sup> R K Anand v Delhi High Court (2009) 8 SCC 106

<sup>39</sup> Rajesh Talwar v CBI (2012) 4 SCC 2017

<sup>40</sup><https://www.thequint.com/explainers/sheena-bora-murder-case-story>





thought before declaring Sashi Tharoor a murderer in their media trial long before the court's decision can be foreseen.<sup>41</sup> They have the talent to broadcast a half an hour story about a cat stranded on a terrace as the most important news of the day. Once they were so concerned about a commissioner's dog being missing that they made a whole news story out of it.<sup>42</sup> There is something called rhetoric and then there is rhetoric of the anchors of India TV which will make shiver run down your spleen. Some examples of such bizarre headlines are; "ye himdanav iss waqt aapke bedroom mei baitha hai" (A yeti is present in your bedroom right now). Once they reported about a witch who demands onions with the tagline "pyaz maagne vali chudail ka aatank."<sup>43</sup> Even the witch would have felt insulted with such cheap reporting. These people come up with stories that one wouldn't imagine in the wildest of his dreams and present it as news but the funny part is that even after such horrendous charade in the name of journalism they are still running as news reporting channels and that too with average ratings.

Talking about exaggeration and misleading cheap headlines, a very recent example would be unfortunate death of a student of National Law University, Jodhpur which the media tagged as "selfie death" and claimed that she died by falling off the lighthouse while taking a "daredevil selfie". However, in reality she was not on the lighthouse and neither was the selfie the cause of her death. The actual fact was that she was flown away by a giant wave. It was mere unfortunate accident which the media twisted and turned into a sensational selfie death story which perhaps gained them a lot of TRP.

Journalists in India did not only stop at turning and twisting of facts for sensational headlines but also went on to the extent of creating their own facts by bribing small children to speak in their favour on camera. The reference here is to a video that went viral in November 2015 in which a reporter of Aajtak was seen bribing a child to speak negatively about a political party. In the video he was seen tutoring the child as to what he has to say and in return he would give him the money to buy his quarter (alcohol).<sup>44</sup> The reporter did not even shy away from bribing a small kid in name of alcohol, such is the dedication and conviction shown by the journalists for collecting the news or rather creating them (whatever suits better).

### LAWS REGULATING MEDIA IN INDIA

In this country the media is significantly self-regulated by the backing of the Constitutional authority. However, the Press Council of India and News Broadcasting Standard Authority which is a self-regulated authority itself lay down certain standards to be followed by the newspapers and channels respectively. Although, these standards are more in the nature of guidelines in order to help the smooth functioning of media and are not laws backed by sanctions but adhering to them in the practical scenario can solve most of the problems that are arising on a daily basis.

**PRESS COUNCIL OF INDIA-** It was established in the year 1966 on the recommendation of the first Press Commission with an objective to preserve the

<sup>41</sup> Dr Sashi Tharoor v Arnab Goswami & Another (2017) SCC Online Del 12049

<sup>42</sup> <https://lalitkumar.in/blog/yellow-journalism/>

<sup>43</sup> <https://lalitkumar.in/blog/yellow-journalism/>

<sup>44</sup> <http://nithyanandatruth.org/world-economic-forum-reports-indian-media-as-the-most-corrupted/>



freedom of press and to also maintain and enhance its standard. Currently its functions are governed under the Press Council Act, 1978.<sup>45</sup> It adjudicates on complaints against the press for violation of someone's rights or of ethics and also on complaints by the press on complaints of violation of its freedom.

- The Council has the authority to hold an enquiry against any editor of the journal if anything leading to misconduct appears.
- The proceedings take place with regard to judicial hearing under section 193 and 228 of IPC.

It is headed by a retired judge of the Supreme Court who is appointed as the chairman. It has 28 members out of which 20 essentially need to represent the press, 5 are allotted by both the houses of the parliament and 3 are representatives from legal and cultural fields and one nominee of the Bar Council of India.

The Press Council of India therefore is the best place to lodge a complaint against any such practice or incident that is against the essence of print media as its decision is final and cannot be challenged in any court. It also has the authority to cancel the licence of any journalist.

FUNCTIONS OF PRESS COUNCIL OF INDIA

- Safeguards the independence of newspapers
- Builds a code of conduct adhering to high professional standards
- Promotes technical and other research areas related to the news
- Training of new journalists
- Promotes the supply of newspapers from one place to another on time
- Helps to keep a review of functioning, production and processing
- Acts as a watchdog over the rights and responsibilities of citizenship and ensures that the taste of the people is kept in mind.

NEWS BROADCASTING STANDARD AUTHORITY-

The objectives of this authority are somewhat similar to that of Press Council. It also lays down certain guidelines which help to enhance the standards and regulate the ethics and practices with respect to broadcasting.<sup>46</sup> It administers the Code of Ethics and Broadcasting Standards which the News Broadcasters Association drew for its members to adhere to responsible broadcasting and regulate themselves on these lines. NBSA does not interfere in the working of the broadcasters and does not monitor or censor news. It allows the broadcasters complete independence and creativity but only on the condition that it does not violate the ethical standards set by NBSA.

POWERS OF THE PRESS COUNCIL OF INDIA

- The Council enjoys the power to censure any such rule that violates the ethical standards of journalism and public taste.

It is a nine member authority out of which four should be eminent persons having outstanding knowledge or experience in the

<sup>45</sup><https://samsn.ifj.org/wp-content/uploads/2015/06/India-Press-Council-Act-19781.pdf>

<sup>46</sup>[http://cablequest.org/pdfs/i\\_b/NBA\\_Disputes-Redressal\\_Guidelines\\_English.pdf](http://cablequest.org/pdfs/i_b/NBA_Disputes-Redressal_Guidelines_English.pdf)



field of law, education, science, literature, medicine, environment, consumer affairs, public administration, human psychology and or culture and for eminent editors who are working in a broadcasting channel and one chairperson who is an eminent jurist.

#### FUNCTIONS OF NEWS BROADCASTING STANDARD AUTHORITY

- Maintaining the independence of broadcasters
- Setting the standards of broadcast and maintaining and constantly improving it
- Ensuring that the broadcasters adhere to the code of conduct and high professional standards
- Encouraging a sense of responsibility towards the society and public service
- Review and scrutinize any development likely to affect the gathering, supply and dissemination of news
- Any other aspect which is incidental, consequential, related or materially concerned with the above mentioned points

The NBSA has the power to take up complaints under News Broadcasting Standards Disputes Redressal Authority by and against the broadcasters and adjudicate upon them in case of violation of freedom of media and the violation of ethical standards or code of conduct of broadcasting respectively. The decision of the authority is final and binding. However, the problem is that not all channels are members of NBSA and hence it becomes difficult to smoothly run the broadcasting business adhering to the code of conduct and professional standards.

#### **STING OPERATIONS- A HINDRANCE TO RIGHT TO PRIVACY**

Sting operations by media which can also be referred as undercover journalism or investigative journalism knows no end. In today's scenario it has become an order of the era. It is a well-planned process which includes a lot of undercover work in order to entrap a suspect. Since media derives its authority from article 19 (1) (a) under the light of freedom of speech and expression, there is no absolute legal mechanism to regulate these sting operations.

These operations can be simply classified into two categories:-

Legitimate i.e. when a person has agreed on taking bribe in return of a favour and this operation is carried out to record this incident already planned in order to create strong evidence against him.

Illegitimate i.e. when a person is just suspected of being into a habit of taking bribe and this operation is carried out by offering him the bribe under a mask and then recording it as evidence against him. What needs to be understood here is the fact that this person would not have committed that crime if he had not been pushed into that situation.

A lot of fingers have been raised on ethical and moral significance of sting operations. Considering the fact that these operations cannot be said to have more value than a person's fundamental right to privacy it can be evidently argued that the sting operations carried out by the media houses certainly invade the right to privacy guaranteed under article 21 of the Constitution. The sting operations are not only carried out on people who are in public domain and whose acts concern the national interest but also on people whose private life can provide



sensational news content to the news channels and newspapers and enhance their TRP.<sup>47</sup> A perfect example of the argument would be the widespread television expose of affair between a professor of Patna University named Matuk Nath Choudhary and his research student. The channels were flooded with sensational but disgusting pictures of private moments between the two.<sup>48</sup> The concern here is however with respect to the urgency that the media felt to cover this and that with an expensive sting operation. Is the media genuinely the rightful authority to record anything going on between two consulting adults in a closed room? There is no second opinion about this operation invading the right to privacy of the above mentioned people.<sup>49</sup>

A similar incident was carried out when a sting operation caught Swami Paramahansa Nityanand in a compromising position with a Tamil actress which later was declared as fake. Was this really essential to be covered under the garb of national interest and was it really helping a public cause? Even if it was true then also in an unethical act of professionalism the media once again invaded someone's privacy.

However, it will not be just to take this right away from the media houses completely. Therefore, the 17<sup>th</sup> law commission in its 200<sup>th</sup> report made recommendations to the centre to make laws to stop media from invading the privacy rights of the citizen.<sup>50</sup> The sting operations should be legally regulated and only allowed against people in

public domain or against public servants and only in circumstances when the matter involves national interest and national security and only with the prior permission of an authorized committee which might be the Ministry of Information or Broadcasting or any other authority which the law deems fit. That is the only way out to safeguard people's privacy rights against the profit centric interests of the media houses.

The Delhi High Court however referred to the decision of the Supreme Court of the United States in Keith Jacobson v. United States (503 US 540) while deciding a case pertaining to a "Live India" sting operation. In the said decision, it was held by the Supreme Court of the United States that "in their zeal to enforce law, law protectors must not originate a criminal design, implant in an innocent person's mind a disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute."<sup>51</sup>

The Delhi High Court held that the principles of the U.S. Supreme Court decision can be extended to the media. The Court held that inducing a person to commit an offence, which he is otherwise not likely and inclined to commit, so as to make the same part of the sting operation is deplorable and must be condemned by all including the media.

Nevertheless, Indian courts have adopted a contradicting view in responding to such sting operations. But, since the evidences recorded were earlier easily admissible in the

<sup>47</sup> R Rajagopal & Another V State of Tamil Nadu 1994 SCC (6) 632

<sup>48</sup><https://mediamagazine.in/content/sting-operations-and-ethics-journalism>

<sup>49</sup>People's Union for Civil Liberties v Union of India (2003) 4 SCC 399

<sup>50</sup><https://www.lawctopus.com/academike/tag/200th-law-commission-report/>

<sup>51</sup>Keith Jacobson v United States (503 US 540)



court as the court did not bother itself with the way the evidence was obtained but in the recent past the court has been looking up to the evidences obtained by sting operations with more caution and only allow it to be admissible if it is in the larger public interest. Evidence by way of sting operations has been treated as extra-judicial confession in certain cases and thus, admissible. The extra-judicial confession cannot be sole basis for recording the confession of the accused, if the other surrounding circumstances and the materials available on record do not suggest his complicity. The recent practice of the Indian Courts as in the case of *State of Haryana v Ved Prakash*<sup>52</sup> and *Godhra train carnage case*<sup>53</sup> gives effective and clear reflection on its intention to cautiously consider the evidences obtained through sting operations.

An absolute statute or regulation needs to be enacted, enforcing standards which should be adhered to by the media, without invading the freedom of media to a great extent but considering the higher worth of people's, privacy right. Courts must lay down unambiguous principles pertaining to the admissibility of evidence, considering the facts and circumstances. Indian courts in the recent past seem to have taken the stand that the sting operations are admissible when they help to combat corruption. In the light of preventing the privacy right of citizen and ensuring that false and fabricated operations are not widespread, the Delhi High Court, in the *Uma Khurana case* laid down certain guidelines for channels/newspapers.<sup>54</sup>

- A media house intending to telecast a sting operation must obtain a certificate from the person recording or producing it stating that it is genuine to the best of his or her knowledge.
- The channel must obtain permission from a committee appointed by the Ministry of Information and Broadcasting to telecast the sting operation.
- Reports should not be of a nature to create alarm or panic or amount to incitement to commit any crime and the media house should avoid overplaying certain parts and underplaying others.
- Media should observe general standards of decency, considering the sentiments of viewers, especially that of children.

This is just the beginning of a decent era of journalism but only if these guidelines are adhered to in the practical scenario. Media must acknowledge the privacy rights of the citizen fundamentally guaranteed by the constitution by a recent Supreme Court judgement<sup>55</sup> and must ensure that none of its acts in the garb of Freedom of Press invades the privacy rights of the citizen of this country like it did when a news channel carried out an illegitimate sting operation on actor Shakti Kapoor by a journalist masked as a lady who wanted work in the film industry and was asked to compromise.<sup>56</sup> Sting operations like this are not in the national interest neither are for national security and therefore need a permanent halt.

### CONCLUSION

<sup>52</sup> *State of Haryana v Ved Prakash Gupta* (1999) 1 Ren LR 689

<sup>53</sup> *Amrisha N Patel v Commission of Inquiry* 2009 SCC Online Guj 10926

<sup>54</sup> *Court on its own motion v State* (2007) SCC Online Del 1662

<sup>55</sup> *K. S. Puttaswamy v Union of India* (2017) 10 SCC 1

<sup>56</sup> <https://www.indiatoday.in/magazine/controversy/story/20050328-shakti-kapoor-caught-in-sting-operation-offering-work-in-bollywood-for-sex-788030-2005-03-28>



India as a country is proud of being a democracy and media on the other hand is certainly proud of being its fourth pillar. There is no second thought to the fact that the media is an essential and integral part of this country upon whose independence and freedom the growth and development of this democracy lies. The powers vested in the media to question even the greatest in the country and to criticize even the most powerful is to ensure that nobody is able to escape from the eyes of the media. This power, freedom and independence undoubtedly are of genuine importance because without all these, it is impossible for the media to bridge the gap between truth and people.

However, the essence of this paper is to highlight the issue of utmost importance which is unarguably pushing the country towards darkness. The freedom and independence that we are relying upon as media's strength have been compromised off late which has led to enormous corruption in the media houses.<sup>57</sup> The media has made it a habit of manipulating news and broadcasting sensational and interesting stuff which awakens the viewer's interest but never bring them into light. The World Economic Forum which was established in 1971 in Geneva and runs as a not-for-profit foundation declared Indian media as the second most corrupt media in the world after Australia on 16<sup>th</sup> January 2017 in a tweet that posted a screenshot of Edelman report.<sup>58</sup> This shows that the faith of people in media is constantly

declining while credibility of these institutions is under question.

The powers vested in the media have been sold for pecuniary interest and making profit has become the sole motive of these institutions. A prime example of this is the COO of Sun TV has been arrested several times for cases of extortion and blackmailing.<sup>59</sup> Another defamation case on ZEE TV worth 100 crore which was slapped upon them by Indian cricketer MS Dhoni<sup>60</sup> and author Sree Iyer in his book 'NDTV frauds' significantly exposing how NDTV is one of the most corrupt media house in Indian history explains that all the other channels are not free from the evil practices and are contributing equally in ruining the essence of this profession.<sup>61</sup>

Media houses have sadly turned into corporate hubs and have no shame in selling the most important news for some good amount of money and neither have shame in broadcasting manipulated and forged content in exchange of some interest. Paid media is taking over the essence and significance of this profession in a rigorous manner. The media is working its heart out in misrepresenting the people of this country either due to the fear of people in power or due to its money making motives.<sup>62</sup>

The problem gets doubled when the media in the garb of exposing the truth and in the race of multiplying profits does not respect even the privacy of the citizen of this country.

<sup>57</sup>All India Anna Dravida Munnetra Kazhagam v L K Tripathi & Others (2009) 5 SCC 417

<sup>58</sup><http://nithyanandatruth.org/world-economic-forum-reports-indian-media-as-the-most-corrupted/>

<sup>59</sup><https://www.news18.com/news/india/sun-pictures-coo-saxena-arrested-for-third-time-383351.html>

<sup>60</sup>Mahendra Singh Dhoni v Yeraguntla Shyamsunder (2017) 7 SCC 760 : AIR 2017 SC 2392

<sup>61</sup><https://www.pgurus.com/ndtv-frauds-book-shows-indian-media-house-broke-rules/>

<sup>62</sup> Re Harijai Singh (1996) 6 SCC 106



Even after the Supreme Court's decision of Right to Privacy being a fundamental right under Article 21 the media is of the opinion that its powers are over and above any such right. The sting operations carried out by media houses on people whose acts have nothing to do with national interest and that to in illegitimate manner are a crystal clear violation of their privacy rights. The media houses should strictly follow the guidelines issued in the Uma Khurana case and none of the sting operations should be carried out without the permission of Ministry of Information and Broadcasting and if it is not a matter of national interest or security.

It is high time to understand that the corruption in media houses and the broadcasting of fake news by the media for some pecuniary interest has made the fourth pillar of the democracy lose its essence by far. The National Broadcasting Standard Authority has not been able to significantly manage the functioning of news broadcasting television media. The standards set by these authorities are more in form of guidelines and therefore have been taken for granted by the media houses. Also the fact that not all channels are members of NBSA and therefore there is no control over those channels which are not its members and work arbitrarily. The media genuinely needs to work with more responsibility and concern towards the country as it has diverted itself from the actual path it was supposed to walk upon and has taken the path of corruption and dishonesty.

Therefore, it would be just and reasonable for the parliament to enact statutory laws by

passing an act which would provide the news broadcasting channels with a list of activities that should not be done as they are criminal in nature and violate the Constitution of India. The Press Council Act 1978 is a symbol of the fact that enacting a similar act to regulate the media channels will not be unreasonable. It will penalise the corrupt practices like paid media, fake news, misrepresentation, exaggeration and violation of citizen's privacy rights by conducting sting operations. The act would also pre-scribe the code of conduct and professional ethics and standards which must be followed in order to achieve back the lost essence of media. These laws would be backed by sanctions and will expressly talk about the extent of liability of publishers, reporters and editors in case of fake news or violation of laws. Having an authoritative act to reasonably restrict the media practices in the country and putting an end to the self-regulated mechanism of the media is of utmost requirement to eradicate the ill practices in media houses. However, it is essential to understand that this act will not intervene in the freedom and independence of media that has been vested into them by the Constitution under Article 19 (1) (a) but will regulate its functioning by imposing reasonable restrictions on the media so that in the garb of its freedom and independence it stops misrepresenting people with fake and paid news. This authority has been vested in the government by Article 19 (2) which allows it to impose reasonable restrictions in the interest of public order.<sup>63</sup><sup>64</sup> Since the freedom of speech and expression is not absolute in nature<sup>65</sup> it is time to enact laws codifying the reasonable restrictions and

<sup>63</sup>Ramlila Maidan Incident, In Re (2012) SCC 1

<sup>64</sup>R Rajagopal v State of Tamil Nadu (1994) 6 SCC 632

<sup>65</sup>Romesh Thappar v State of Madras 1950 SCR 594



penalising the evil practices that are a blot on the essence and significance of media and stop the media from functioning like a trozan horse. It is time to stop the media from arbitrarily running its shop and making the country suffer under the garb of its freedom and independence and actually work towards its growth and excellence in order to get back the lost essence of media.

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