SOCIAL MEDIA: SYNCHRONIZING THE DEMOCRACY

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Abstract

The present time orates the command of "media", ceding to the polity of a democratic nation like India. Tagged as being the 4th pillar of democracy, its regulation is indispensable. Its regulatory history can be traced back to the colonial experience. The onset of 1835 saw the promulgation of the Press Act, mostly containing repressive features. Further, legislations like, the Press and Registration of Books Act, the Newspapers (Incitement to offences) Act, authorized the Government to clamp down on the publication of writings deemed to constitute an incitement to rebellion. Coming to the point of its vitiating the judicial process, the Hon'ble Supreme Court in 2012 laid down a constitutional principle under which the aggrieved parties can seek postponement of publication of court hearings. It also clarified that this was preventive in nature, perhaps, to avert the substantial risk of prejudicing the trial.

If seen other side of the coin, the Apex Court, to ensure the Freedom of Speech and Expression, enshrined under Article 19(1)(a) of the Indian Constitution, struck down Section 66A and of the Information Technology Act, 2000 in one of its landmark judgment. So, time and again the Apex Court has tried to balance the regulatory standards for the social media.

Further, there are certain issues like the cyber bullying, hacking etc., which need serious attention. Also, the world has been stormed with loads of revolutions from censorship to free media but incidents like that of the whistleblower Snowden have shown the true state of affairs. Now, the need of hour is to work upon the basic ideals of freedom of media for which many revolutionists have laid even their lives on.

Hence, this paper aims to disseminate research on various regulatory mechanisms and if it really upholds the democratic values by extending its regulatory regime.

Keywords: democracy, social media, cyber bullying, cyber stalking.

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INTRODUCTION

"One of the objects of media is to understand the popular feeling and give expression to it, another is to arouse among the people certain desirable sentiments, and the third is the fearlessness to expose popular defects."

– Mahatma Gandhi

Advancements in media laws are now becoming the calibration marks for history's major paradigmatic shifts. As the present time orates the command of "media", ceding to the polity of a democratic nation like India.

The word medium comes from the Latin word 'medius' (middle). 'Media' the popular term inter-alia used as 'Press' denotes the print & electronic information carriers –the News Papers & Magazines, Radio, Television and currently includes Internet as the latest entrant to the family of Media. Awarded as the 'Fourth Estate', media is the watchdog of the public affairs, informing the society and vice versa, acts as the forum to advocate the views of the society at large to those at the helm of public affairs.

The media scene in India today, primarily due to television, is so fluid that it requires of advertisers and agencies the ability to anticipate and to adapt to rapid change. TV attempts to reduce the country to a single media solution, but in reality each market has to be viewed on its own and then meshed into the larger national context.

The new addition 'social media' is a phrase being tossed around a lot these days, but it can sometimes be difficult to answer the question of what is social media. Generally, social media is the collective of online communication channels dedicated to community-based input, interaction, content- sharing and collaboration.[1]

HISTORICAL PERSPECTIVE OF MASS MEDIA LAWS

The freedom of speech and expression has been characterized as 'the very life of civil liberty' by the Constituent Assembly Debates. The freedom of the press, while not recognized as a separate freedom under Fundamental Rights, is folded into the freedom of speech and expression. The Supreme Court has described this freedom as the ***"ark of the covenant of democracy".***

[1] http://whatis.techtarget.com/definition/social-media (Last accessed on 15/7/2015 @10.12 pm)

Mass Media laws in India have a long history and India had its first brush with media legislation under country's colonial experience under British rule. The earliest regulatory measures being traced back to 1799 when Lord Wellesley promulgated the Press Regulations, which had the effect of imposing pre-censorship on an infant newspaper publishing industry. The onset of 1835 saw the promulgation of the Press Act, mostly imposing repressive features. Thereafter on 18th June 1857, the government passed the 'Gagging Act' its head point being introduction of compulsory licensing for the owning or running of printing presses; prohibit the publication or circulation of any newspaper, book or other printed material and banning the publication or dissemination of statements or news stories which had a tendency to cause a uproar against the government, thereby weakening its authority.

Then followed the 'Press and Registration of Books Act' in 1867 and which continues to remain in force till date. Governor General Lord Lytton promulgated the 'Vernacular Press Act' of 1878 allowing the government to clamp down on the publication of writings deemed seditious and to impose punitive sanctions on printers and publishers who failed to fall in line. In 1908, Lord Minto proclaimed the 'Newspapers (Incitement to Offences) Act, 1908 which authorized local authorities to take action against the editor of any newspaper that published matter deemed to constitute an incitement to rebellion.

However, the most significant day in the history of Media Regulations was the 26th of January 1950 - the day on which the Constitution was brought into force. The colonial experience of the Indians made them realize the crucial significance of the 'Freedom of Press'. Such freedom was therefore incorporated in the Constitution; to empower the Press to disseminate knowledge to the masses and the Constituent Assembly thus, decided to safeguard this 'Freedom of Press' as a fundamental right. Although, the Indian Constitution does not expressly mention the liberty of the press, it is evident that the liberty of the press is included in the freedom of speech and expression under Article 19(1) (a). It is however pertinent to mention that, such freedom is not absolute but is qualified by certain clearly defined limitations under Article 19(2) in the interests of the public.

India is an over-legislated nation with about 34800+ laws enacted to keep checks and seizures on the conduct of people. Some of the legislations in backing to media being- The Press and Registration of Books Act, 1867, The Newspaper (Prices and Pages) Act, 1956, The Press Council Act, 1978, The Right to Information Act, 2005, The Telecom Regulatory Authority of India, Law Relating to Official Secrets etc.

PRESENT SCENARIO

In almost all the democratic countries, the Press enjoys a crucial role so far as dissemination of news is concerned. Media and their wide-ranging effects have been around ever since humanity has been conglomerating into tribes and nations and developing methods of communication --- ways of extending the scope of one's naked voice beyond hearing range, and giving form and substance to one's thoughts.

Shifting our view to the Indian perspective and its system of Parliamentary Democracy, it is true that, the Press is free but subject to certain reasonable restrictions imposed by the Constitution of India, 1950, as amended. The Indian Parliament has used a transmuted strategy while providing for the cybercrimes under the cyber law of India i.e. The Information Technology Act, 2000. Before the impact of globalization was felt, the mass media was wholly controlled by the government, which let the media project only what the government wanted the public to see and in a way in which it wanted the public to see it. However, with the onset of globalization and privatization, the situation has undergone a humongous change.

Before the invention of communication satellites, communication was mainly in the form of national media, both public and private, in India and abroad. Then came 'transnational media' with the progress of communication technologies like Satellite delivery and ISDN (Integrated Services Digital Network), the outcome: local TV, global films and global information systems.

Hence, in such an era of media upsurge, it becomes an absolute necessity to impose certain legal checks and bounds on transmission and communication. In the due course of this paper, we would discuss the various aspects of media and the relevant legal checks and bounds governing them.[2]

LEGAL FRAMEWORK

The media evolves its right from the right to freedom of speech and expression available to the citizen. Thus the media has the corresponding right – no more and no less than any individual to write, publish, circulate or broadcast. In the case of *Channing Arnold v.*

[2] http://www.legalserviceindia.com/articles/media.htm (accessed on 21.09.2015)

Emperor[3] which arose in pre-independent India, the Privy Council emphasizing on the importance of media held:

"The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever lengths the subject in general may go, so also may the journalist, apart from the statute law, his privilege is no other and no other and no higher…No privilege attaches to his position."

In a democratic set up, the citizens enjoy certain rights and the right of freedom and speech is one such right which is the prized possession and has a pious value for the citizen. Article 19(1)(a) of the Indian Constitution protects and guarantees right of freedom of speech and expression to all the citizens, subject to the reasonable restrictions which are defined time to time. Moreover, Liberty of thought and expression is one such objective contained in the Preamble of the Constitution. To upkeep this objective, India made its first attempt to keep misuse of digital world in legal sphere with the enactment of the Information Technology Act, in the year 2000.

In the words of Justice A. N. Sen, these rights are instinctive and natural rights of every individual. According to him, "This freedom of expression, which is indeed a natural right as is expressed in different ways under different circumstances, varies in its nature. The freedom of expression is the birth right of every living creature and is indeed a gift of nature[4]." Also, it cannot be over-emphasized that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme[5].

The basis of a democratic process of a country, which is the freedom of thought and expression, receives substantial importance in a society which allows active participation of citizens. Holding in high spirits, the Supreme Court in the *Re Ramlila Maidan Incident*[6] observed, "The freedom of Speech is the bulwark of democratic Government and is regarded as the first condition of Liberty…it is the mother of all Liberties…Belief occupies a place higher than thought and expression. Attainment of the Preambular liberties is internally connected to the liberty of expression."

[3] AIR 1914 PC 116
[4] Justice A. N. Sen, "Freedom of expression", Press Council of India Report, January 1989, p.4
[5] The Indian Express, 25th March, 2015
[6] (2012) 5 SCC 1

MEDIA TRIALS: VITIATING JUDICIAL PROCESS

Coming to the point of its vitiating the judicial process, the Hon'ble Supreme Court in 2012 laid down a constitutional principle under which the aggrieved parties can seek postponement of publication of court hearings. It also clarified that this was preventive in nature, perhaps, to avert the substantial risk of prejudicing the trial. The Court viewed it as necessary because to maintain a balance between freedom of speech and fair trial for proper administration of justice. Although the guidelines regarding the same were not framed by the Bench, but there is growing tendencies in the judiciary as well as executive to curb free speech. Such view of the Supreme Court was also reiterated in its earlier observations.

In the case of *Sidhartha Vashist* v. *State NCT of Delhi*[7] the Apex Court cautioned that Article 19(1) (a) did not permit the media interfering in the administration of justice in matter sub-judice. Recognizing the significance of both print and electronic media in the contemporary world, the Supreme Court pointed out to the danger of serious risk of prejudice of the media, exercising unrestricted freedom in holding the suspect or the accused guilty even before such an order was passed by the Court. The Court further maintained that trial by media not only hampered fair investigation but also amounted to travesty of justice. A trial by media or by public agitation is the very antithesis of the rule of law[8].

If seen on the other side of the coin, the high-profile accused in the Jessica Lall murder case had secured a ban on media coverage, deficiencies in prosecution and underhand tactics used to subvert the process of justice would have probably gone unnoticed and justice might not have been delivered[9].

Arrest, bail, interrogation, search, so- called confessional statements are some matters in which media conducts connate proceedings in complicity with the police or other stakeholders, so that there shall be increased circulation or influence on the course of justice. This in turn puts a ponderous load on the court which has a constitutional duty to minimize the effects of prejudicial publicity.

So, it cannot be said that the judicial process is wholly vitiated through such media trials, but there requires the balance to be struck down between the judicial processes and the media

[7] AIR 2010 SC 2352
[8] Dr. Sukanta K. Nanda, " Media Law", p.24-25
[9] The Tribune, 13th September, 2012

coverage, rather than fully curtailing the openness of the media trials. Although the five judge bench laid down the Rule of Postponement, but they refrained from making any guidelines on the same, and this is evident that the Apex Court, keeping in mind their independence, are also in favour of freedom of openness of ideas under the Freedom of Thought and Expression, of which the result is that the Hon'ble Court in the case of *Shreya Jindal* v. *Union of India*[10] struck down Section 66 A of the Information Technology Act, 2000, which provided for punishment for sending offensive messages through communication service, etc., as being violative of Article 19 of the Indian Constitution. He Supreme Court clarified that although something may be coarsely offensive and may be inconvenient to somebody, without at all affecting his reputation. Further, the written words propagated on the internet may be purely in the domain of discussion point of view rather than incitement to an offence.

Also, in point of fact, Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such was the reach of the section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total[11].

Citing the importance of free flow of opinions in its earlier decisions, the Supreme Court in the case of *S. Khushboo* v. *Kanniamal & Anr*[12] said, "This right requires the free flow of opinions and ideas essential to sustain the collective life of the citizenry. While an informed citizenry is pre-condition for meaningful governance, the culture of open dialogue is generally of great social importance."

Also, the concept of 'marketplace of ideas' has been transfused under the American Law, which had been put forward in the congenial words of Justice Holmes in his famous dissent in *Abrams* v. *United States*[13], "But when men have realised that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out."

[10] (2013) 12 SCC 73
[11] *Supra* 5
[12] (2010) 5 SCC 600
[13] 250 US 616 (1919)

Also, the observations of Justice Jackson in *American Communications Association* v. *Douds*[14] are opposite of the above," Thought control is a copyright of totalitarianism, and we have no claim to it t. it is not the function of our Government to keep the citizens from falling into error; it is the function of the citizens to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored."

Taking all the above mentioned case laws into consideration, the Supreme Court gave the landmark judgment of the Shreya Singhal's case, thus upholding the essence of Article 19(1) of the Indian Constitution.

OUTRAGE OF CYBER CRIMES

Giving absolute freedom of thought and expression, although practically not absolute but subject to certain restrictions, does not mean that it would be for the good only, yet there are chances of one being a victim of harassment on the social media. It may be harassment in different forms like some of the unpalatable comments (written or spoken) or conduct which violates an individual's dignity; and/or creates a degrading, humiliating or offensive environment. According to the reports of ASSOCHAM- Mahindra, the number of cybercrimes in India may touch an alarming figure of around 3 lakh till the end of the year 2015, which is almost double the level of last year creating havoc in the financial space, security establishment and social fabric. Phishing attacks of online banking account or cloning of ATM/Debit cards are common episode. It's important here to discuss some of the cybercrimes. Issues like cyber bullying, cyber stalking, phishing, hacking, squatting, etc. All these crimes are one or the other form of fazing or posting cruel online posts or obscene digital pictures, to online threats, negative comments, gaining unauthorized access to data, stalking through emails, social networks etc.

Although the legal protection has been granted to such crimes but aftermath also, there were series of demands that will make sure that the Act provided for restricting the imminence of cybercrime. A major amendment was made to the Act with effect from 6 February 2003 consequent to the passage of a related legislation called Negotiable Instruments Amendment Act 2002. The amendment to Negotiable Instruments Act, 2002 for the first time recognized a cheque in electronic form. These changes notwithstanding, Indian government realizing the

[14] 339 U.S. 382 (1950)

changing terrain of online interactions, formed an expert committee under Ministry of IT to suggest amendments to act to keep it relevant. The committee pointing out several lacunas in the enactment proposed amendments to it in the report it tendered to the ministry of information technology. The result was the Information Technology Amendment Bill, 2006 based on the report submitted by the expert committee[15]. Further the Amendment Act of 2008 novated the Act with the introduction of few more things such as introduction of electronic signatures, addition of important definitions of 'communication device', 'intermediary', and 'critical information infrastructure', greater emphasis on the legality of electronic documents, increased role of adjudicating officers, composition of Cyber Appellate Tribunal, introduction of new cybercrimes such as receiving stolen computer resource, identity theft, introduction of Section 67C for its significant role in cybercrimes prosecutions etc.

CONCLUSIONS

So, when an economy develops into a conditioned one, the use of computers becomes more quotidian. It is incumbent that our laws are contemporize with changing scenario. The amended Information Technology Act, if seen from overall perspective has introduced a remarkable position with easy facilitation of the effective enforcement of cyber law in India. The significance of date protection finds its place under sections 43, 43A, 66, 72 of the IT Act, 2000. Empowering the Adjudicating officers by conferring powers of execution is at par with the civil court, which is also a landmark step. Further, introduction of new cybercrimes under Chapter XI are a welcome step to combat the growing kinds of new crimes. There is need to train the police force with forensic knowledge and cyber laws for their effective investigation. Along with this, the concept of Examiner of Electronic evidence needs to be introduced for analysis of digital evidence as pointed out by one of the researcher[16].

Moreover, we have only one Government recognized forensic laboratory at Hyderabad. We require more such labs to effectual handling the rising cases of cybercrime. Al last, there is also need for trained personnel at state and national level. Hence, for effective implementation of the laws there is a need for global alliance.

[15] Sanjay Pandey, "Curbing Cyber Crime: A Critique of Information technology Act 2000 and IT Act Amendment 2008", (accessed through 'www.softcell.com/pdf/IT-**Act**-Paper.pdf', on 24/9/2015)

[16] Karnika Seth, "IT Act 2000 vs. 2008- Implementation, Challenges, and the Role of Adjudicating Officers", (accessed from http://catindia.gov.in/writereaddata/ev_rvnrbv111912012.pdf on 24/9/2015)