

**DE JURE NEXUS LAW JOURNAL**

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**THE CURRENT CHALLENGES FACED BY INDIAN MEDIA****Abstract**

*In India, there is no one legislative legislation governing the media. It is a collection of several legislation that apply to various forms of media. It has been a development in and of itself, with revisions made as needed to preserve its aims. However, this progress has met several obstacles along the road, and it appears that it has lost its core in terms of delivering information in the manner that it deserves. It is concerning that the media is altering people's perceptions in such a way that they trust even disinformation that is broadcast. The press, as a potent medium of mass information, should be allowed to play its part in the development of a strong and sustainable society. Denying citizens journalistic freedom would imply undermining their ability to influence public opinion, which would be anti-democratic. The right to free speech and expression includes the freedom to publish and disseminate one's ideals, thoughts, and other points of view in total freedom and through any and all accessible methods of publishing. The right to freedom of the press encompasses the freedom to spread ideas and express opinions, as well as the ability to print and distribute them. However, press freedom is not absolute in the same way that freedom of expression is not. Certain limitations on this basic right are not being accepted in certain ways, as the new emerging media takes use of certain facts by seeking support for freedom of speech and expression. The necessity of the hour is for legislation and the judiciary to work together to keep the fundamental right to free expression from crumbling in the current era of media and internet populations.*

**Keyword:**

*Legislation, deserves, freedom, right to free speech, limitations, fundamental rights.*

**Introduction**

The importance of the media in spreading news is regarded as part of the fundamental right to free speech and expression. In fact, some philosophers have seen the media as the fourth pillar of a Democracy, as the other three are the legislature, the judiciary, and the executive. As a result, it is important to create media law so that the media and its regulatory bodies may execute their tasks effectively and journalists can preserve the industry's ethical standards.

When the term "media law" is used, the emphasis is mostly on the law. It investigates the limits that media companies and journalists operate under. As a result, this emphasis shifts the attention to concepts such as free speech, defamation, secrecy, privacy, censorship, contempt, and freedom and access to information.

### **Developing stages of Media in India**

The laws governing the media in India have evolved dramatically over time. After the Battle of Plassey in 1757, the British East India Company took control of a portion of India, resulting in the establishment of press regulations. Then, in India, only Europeans published newspapers, and deportation of the editor (printer) was the ultimate punishment.<sup>1</sup>

William Bolts, an ex-employee of the British East India Company, attempted to create the first newspaper in India in 1766 but was deported. Later, in 1773, J. Almon, London, published a series of articles on Indian politics "particularly" with relation to the state of Bengal and its dependents as "Considerations on Indian Affairs" in two volumes with maps and survey reports. In this book, he is listed as a former Judge of the Mayor's Court of Calcutta. In 1780, James Augustus Hickey founded The Bengal Gazette or Calcutta General Advertiser, India's first newspaper. It was confiscated in 1872 for openly opposing the government. Licensing, like censorship, was a European institution used to regulate the press and was implemented in Bengal in 1823 through Adam's rules. The East India Corporation has ordered that no employee of the company have any involvement with a newspaper.<sup>2</sup>

Metcalf's Act, enacted in 1835, abolished licencing rules and applied throughout the whole East India Company area. It also specified that the printer and publisher of every newspaper must identify the location of the publication's premises. However, Lord Canning reinstated licencing in 1857, which was applied to all types of publications. With the establishment of the Indian Penal Code in 1860, the legislation established crimes that every writer, editor, or publisher must avoid: defamation and obscenity. The next significant event in India's media legislation was the passage of the Press and Registration of Books Act (25 of 1867). This Act is still in effect, with minor changes made from time to time. The purpose of this Act was to set regulations for printing presses and news periodicals, as well as for the preservation of duplicate books and the registration of books. The government's resistance reached a climax with the Swadeshi Movement and the partition of Bengal, both in the press and in the people. The government approved the Journal Act in June 1908, giving authorities the authority to sue the editor of any newspaper who writes to encourage insurrection.

Nine cases were filed under this Act, and seven presses were confiscated consequently. Then came the Press Act of 1910, which gave the government the authority to seek security from any publication, comparable to the Vernacular Press Act. In 1911, the British Parliament approved the Copyright Act. The Indian Copyright Act of 1914 introduced similar rules to India (3 of 1914). It was only in 1957 that the new Copyright Act replaced it with complete law (14 of 1957). The Government approved the Cinematograph Act (2 of 1918) in 1918, which was later superseded by the Cinematograph Act of 1952. (37 of 1952).<sup>3</sup>

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<sup>1</sup> Media law in India : An Article by CA Rajkumar S. Adukia

<sup>2</sup> Media law in India : An Article by CA Rajkumar S. Adukia

<sup>3</sup> Mass India law and Regulation: Bahri Sons (India Research Press)

Prior to independence, the Interim Government formed the Press Laws Enquiry Committee in March 1947 to investigate the press laws. The Committee issued its findings on May 22, 1948, following India's independence and division. Following the submission of this committee's findings, the Act of 1931 was repealed and replaced by the Press (Objectionable Matter) Act 1951. However, the public sentiment was so strong in favour of press freedom that it was allowed to lapse in February 1956 and was repealed in 1957. The Indian Constitution guarantees every person the basic right to free expression and expression, which the courts have construed to include freedom of the press (Article 19(1)(a)). When the Emergency was declared in June 1975 and censorship was implemented, it was a huge defeat for journalistic freedom in India. However, since the fall of the then-ruling party in the 1977 General Elections, no one has been able to follow in their footsteps. The Journalistic Council recommended the government not to restrict press freedom, including in troubled areas like as Jammu and Kashmir. This strategy appeared to be preferable to the government's restrictions on the press. The liberal attitude that was strengthened after 1977 has also influenced broadcasting. While the demand for a self-governing body to control All India Radio and Doordarshan was granted, Prasar Bharti, an independent corporation, was established on September 15, 1997, after the notification of the Prasar Bharti Act. Despite many legislations that have been introduced in Parliament over the years, it has not been feasible to create a regulator capable of controlling broadcasting content, and private satellite and cable channels have greater freedom than in any other area of the globe. Though the government has not yet permitted news on commercial radio stations, freedom of print and television channels distinguishes India as one of the most open countries in the world in terms of media freedom. The Right to Information Act of 2005 has been implemented, extending media freedom in India even further. However, currently, several committees urge for restrictions on private satellite and cable networks. Recent developments in the news media, such as the expansion and subsequent curtailment of social media, the sponsored news phenomena, false sting operations, trial by media, invasion of privacy, and so on, have raised several concerns.<sup>4</sup>

### **Previous Analysis and Suggestions**

In terms of elections, the Ministry of Law and Justice's Committee on Electoral Reforms published a report on Electoral Reforms, which was endorsed by the Election Commission of India and addressed concerns with media and elections. The committee reviewed the suggestions and concluded that there was a need for restrictions on opinion surveys. In its 47th report, the Parliamentary Standing Committee on Information Technology examined issues related to paid news and recommended that either a statutory body be established to investigate content from both print and electronic media, or that the PCI be revamped with powers to investigate paid news and a similar statutory body be established for electronic media.<sup>5</sup> The Committee recognised the importance of providing a detailed definition of paid news in order to distinguish between 'news' and 'advertisement.' The Committee highlighted that the phenomena of Private Treaties gave rise to Paid News and urged that current norms and codes be strictly enforced in order to bring transparency to Private Treaties.

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<sup>4</sup> Media law in India : An Article by CA Rajkumar S. Adukia

<sup>5</sup> Consultation on Media Law: Law Commission of India (link: <http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc> )

## Method of Regulation

In India, media regulation is fragmented, with many regulating agencies. Understanding the jurisdiction of each rule is likewise a highly complex structure. Furthermore, there are problems in enforcing such regulatory organisations' decisions. The Supreme Court suggested an independent Broadcasting media authority along the lines of TRAI in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*, and the Delhi High Court in *Indraprastha People v. Union of India* recommended that an independent statutory body be set up under the Cable Television Networks (Regulation) Act, "consisting of men and women of eminence."<sup>6</sup>

## Paid News

Paid news can be defined as the publication or transmission of a news item that is typically slanted or misleading for the advantage of the party in exchange for payment. It is a long-standing tendency, but it was most evident during the 2009 general election. The Press Council of India (PCI) defines paid news in its 2009 report on paid news as "any news or analysis appearing in print or electronic media for compensation in cash or kind." In its 47th report on "Issues Related to Paid News," the Parliamentary Standing Committee on Information Technology under the Ministry of Information and Broadcasting (MoIB) supported the PCI description and referred to this phenomenon as paid news sickness. Advertisements masquerading as news were also presented. However, a thorough and broad legislative definition of sponsored news is required, which should be developed in cooperation with parties such as the PCI, journalists, and business organisations.

Paid news and Journalists destroy the efforts of those Journalist who desperately work to serve news to their audience as they are also thought of like the paid journalist in the industry.

In the case of *Dr. Narottam Mishra v. Election commission of India & ors.*<sup>7</sup> In which Madhya Pradesh's Minister for Home Affairs is Narottam Mishra. On June 23, 2017, the ECI disqualified him for filing fraudulent election spending reports and utilising bought news during the 2008 elections. The commission found 42 instances of sponsored news against Mishra. He filed an appeal with the Delhi High Court, which delayed the Commission's disqualification judgement. Furthermore, the HC barred ECI from hearing any cases involving paid news, stating that such disqualifications impair citizens' free expression. As a result, the Commission petitioned the Supreme Court in October 2018, which delayed the Delhi High Court's ruling on the issue of investigating cases of sponsored journalism. The Supreme court still has to give their judgement on the case.

## Defamation

Defamation is an extremely serious subject that must be addressed. Cases of fraudulent sting operations or media trials lend weight to accusations of irresponsible journalism. Threats of legal action with punitive penalties under defamation laws also have a "chilling effect" on the production of free and independent news stories, putting excessive pressure on journalists and publishing companies. Any changes to India's defamation legislation must strike a balance

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<sup>6</sup> Consultation on Media Law: Law Commission of India (link: <http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc> )

<sup>7</sup> AIR 2017 DEL182

between these two concerns. Civil defamation is now handled under tort law, but criminal defamation is an offence under Section 499 of the Indian Penal Code.

In India, there is no special standing for journalists under defamation laws. Although the press has the right to free speech and expression under Article 19(1)(a) of the Constitution, defamation is deemed a justification for limiting this freedom under Art 19(1)(b). In the past, organisations such as the Editors' Guild of India have called for the decriminalisation of defamation against journalists. The idea has also been taken into consideration by the Law Ministry. The Hindu newspaper unsuccessfully challenged the application of the criminal code for defamation in the Supreme Court in 2003, claiming that it violated the Constitution's protection of press freedom.

### **Contempt of Court**

Contempt of court, often known as "contempt of court," is the offence of being disobedient to or disrespectful toward a court of law and its officials via behaviour that contradicts or challenges the court's authority, justice, and dignity. Contempt of Parliament or contempt of Congress refers to a similar attitude against a legislative body. The verb for "to commit contempt" is contemn (as in "to contemn a court order"), and the individual who does so is referred to as a contemnor.<sup>8</sup>

According to the Supreme court's interpretation of article 142 the power to punish for contempt of court is the 'inherent jurisdiction' of courts and according to the common law doctrine as the courts record their orders it is within their power to punish anyone who down not compel with their judgements. On the contrary Dr. B R Ambedkar the father of India constitution contempt of court is not an inherent power of courts as they themselves draw their powers from the constitution of India.

In the case of Mulgoankar(in re:)<sup>9</sup> Justice K. Iyer advised other judges regarding the contempt of court which were:-

- This competence is desirable economically.
- The objective should be to harmonise the free critique with the judiciary.
- Confusion should be avoided between the protection of the individual person of a defamatory judge and the prevention of obstacles to public Justice.
- The media, even when the court focuses on its critical attention, should be allowed a free play within reasonable limits.
- Judges should not, although distortions and criticism exceed limitations, be hypersensitive.
- If the court finds disregard for the Court over and above condonable limitations after taking all these considerations into account, a strong arm of the law shall be applied in the name of the public interest and the public justice system.

Civil contempt is only punishable by fine but criminal contempt is punishable by both imprisonment and fine. Press has always been accused of the criminal contempt as their work

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<sup>8</sup> Contempt of court: Wikipedia Link: [https://en.wikipedia.org/wiki/Contempt\\_of\\_court](https://en.wikipedia.org/wiki/Contempt_of_court)

<sup>9</sup> AIR 1978 SC 727: (1978) 3 SCC 339: 1978 SCC (Cri) 402

is to publish their opinions and facts of the situation which sometimes has been regarded as disrespectful by the courts.

As in the case of Kerala where an MLA of city kannur had criticized the Kerela high court judges for banning road Meeting in 2011 and addressed them as idiots in Malayali language for which he had been penalized with six months of imprisonment and a fine of rupees 2000.<sup>10</sup>

Also, in the Chandan Mitra 1995 case where he was an editor in the Hindustan times and wrote an article in which he said that the judges needed psychiatrist counselling to which he was charged for contempt of court<sup>11</sup>

As in the above two Indian cases Contempt of court is not charged that easily in other countries like in the spy catcher case 1987 UK where a book was banned which suggested that there was a spy in the intelligence agency, to which a newspaper named daily mirror ran a front-page heading calling the judges 'YOU FOOLS'. The editor was not charged to contempt of court even when the headline was very offensive for the judges. And, in the R v commissioner<sup>12</sup> case lord Dennings said that the power of contempt of court is not to uphold the dignity of judge or to Suppress the person who is criticising the judge because according to him the nature to duty of a judge does not allows them to directly respond to the criticisms.

### **Social media and Section 66A of the Information technology Act, 2000**

The capacity to effortlessly transmit information via social media has resulted in an increased necessity to control the content of such material. Section 66A of the IT Act makes it a serious offence to send insulting or misleading communications using a computer device with the intent of creating irritation or trouble, danger, obstruction, insult, harm, criminal intimidation, hostility, hatred, or ill-will. Because no criteria for identifying damaging material have been established, the broad swath of the clause has frequently been utilised for politically motivated arrests. Two academics were recently jailed in West Bengal for sharing a cartoon criticising a politician. In another case, two teenage girls from Maharashtra were detained — one for posting a Facebook status on Mumbai's chaotic shutdown due to the death of a famous politician, and the other for 'liking' the status post. Section 66A is now being challenged as a violation of free speech and expression. Though no stay of arrest has been given under this provision, the Supreme Court has ruled that no one should be jailed for making offensive remarks online without the consent of top police authorities.

Simultaneously, social media has frequently been used to incite ethnic and sectarian violence, such as false reports spread online in August 2012, which led to an exodus of North-eastern migrants from South India. Given the widespread use of social media by political parties, the Election Commission established certain guidelines to govern online campaigns in 2013. Despite the fact that the Print and Electronic Media Standards and Regulation Bill, 2012 suggested the creation of a media regulating authority, the Bill was never introduced. The Cyber Appellate Tribunal is competent to deal with complaints under the Act under the current Act, although it is mostly limited to allegations of fraud and hacking.

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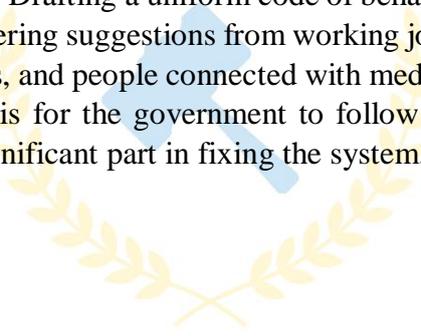
<sup>10</sup> M.V. jayarajam V. High court of Kerala and another 2010

<sup>11</sup> 1997 IIAD Delhi 552, 68 (1997) DLT 259, 1997 (41) DRJ 564

<sup>12</sup> R v commissioner of police of metropolis CA 1968.

## Conclusion

The importance of media ethics in the reconstruction of the vital 4th pillar of the constitution cannot be overstated. The necessity of the hour is to update the regulations in an effective manner so that all lost grounds and failures may be effectively reinstated. Certain bills that are currently pending, as well as the suggestion, must be passed as quickly as possible. There must be a clear-thinking process on what concerns should be addressed under the Press Council of India Act (PCI Act) and how they should be implemented successfully. Furthermore, a balance must be maintained between free speech and speech restrictions. Management and authorities must ensure reporters and journalists' independence and protection so that they may cover the news without fear of being persuaded by political, governmental, or wealthy influential persons and groups. The Press Council should develop ideas in collaboration with significant journalism training and organisations to ensure that journalists are highly recognised for ethical conduct. Drafting a uniform code of behaviour for journalists - reporters and editors - separately considering suggestions from working journalists across print, TV, and web, retired veteran journalists, and people connected with media are some essential steps that may be taken. What remains is for the government to follow the council's suggestions and guidance, which can play a significant part in fixing the system.



# De Jure Nexus

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