

DOES MEDIA NEED TO BE  
REGULATED?

IF YES, HOW SHOULD IT BE  
REGULATED?

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# INTRODUCTION

“The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power. Because they control the minds of the masses.”

—*Malcolm X*

Often referred to as the fourth Estate and the ‘fourth pillar of a democracy’ after the executive, legislature and judiciary, media has an enormous responsibility as an interface between the government and the people. Mass media denotes a section of the media specifically envisioned and designed to reach a very large audience such as the population of a nation state.<sup>1</sup> Also known as mainstream media, it includes newspapers, magazines, television, radio etc. that disseminates information and prominent stories of interest to a general audience and influences every aspect of life of the common man including their issues, expectations, feelings and necessities. They are one of the major instruments of social change.

There has been a paradigm shift in the media environment with traditional media increasingly transitioning to digital and multimedia such as online newspapers. The advent of new age media based on the internet with the development of information technology has enhanced media’s role in society and vice-versa. Improved accessibility and affordability of high speed internet, advancement of literacy as well as the educational and technological infrastructure of the society has lead to the boom of citizen journalism and user generated content where people create and edit content using web pages, blogs or even photo or video sharing sites such as YouTube. With people banking on the ad revenues and global outreach of the platforms, even social media has become an inevitable source of day to day information besides entertainment.

However digital media has its own disadvantages such as misinformation, privacy issues, provocative contents including hate speech propagating religious or racial intolerance, cybercrimes and data security. With increased reliance being placed on digital media upon the onset of COVID-19 pandemic, more focus on regulation of media has been brought to the spotlight.

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<sup>1</sup> Dr. S R Myneni, Media Law, 2013.

# NEED FOR MEDIA REGULATION

Media regulation includes laws, guidelines, rules and procedures enforced to protect the public interest, establish standards and govern its content, conduct or structure. While the debate around the need for regulating media has always concerned compromise of freedom of speech and expression, the digital media evolution has necessitated a more comprehensive approach including new dimensions.

Unlike print media viz. newspapers, visual media has a greater influence on the heart and minds of people and has a wider audience as even children and uneducated people rely on them. Recent decade has witnessed rampant misuse of media for creating havoc or misleading the people into violence as in the US capitol attack case<sup>2</sup>. The major reasons that validate the necessity of media regulation are as follows:

## 1. Fake news

Misinformation and disinformation reigns an unregulated media without a fact checking mechanism. While misinformation includes false or inaccurate information intentionally or unintentionally propagated, disinformation refers to deliberately misleading or biased information, manipulated narratives or facts or propaganda. Fake and incorrect reports can have unforeseen consequences when it goes viral on social media spreading like wildfire and the damage gets done even before the truth could be verified. In a case before the Hon'ble Supreme Court of India, the Centre stressed the need to prevent "fake and incorrect reports, intentional or unintentionally either by all sections of the media"<sup>3</sup>.

In the ongoing Russian invasion of Ukraine, misleading twitter posts, manipulated photos, deepfake videos and false statements have all become part of the war<sup>4</sup>. A fake video of Ukrainian president Volodymyr Zelenski asking his troops to lay down their weapons that had appeared on a Ukrainian news website, YouTube and Facebook, though shortly taken down, could be the first weaponized use of deepfakes during an armed conflict<sup>5</sup>. However, with fastidious technological advancements on the way, it is unlikely to be the last.

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<sup>2</sup> January 6, 2021. See <https://www.britannica.com/event/United-States-Capitol-attack-of-2021>

<sup>3</sup> "Supreme Court concerned over fake news on covid-19", Hindustan Times, April 1, 2020.

<sup>4</sup> <https://www.dw.com/en/fact-check-fake-news-thrives-amid-russia-ukraine-war/a-61477502>

<sup>5</sup> <https://www.wired.com/story/zelensky-deepfake-facebook-twitter-playbook/>

## 2. Manipulation of Public opinion

Blatant abuse and misuse of media power and privilege is observed in cases where it reports opinionated and tailored facts as news to create or induce opinions or to push propaganda. Serving its opinions under the garb of news reports or facts can lead to dangerous circumstances. Attempts to thwart elections by influencing the voters using manipulated narratives as in the U.S capitol breach instigated by the tweets of former president Donald Trump is an example of disruptive use of media when unchecked.

## 3. Sensationalizing of contents

Media is disrepute for exaggerating the facts for commercial purposes. Though acceptable to some extent, these editorial tactics are often overused and have been degrading over the years to unethical and unacceptable practices in the face of freedom enjoyed by the media. Online journalists are accused of creating clickbait titles and thumbnails on videos, often misleading, to generate more views for ad revenues. This also degrades the quality of contents as media focus shifts from social responsibility to commercialization.

Prominent news channels in their attempt to sensationalize the issues have gone as far as displaying the Call Detail Records- a vital piece of evidence- as seen in the aftermath of death of actor Sushant Singh Rajput, resulting in several threat calls and messages to the alleged accused in the case. The Press Council of India had stated that the coverage of the alleged suicide of the actor by many media outlets was in contravention of the norms of journalistic conduct. Bombay High Court Division Bench of Dipankar Datta, CJ and G.S. Kulkarni, J., while addressing the several questions on reporting by electronic media remarked that the duty of the press or media to have news items printed or telecast based on true and correct version relating to incidents worth reporting, accurately and without any distortion or embellishment as well as without taking sides cannot be overemphasized.<sup>6</sup>

Recently, Vice-President M. Venkaiah Naidu also called for shunning of sensationalism in news coverage, emphasizing the need for the media to introspect and self-regulate.<sup>7</sup>

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<sup>6</sup> Source: [www.livelaw.in](http://www.livelaw.in)

<sup>7</sup> [www.thehindu.com/news/national/andhra-pradesh/shun-sensationalism-vice-president-tells-media/article65360005.ece](http://www.thehindu.com/news/national/andhra-pradesh/shun-sensationalism-vice-president-tells-media/article65360005.ece)

#### 4. Media trial

Another prominent media tactic in the rat race to viewership includes parallel trial or investigation by the media. In a recent instance, in the Sushant Singh case<sup>8</sup>, an aggravated scenario has played out with several prominent media channels conducting and broadcasting debates, opinions, scrutinizing details, exposing the material witnesses, examining and cross-examining witnesses and even, chasing investigating officials soon after the death of the actor. Also a part of sensationalism, media trial has further grave implications as it can overturn the investigation in itself.

In **Manu Sharma v. State (NCT of Delhi)**<sup>9</sup>, the apex Court had commented on the danger of serious risk of prejudice that comes with unrestricted and unregulated freedom exercised by the media. It stated that the concerned authorities should ensure that fair investigation by the investigating agency is not hampered by media trial and that the right of defence of the accused is not prejudiced in any manner whatsoever. It is beyond media's domain to prove someone guilty or not while the investigation is ongoing.

In **R.K. Anand v. Delhi High Court**<sup>10</sup>, the Supreme Court also observed that it would be a sad day for the court to employ the media for setting its own house in order and the media too would not relish the role of being the snoopers of the court.

Recently, the High Court of Kerala observed that in a democracy governed by rule of law, the media interest or debate are all permitted subject to the inviolable exception that it cannot suggest, publish or telecast that A or B is guilty, untrustworthy or a credible witness or not, during the course of trial or investigation. Such measures are synonymous to usurping the jurisdiction of the courts which alone has the constitutional authority to decide on such particulars.<sup>11</sup>

#### 5. Violence and obscenity

Research on the effects of viewing violence on television- especially among children- found that it has a desensitizing effect to violence in the real world.<sup>12</sup> It can even lead to sadistic attitude development where watching violence becomes

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<sup>8</sup> Rhea Chakraborty v Union of India, 2020 SCC OnLine Bom 990

<sup>9</sup> (2010) 6 SCC 1

<sup>10</sup> (2009) 8 SCC 106

<sup>11</sup> T. N. Suraj v. State of Kerala, WP (Crl) No. 346 of 2022(S)

<sup>12</sup> Kalpana Srivastava et al, Media and mental health, Industrial Psychiatry Journal, 2018 Jan-Jun, 27(1):1-5.

enjoyable to the person. Trivialized and glamourized portrayal of violence and sexual harassment in media contributes to this. A study by the Network of Women in Media, India (NWMI) of 31 primetime television news and talk shows in 12 languages found aggression in more than 50% of all news shows and in 85% of talk shows<sup>13</sup>.

With the web media gaining popularity among the new generation and transforming to influential platforms in society beyond their communication purposes, there is an increased challenge for content moderation. The so-called “social influencers” such as celebrities, vloggers etc. in YouTube, Instagram and Facebook, yields much power to mobilize even mass movements, as seen in Whatsapp hartal<sup>14</sup> and in E-BullJet case<sup>15</sup> in Kerala. Videos threatening the police and the government system besides provocative comments were posted on social media even by minors during the arrest of the E-BullJet brothers for motor vehicle rules’ violation due to their influence on the youth through social media.

The heightened popularity of Over-The-Top (OTT) platforms since the pandemic due to closing down of theatres, where the audience can watch any programme at any time on their mobile at their convenience also contributes to increased exposure of people to violence, vulgar language use and pornographic and explicit sexual contents which are not allowed on other media platforms.

Nowadays even toddlers know to browse through apps to get the content they want. However the internet is littered all over with obscene, malicious and cringeworthy contents inappropriate for children. The “Elsagate”<sup>16</sup> scandal of YouTube in which disturbing videos depicting horrendous violence, drug abuse and scenes of sexual nature using popular animated characters are hidden amongst cheap animation and specifically targeted at children, is merely one such extremely alarming instance that exposed the inadequacy of safeguards in digital media. That many more such contents still remain on these platforms even after being flagged inappropriate, affecting the perception and mental health of our children in ways beyond our

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<sup>13</sup> “Staging Aggressive Masculinity, Report of a Media Monitoring Project”, January 2022. The study was based on the performance of reporters or anchors rather than news framing or biases.

<sup>14</sup> <https://www.newindianexpress.com/states/kerala/2018/jun/05/whatsapp-hartal-in-kerala-385-cases-registered-1595-held-says-cm-pinarayi-vijayan-1823788.html>

<sup>15</sup> <https://www.thehindu.com/news/national/kerala/arrest-of-e-bull-jet-brothers-cyber-police-register-case-against-people-who-posted-provocative-comments-on-social-media/article35995507.ece>

<sup>16</sup> <https://www.forbes.com/sites/danidiplacido/2017/11/28/youtubes-elsagate-illuminates-the-unintended-horrors-of-the-digital-age/amp/>

comprehension is truly terrifying. Prevalence of child pornography and content depicting sexual violence on these media also requires immediate attention and stringent action, which is not being implemented properly at present.

#### 6. Mental health

Mass media reflects as well as moulds public attitudes and values. While media has been a boon in overcoming social isolation imposed by the pandemic, it has also taken a toll on the mental health of the society. Children who spend more time watching or gaming on mass media spend significantly shorter time with friends and family than who don't, leading to antisocial behavior. Excessive use of media also leads to depression, anxiety and suicidal behaviour due to constant pressure to keep up with the 'trend'.

#### 7. Media pluralism or diversity

Media pluralism and diversity refers to the co-existence of multiple opinions, points of view and analyses in media systems or different types of medias and media support. It is essential for the citizens to confront new ideas and make their own informed decisions independently and hence is an indispensable part of a democratic state.

India Media Ownership Monitor- a database listing ownership details of news media in developing countries that rank low on World Press Freedom Index- released by the Reporters Without Borders and Data Leads, ranked India high-risk on media plurality despite a flourishing news media market. The report observed highly unregulated cross-media ownership, high political control and funding, lack of transparency and missing data.<sup>17</sup> This indicates the political stronghold on Indian media.

Eminent Indian journalist, P. Sainath in his bold and frank letter to the Chief Justice of India ('To the CJI, On His Lament that Investigative Journalism Is Vanishing From Indian Media', December 24, 2021) quite rightly pointed out that "media ownership (is) concentrated in the hands of a few corporate houses pursuing mega profits."

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<sup>17</sup> <https://www.newsclick.in/Media-Pluralism-India-Under-Threat-RSF-Reporters-Without-Border>



#### 8. Other reasons

As there are few fact-checking mechanisms in the electronic media and with people themselves turning to content creators utilizing web connectivity, the quality of information available in electronic media has undergone a drastic decline. Misuse of anonymity in online arena is rampant and there is no set standards of cyber etiquette or ethics followed in the public domain. According to former Defence chief Bipin Rawat, cybercrimes increased by 500% in the pandemic.<sup>18</sup>

Thus regulations are essential to keep a check on media activities and revolting contents spewed out in the shield of creative freedom as well as to ensure media freedom, plurality and diversity by bringing media markets, ownership, infrastructure and technical standards in its ambit.

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<sup>18</sup> The Hindu, 13 November 2021.

# CONFLICT WITH FREEDOM OF SPEECH AND

## EXPRESSION

It is impossible to bypass the discourse on conflict between the freedom of speech and expression guaranteed by the Constitution of India under Article 19(1)(a) while debating the need for regulation of media. “Liberty of thought and expression” incorporated in the preamble signifies its utmost importance in democratic foundation of our Government. Though not expressly mentioned in the Constitution, the liberty of the press is undoubtedly included in the ambit of Article 19(1)(a) empowering it to disseminate knowledge to the masses.

However absolute freedom involves the risk of abuse necessitating restrictions. Thus the freedom provided is qualified by certain clearly defined limitations under Article 19(2) in the public interest. The Supreme Court in *Harijai Singh* case<sup>19</sup> held that “the freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving unrestricted freedom of speech and expression would amount to an uncontrolled licence”. It would lead to disorder and anarchy in the absence of even reasonable restraints. The freedom granted is not to be misinterpreted so as to disregard its duty to be socially responsible. The Court stressed the need for the element of responsibility in the conscience of the journalists.

Other important judicial interpretations dealing with Press or Media Freedom are given below:

### **Brij Bhushan v State of Delhi<sup>20</sup>**

Imposition of pre-censorship on publications was held to be violative of freedom of speech and expression unless justified under Article 19(2) of Constitution.

### **K. A. Abbas v. Union of India<sup>21</sup>**

Wherein the validity of censorship was challenged as violative of Article 19(1)(a), the Court observed that pre-censorship of films under the Cinematograph Act was justified under

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<sup>19</sup> In Re., (1996) 6 SCC 466

<sup>20</sup> A.I.R. 1950 S C 129

<sup>21</sup> 1971 AIR 481

Article 19(2) and that films have to be treated separately from other forms of art and expression due to its ability to stir emotions more deeply.

**Ajay Goswami v Union of India**<sup>22</sup>

It held that blanket ban on publication of obscene materials and articles can't be imposed to protect juvenile innocence as the same might not be offensive to the sensibilities of an adult.

**Romesh Thappar v State of Madras**<sup>23</sup>

Court held that Article 19(1)(a) includes freedom to propagate ideas and that liberty of circulation is as essential as that of publication. Hence it can be stopped only under grounds of Article 19(2).

**S P Gupta v Union of India**<sup>24</sup>

Right to know, receive and import information and the access to telecasting for the purpose has been recognized as a fundamental right within Article 19(1)(a).

**Secretary, Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal**<sup>25</sup>

The Supreme Court held that the freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression.

**Sidhartha Vashist alias Manu Sharma v State (NCT of Delhi)**<sup>26</sup>

Court cautioned that media interfering in administration of justice sub-judice isn't permitted under the Article 19(1)(a).

Although the freedom of the press is guaranteed as a fundamental right, it is necessary to deal with the various laws governing the different areas of media so as to appreciate the vast expanse of media laws.

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<sup>22</sup> (2007) 1 SCC 143

<sup>23</sup> AIR 1950 SC 124

<sup>24</sup> AIR 1982 SC 149

<sup>25</sup> (1995) 2 SCC 161

<sup>26</sup> AIR 2010 SC 2352

## CURRENT SCENARIO

Media in India is governed by general laws of land including taxation like any other individual citizen with no special immunity or elevated status. But like any other profession, substantial areas of activities specific to the field remains out of domain of existing law and has the need to be governed by a professional code of ethics or self regulation. In the words of former PCI Chairperson Justice Markandey Katju, “Normally, negotiating with the media should be the way, but we do need laws under some extreme situations” while remarking that though 90% of wrongdoers could be persuaded to do the right thing, law is needed for some who are incorrigible.<sup>27</sup>

During the British rule and in post independence India, several legislations were enacted to regulate media and to protect its freedom, such as First Press Regulation, 1799, Vernacular Press Act, 1878, Indian Press Act, 1910, Cinematography Act, 1952, Press Council of India Act 1965 etc. In the current scenario, Indian media is mostly self-regulated so as to avoid government control intervening with media independence and autonomy.

### Regulation of Print Media

Print media isn't generally government regulated. The Press Council of India<sup>28</sup>(PCI) is a quasi- judicial statutory body constituted under the aegis of the PCI Act of 1978 to regulate print media in India. A self-regulatory organization, it issues standards more in the nature of guidelines to maintain and improve quality and to preserve press freedom but doesn't have penal power and the government need not comply with its recommendations. It remains a mere superficial body as reports analyzing working of media aren't adopted by the government and rules issued are not adhered to by journalists as it can't suspend them. Other laws include the Press and Registration of Books Act, 1867 (introduced under British rule against derogatory, explicit, ethically wrong or misleading publication threatening national security and sovereignty), The Newspaper (Prices and Pages) Act, 1956, and Civil Defence Act, 1968 that allows Government to make rules to prohibit print media compromising civil defence.

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<sup>27</sup>The Hindu, 19/04/2012.

<sup>28</sup> <https://prsindia.org/theprsblog/regulation-of-media-in-india-a-brief-overview>

## Broadcast media, Television and Radio

Initially government regulated, Doordarshan and AIR became autonomous in 1997 with the establishment of Prasar Bharati Act 1990. With entry of private ownership channels and profit seeking companies quality of the programmes in Television started degrading. At present Programme and Advertisement Codes to regulate television contents are issued under Cable Television Networks (Regulation) Act, 1995. Other regulations include Telecom Regulatory Authority of India Act, 1997, Policy Guidelines for downlinking of Television Channels and Guidelines for obtaining DTH license among others.

The Broadcasting Code, adopted by the Fourth Asian Broadcasting Conference in 1962 that laid down important principles to be followed by the electronic media has ideally been practiced by all Broadcasting and Television Organization. In *Secretary, Ministry of I&B v. CAB*<sup>29</sup>, the Supreme Court emphasized the right of every citizen to telecast and broadcast to the audience through any media and that Government had no monopolistic power over electronic media as it has not been mentioned anywhere in the Constitution or in any other prevailing law in the country, opening the broadcasting sector to the citizens.

News channels are governed by a self-regulation body, the News Broadcasters Association (NBA) with its Code of Ethics regulating the content. However as these are applicable only on its members, a large chunk of private media entities are left out. The News Broadcasting Standards Authority (NBSA) of the NBA can fine, censure, warn or admonish the broadcaster for violating its code. Instances of non compliance of members with the NBSA's decisions and the lack of stringent punishment show the ineptitude of self-regulation systems.<sup>30</sup> Other organizations like Broadcast Editors Association and the Advertising Standards Council of India don't have any statutory powers and merely govern through agreements.

## Films

In the film industry, the distribution networks are government controlled. The statutory film certification body in the Ministry of Information and Broadcasting of the Government of India called the Central Board of Film Certification (CBFC) regulates public exhibition of films. It certifies movies as U, U/A, A or S indicating unrestricted public

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<sup>29</sup> (1995) 2 SCC 161

<sup>30</sup> <https://thewire.in/media/arnab-goswami-republic-tv-jignesh-mevani-2>

exhibition, parental guidance for children under age 12, restricted to adults and restricted to a specialized group of people, such as engineers, doctors or scientists respectively or may refuse to certify the film and censors contents under the provision of Cinematography Act, 1952.

There have been instances where the exhibition of the film was suspended on the sole ground that the public screening of the film was likely to hurt religious sentiments and cause a breach of the peace<sup>31</sup>. In *Phantom Film Pvt. Ltd. & Anr vs. Central Board of Film Certification*<sup>32</sup>, the Bombay High Court held that the film cannot be objectionable merely due to depiction of the use or sale of drugs in a particular state and because of the political references therein and opined that the story must be viewed in its entirety.

National Centre of films for Children's and Young People (CFSI) established in 1955, produce and distribute films which essentially provide a clean and healthy environment for children and young people. The National Film Development Corporation (NFDC) was established in 1980 with the task of promoting good cinema, to produce and finance films, and overseas distribution of films.<sup>33</sup>

#### OTT Platforms and Other digital media

OTT platforms that offer viewers access to media directly through the internet bypassing cable and satellite systems are not regulated by any statutory body and hence displays content with all sort of vulgarity. In the recent time platforms have considered self-regulation of online content through voluntary code specifically for language, violence and sex, but these have weak standards due to lack of sanctions. A diverse country like India has to carefully tread the need for independent media regulator to deal with OTT contents as some are based on harsh social realities and are a tool to expose the brutalities political powers tend to erase from public domain.

Recently the government of India formally notified the the 'Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021'<sup>34</sup> framed by the Ministry of Electronics and Information Technology (MeiTY) under the Information

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<sup>31</sup> *Vital Media v. State of Punjab*, (2015) 13 SCC 397

<sup>32</sup> 2016 SCC OnLine Bom 3862

<sup>33</sup> <https://www.legalserviceindia.com/articles/media.htm>

<sup>34</sup> <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>

Technology Act, 2000,(IT Act) seeking to regulate contents in OTT and social media platforms (intermediaries) like Twitter and Facebook. While The IT Act, 2000 largely deals with cybercrimes and doesn't seek to regulate digital media, MeitY is now empowered to do so. This has several legal challenges as it excludes the Ministry of Information and Broadcasting (MIB), originally responsible for digital media regulation because IT Act, 2000 is beyond its administration.

Under these rules, the intermediaries are required to provide a grievance redressal mechanism to resolve complaints from users or victims. It also endeavours to deploy technology-based measures to curate the contents. India operates on the 'Safe Harbour model', under which the intermediaries are have no liability for the unlawful acts of third parties who use their infrastructure. While the new rule attempts to place more responsibility on these platforms, it has received widespread criticism as being ultra vires as the MeitY controls it and that it may be misused to adversely affect the privacy of individuals.

## REGULATIONS WORLDWIDE

Development of media regulations without encroaching on their creative freedom requires study of tried and tested practices over the world. Some international practices of media regulation are as follows:

In the United Kingdom while print media is largely self regulated, a statutory body called the Broadcasting Standards Commission regulates electronic media through code of conduct and monitors them through public complaints. Government has released a white paper on the threat of unregulated online content proposing new regulatory framework to enforce codes of practice and redressal mechanism to users for online safety.<sup>35</sup>

In USA, independent government agency, The Federal Communications Commission regulates broadcast journalism by issuing licenses, investigating complaints and implementing rules and regulations.

In Singapore online contents are directly regulated by its media regulatory authority Infocomm Media Development Authority that classifies them into categories with age restrictions. It even issued and enforced code of practices for OTT services requiring them to clearly display ratings and elements in content such as the theme and language and to comply with the law of the land. Contents disruptive of racial or religious harmony or public interest and national security are prohibited from streaming.

Dutch Media Authority recognizes five types of measures to promote media diversity such as: restrictions on media concentration or ownership, providing alternatives to commercial media outlets like public service broadcasting and non-profit or 'community' media economic interventions like tax reduction, transparency measures and organizational measures.

The German Press Council deals with issues at an early stage through conciliations. Only in the next stage, the Press Council of Germany intervenes between

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<sup>35</sup> Astha Pandey and Pranjali Pandey, To Censor or Not to Censor: Regulation of Content on OTT Media Platforms in India, 7 CMET (2020) 46 at page 52



concerned parties where its complaints commission inspects issues related to editorial pages to detect violations and may take suo moto actions. They also have another branch to evaluate even anonymous public complaints, compelling most media establishments to voluntarily accept the press code as the ethical guideline and to take corrective measures. Readers can make a complaint to the Press Council if they believe that data pertaining to them have been mishandled and it will be dealt under the contravention of individual rights ensuring data protection.

## MEDIA REGULATION IN NEW AGE

In reality there is no single medium on media regulation and redressal in India and self-regulation unfortunately exist as a mere farce. Proper self-regulation can be done in many ways, including licensing and association certification, information and awareness movement, establishing public complaint management and grievance redressal division, establishing preset procedures such as for dispute resolution, standard regulation through accreditation and quality assessment measures as well as ensuring stringent punishments so as to deter unfair practices. However the dilemma of who determines the fairness and righteousness of the contents is a matter of grave concern. Leaving the regulation to the media itself entails great likelihood that objectives of regulation are surrendered to its own business goals. Thus it is essential to review the accountability systems existing in the media.

At present, no qualification has been prescribed by the PCI for journalists unlike other professions such as that for advocates prescribed by the Bar Council. Similarly it has very limited powers to deal with delinquent journalists unlike the Bar Council or the Medical Council that can take action against professional misconduct or violation of principles in their respective fields.

The recommendations put forward to the UK Government by the Cairncross review<sup>36</sup>, a British study into the future of the press and the sustainability of the production and distribution of high-quality journalism and public-interest in 2019 can also be taken into consideration to improve the prevailing conditions. It included: establishment of a government innovation fund to improve the supply of public-interest news; direct funding for local public-interest news; and new forms of tax relief to improve standards of online news market and ensure quality journalism.

The Indian media has transformed rigorously since the independence. With social media platforms taking over the digital media, a Pandora's Box of novel issues has also been unleashed. They suffer a lack of editorial oversight as in traditional news content where the viewpoints to be broadcasted or published are determined by a set of producers and higher executives. While Companies can easily supervise the contents shared in their platforms and can be held accountable in traditional media systems, social media platforms are mere conduits for user-generated content and is subject to much less moderation. Unlike traditional

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<sup>36</sup> <https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>

media, social media users have almost no control over the content they are exposed to as it uses complex algorithms to keep users scrolling by recommending more radical posts than they would have ever sought out on their own.

Despite governments being aware of the need for OTT regulation as well as impact of web media on the people, there are currently no globally accepted best practices as these are in early stages of development and are subject to review and modifications. However the crucial aspects taken into consideration include content regulation, net neutrality, licensing, taxation and privacy policy.

Regulating social media is a different topic overall. Attempts for the same have seen tech giants such as Facebook and Google being at war with the governments, threatening to discontinue their services. However hope is not all lost with The European Union attempting to set the standard for tech regulation globally by taking steps toward a landmark legislation, The Digital Services Act to address social media's societal harms and economic effects<sup>37</sup>. It aims to end an era of self-regulation by compelling tech companies to police their platforms for harmful contents more aggressively by setting up new policies and procedures to deal with terrorist propaganda and other illegal materials in the context of European Union nations. It also proposes yearly audits for tech giants like Google and Meta for "systemic risks" related to their businesses.

Another legislation, The Digital Markets Act aims to counter anticompetitive behaviour by these tech firms that affect the economy with their iron grip over online advertising, app stores and e-commerce. However, that the European Union's data privacy law, the General Data Protection Regulation (G.D.P.R.) introduced with much expectations is lacking in enforcement, creates concern about the fate of new laws. Thus the governments have a great responsibility to ensure that these big companies no longer bypass their obligations by elusive techniques such as compelling the user to sign consent forms to continue using their services. Along with the introduction of new rules, effective enforcement of these as well as the existing rules has to be ensured for a successful regulation.

Other suggestions<sup>38</sup> so as to regulate media are:

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<sup>37</sup> <https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html>

<sup>38</sup> Meera Mathew, Media Self- Regulation In India: A Critical Analysis, ILI Law Review, Winter Issue 2016

- i. Drafting contracts that maintain essential compliance with the Codes of Practices can deter journalists and guest contributors from grave violations. Concerned departments for the purpose have to be established in all branches of organization.
- ii. Data protection has to be given prime importance and integrated into laws
- iii. Developing a universal code of ethics to be followed by all journalists and content creators
- iv. Publicizing ownership details etc. of media in public domain to counter political control and paid news
- v. Establishing a media ombudsman to deal with complaints of the public and to take quick and effective action. It may also be a grievance redressal system for journalists as well.
- vi. Digital media ethics awareness courses maybe established as part of journalism training. Awareness classes to the public as well on digital media etiquette.

Other steps that could be taken include:

- Developing technology based measures to quickly take down flagged contents after review from digital media platforms.
- Making it compulsory for intermediaries to provide annual or monthly data statistics on flagged or reported contents and action taken towards the same to bring accountability.
- Preventing misuse of system by forming review groups of experienced and expert members of the media community within the country for determining whether the content has to be taken down.

## CONCLUSION

Media regulation is a sensitive topic that needs a detailed study on the need of laws and for its successful implementation and enforcement. Accountability and transparency of media can only be ensured in the era of the internet by developing some kind of international code of ethics. At the same time it shall not be restrictive of the fundamental human right.

In the wake of recent developments, the governments must strive to strike a balance between media freedom and regulation for their smooth functioning. The problems emerging in the media and entertainment industry cannot be tackled with regulations alone. Moderation of content can also be imposed only upto a reasonable extent so that it does not cause any apprehensions as to the creative freedom enjoyed by the sector. The traditional values of the society have also been affected as contents from culturally diverse countries are available to the audience on the web introducing them to new ways of thinking. It has become almost impossible to set the standards as to obscenity, morality, decency etc. The ultimate choice on the matter must always be left to the interest of the consumers and the society.

Along with development of new rules and policies to keep up with the changes due to fast paced technological developments in media sector, the misuse of these rules by the political powers and market interests also have to be curtailed. Biased contents dominating media presentation is an unsightly scenario in a democracy. Rather than relying on self regulation, co-regulation or a hybrid model of regulation involving self regulation backed by statutory regulation shall be promoted for progress and quality improvement of the media.

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