

BEFORE THE INK IS DRY: INDIAN MEDIA @77

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There have been significant changes in the Indian media landscape since independence. This research paper throws light on the underpinnings of press freedom to lay a background over which the present state of journalism could be studied and analyzed. It lays down the recently enacted acts and bills to understand the need for censorship in curbing the menace of fake news. This paper concludes by placing hope both- in the independent media channels and the journalists on the one hand and the judicial system on the other.

1. CONSTITUTIONAL FOUNDATION OF FREEDOM OF THE PRESS

The written Constitution of India in part III and specifically in Art. 19 declares fundamental freedoms of the citizens that include the right to freedom of speech and expression.

It can be observed that under Art. 19 (1)(a) as above, there is no provision to guarantee freedom of the Press as such, nor does it specifically mention the Press¹. But, even in the earliest decisions of the Supreme Court of India, the Court stated that freedom of speech and expression includes freedom of the press.²

1.1 The beginning of press in India

The Christians, who came to India to propagate Christianity among the Hindus and convert them to Christianity, set up the first-time printing presses in India to achieve their desired goal. The year 1556 is quite significant as it saw the arrival of the first printing press in India.

The Press was brought to India in the wake of British rule. Under the authority of the East India Company, some enterprising journalists set up printing presses in India to expose the misdeeds of the Company.³

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¹ M.P Jain, Indian Constitutional Law (8th ed. 2018).

² Romesh Thappar vs. The State of Madras (26.05.1950 - SC): MANU/SC/0006/1950

³ Durga Das Basu & Bhagabati Prosad Banerjee, Law of the Press (2010).

1.2 The history of press legislation in India

In India, the history of laws directed against the Press dates from the days of the East India Company⁴. From its inception, the newspaper took up the difficult task of criticising the administration and the officials responsible for it.⁵

The earliest surviving enactment targeted against the press was the Press and Registration of Books Act of 1867. The object was, however, not to establish governmental control over the freedom of the Press. It was a regulatory law that enabled the Government to regulate the printing press and newspapers by a registration system and to preserve copies of books and other matters printed in India⁶.

Freedom of the Press today means the absence of interference by the State, except in so far as it is authorised by the Constitution and through constitutionally valid laws⁷.

2. Need for freedom of the press.

2.1 Time and again, this freedom has been referred to as a 'basic' human right⁸ and has also been called a 'preferred' right⁹.

- a. What is known as the freedom of the Press is nothing but the freedom of expression of every citizen [guaranteed by Art. 19 (1)(a)] which includes-
 - i. The right to lay what sentiments he pleases before the public¹⁰, or the right to impart information and ideas¹¹;

⁴ The first Indian Newspaper- the "Bengal Gazette"- was published in 1780

⁵ Supra 3

⁶ Ibid.

⁷ Supra 3

⁸ Life Insurance Corporation of India and Union of India (UOI) and Ors. vs. Manubhai D. Shah and Cinemart Foundation (22.07.1992 - SC): MANU/SC/0032/1993 (para. 5.)

⁹ Odyssey Communications Pvt. Ltd. vs. Lokvidayan Sanghatana and Ors. (19.07.1988 - SC) : MANU/SC/0350/1988

¹⁰ William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765--1769*. Chicago: University of Chicago Press, 1979.

¹¹ Art. 19, Universal Declaration of Human Rights, 1948

- b. Historically, the growth and development of representative democracy (as against absolutism¹²) is so intertwined with the growth of the Press that it has been recognized as an 'institutional limb of modern Democracy'¹³.

2.2 The Supreme Court held the following propositions to be applicable in the interpretation of freedom of the Press in India-¹⁴:

- a. The freedom of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare.
- b. Such freedom is the foundation of a free Government of a free people.
- c. The purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind.

3. The underpinnings of press freedom

3.1 The fundamental right to freedom of speech, enshrined in Article 19(1) of the Constitution, is qualified by Article 19(2), which empowers the State to impose reasonable restrictions²⁰. The grounds give sweeping powers to the government to twist and turn the right to free speech as per their whims and fancy. Over time, these grounds have rendered the right paralyzed.

3.2 Press freedom came under siege notably during the Emergency period of 1975 that saw the suspension of civil liberties including, - freedom of the Press, which was under the leadership of Prime Minister Indira Gandhi.

3.3 The seminal judgement of Shreya Singhal¹⁵ laid out the contours of this right, the underlying principles of discussion, advocacy and incitement. Mere discussion or even advocacy is within the threshold of Article 19 (1)(a). Only when the first two principles escalate to the level of incitement the Clause (2) of Article 19 come into play.

¹² James Bryce, *Modern democracies*. 1 (1921).; Carl J. Friedrich, *Constitutional government and democracy; theory and practice in Europe and America* by Carl J. Friedrich (1968).

¹³ D.K. Basu Commentary on the Constitution of India, 6th Ed., Vol. C. pp. 95-97; *Indian Express v. Union of India* (1985) 1 S.C.C. 641 (paras. 25, 32, 39, 68)

¹⁴ *Express Newspapers (Private) Ltd. and Ors. vs. The Union of India (UOI) and Ors.* (19.03.1958 - SC) : MANU/SC/0157/1958

¹⁵ *Shreya Singhal vs. Union of India (UOI)* (24.03.2015 - SC): MANU/SC/0329/2015

4. Legislative Framework of the Press

4.1 The Press Act

4.1.1 The Press and Registration of Periodicals Act¹⁶ 2023 has replaced the old Press and Registration of Books Act of 1867, which governs the registration and regulation of newspapers and magazines. The Editors Guild of India has described its provisions as 'draconian'-¹⁷ as they empower the State to have more intrusive checks on the functioning of newspapers and magazines.

As per Clause (4) of Section 11 of the act, the Press Registrar General may, by order, for a period not less than thirty days but not exceeding 180 days, suspend the certificate of registration of a periodical where the owner or publisher has been convicted by any court for an offence-

- a) involving terrorist acts or unlawful activity; or
- b) for having done anything against the security of the State.

It would also allow any other 'specified authority' to enter the premises of a publication¹⁸.

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4.1.2 The grounds used in the act are similar to the ones used under the Unlawful Activities (Prevention) Act of 1967. The act has had a history of being used as an instrument to silence journalists, which will be elaborated further in the later part of the essay.

4.2 The Information Technology Act and Information Technology Rules

The Information Technology Act¹⁹ 2000 serves as the de facto legislation for digital governance in India. Information (Intermediary Guidelines and Digital Media Ethics Code) Rules²⁰, 2021 (IT Rules, 2021) that were brought to bring within its purview digital news media.

¹⁶ Press and registration of periodicals act, 2023. Available at: https://mib.gov.in/sites/default/files/Press_and_Registration_of_Periodicals_Act_2023.pdf (Accessed: 30 May 2024).

¹⁷ Committee to Protect Journalists, *CPJ urges India to review "dangerous" legislation that threatens press freedom*, Committee to Protect Journalists (2023), <https://cpj.org/2023/08/cpj-urges-india-to-review-dangerous-legislation-that-threatens-press-freedom/>.

¹⁸ Clause (b) of Section 6 of the Press Act

¹⁹ MeiT, <https://www.meity.gov.in/content/information-technology-act-2000-0>

²⁰ The Information Technology (intermediary guidelines and...., [https://www.meity.gov.in/writereaddata/files/Information_Technology_\(Intermediary_Guidelines_and_Digital_Media_Ethics_Code\)_Rules,_2021_\(updated_06.04.2023\)-.pdf](https://www.meity.gov.in/writereaddata/files/Information_Technology_(Intermediary_Guidelines_and_Digital_Media_Ethics_Code)_Rules,_2021_(updated_06.04.2023)-.pdf)).

The 2011 Rules²¹ did not regulate Digital News Media and OTTs. This rule was changed with a notification under the Allocation of Business Rules. However, this notification was released for administrative compartmentalisation and does not give power to authorities to exercise it unless it is backed by a majority in the legislature for its enforcement.

So, the government, instead of initiating a bill, expanded the scope of the IT Act of 2000 to include the Intermediary Rules, thereby taking within its fold - Digital News Media and OTT platforms. This overreaching, by the executive, to amend parliament-enacted legislation is itself ultra vires our Constitution²².

4.2.1 Framework: Code of Ethics

4.2.1.1 Part II of the IT Rules regulates Digital Media by laying down a code of ethics to be followed by digital media and a three-tier Grievance Redressal Mechanism²³ with the Ministry of Information and Broadcasting (MIB) at the top to punish any violation made of the code.

4.2.1.2 It prescribes that Digital News Media has to comply with the Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978 and Programme Code under Section 5 of the Cable Television Networks Regulation Act of 1995, and prohibited content under any law for the time being in force, shall, not be published or transmitted²⁴.

4.2.1.3 The oversight mechanism that is level III comprises an 'Inter-Departmental Committee', consisting of members from the Ministry of Information & Broadcasting and other Ministries under the government²⁵.

This committee will hear complaints regarding decisions taken at Levels I & II and is empowered to delete content to prevent incitement to the commission of a cognisable offence relating to public order²⁶.

²¹ भाग II खण्ड 3(1) भारत का राजपत्र ., [https://www.meity.gov.in/writereaddata/files/GSR313E_10511\(1\)_0.pdf](https://www.meity.gov.in/writereaddata/files/GSR313E_10511(1)_0.pdf)

²² Tejasi Panjari & Prateek Waghre, *A silver lining? We wrote to the Rajya Sabha Committee ahead of its consideration of the IT rules, 2021* Internet Freedom Foundation (2023), <https://internetfreedom.in/letter-to-the-rajya-sabha-committee-ahead-of-its-consideration-of-the-it-rules-2021/>

²³ Rule 9 (3) of the IT Rules, 2021

²⁴ Paragraph I of Appendix of IT Rules, 2021

²⁵ Rule 14 of the IT Rules, 2021

²⁶ Rule 14(5)(e) of the IT Rules, 2021

While Rules 9(1) and 9(3) have been stayed by the Bombay Court²⁷ and the Madras High Court²⁸, the latter observed that the oversight mechanism in the Rules may 'rob the media of its independence'.

The Bombay Court²⁹ made a significant remark on this aspect- 'One would have to think twice before criticising any such personality, even if the writer/editor/publisher may have good reasons to do so without resorting to defamation and without inviting action under any other provision of law.'

The Court³⁰ also stated that the 'publishers could be hauled up, for anything that the committee so wishes' and held that Rule 9 contravenes Article 19(1)(a) of the publishers.

It further held-

'People would be starved of the liberty of thought and feel suffocated to exercise their right of freedom of speech and expression if they continue to live in present times of content regulation on the internet with the Code of Ethics hanging over their head as the Sword of Damocles. This regime would run contrary to the well-recognized Constitutional ethos and principles.'

4.2.2 Self-censorship and right to fair hearing-

The regulatory mechanism invites the Publishers, Editors and Writers to self-regulate their content in fear of being taken down by the authorities under the overbroad provisions of the Rules.

²⁷ Agij Promotion of Nineteenonea Media (P) Ltd. v. Union of India, 2021 SCC OnLineBom 2938

²⁸ M Krishna v. Union of India (WP (C) No. 12515/2021 & Digital News Publishers Association and Anr. v Union of India and Ors. (WP (C) No. 13055/2021

²⁹ Supra 27

³⁰ Supra 27

4.2.3 Violation of separation of powers and principles of natural justice-

The three-tier grievance redressal forum and Oversight Mechanism³¹, which sits over publishers, makes the Executive, the Central Government, the judge in its case³². The 'Review Committee'³³ as does the Inter-Departmental Committee³⁴ solely comprised of the executive. The Authorized Officer, too, is appointed by the Ministry to issue directions under the rules³⁵.

The Officer, subject to the approval by the Secretary, has a wide amplitude of power to block, delete or modify content³⁶ that does not sit well with them under the pretext of public order. This rule, however, violates the rule of law under Article 14 of the Constitution and the separation of powers under the Constitution³⁷. There is no judicial oversight over the III-tier mechanism.

4.2.4 Despite backlash from courts, amendments continue:

IT Amendment Rules³⁸, 2023, have made some changes to Rule 3(1)(b)(v) under Part II of the IT Rules, 2021, which cover due diligence and grievance redressal mechanisms for intermediaries. The amended provision makes it necessary for intermediaries such as WhatsApp, Facebook, and Instagram to 'make reasonable efforts to' cause its users to not post information in respect of any business of the Union Government that is identified as 'fake', 'false', or 'misleading' by the Fact Check Unit established by the Union government.

4.2.4.1 It fails to define grounds that constitute- 'Fake', 'False', and 'Misleading'. This rule violates Shreya Singhal's case³⁹ judgment because of its vague and overbroad terms. The Court⁴⁰ stated that takedown orders issued by MeITy are issued under

³¹ Rule 13 of the IT Rules, 2021

³² Gurdip Singh v. State of Punjab [(1997) 10 SCC 641: 1997 SCC (L&S) 1742

³³ Rule 17 of the IT Rules, 2021

³⁴ Rule 14 of the IT Rules, 2021

³⁵ Rule 13 (2) of the IT Rules, 2021

³⁶ Rule 15 (2)] of the IT Rules, 2021

³⁷ Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225, 'The doctrine of separation of powers has been well recognized and re-interpreted by the Court as an important facet of the basic structure of the Constitution.'

³⁸ Meity, <https://www.meity.gov.in/writereaddata/files/244980-Gazette%20Notification%20for%20IT%20Amendment%20Rules%2C%202023-%20relating%20to%20online%20gaming%20%26%20false%20information%20about%20Govt.%20business.pdf?ref=static.internetfreedom.in>

³⁹ Shreya Singhal vs. Union of India (UOI) (24.03.2015 - SC): MANU/SC/0329/2015

⁴⁰ Ibid.

specified grounds that blocking will take place only by a reasoned order after complying with several procedural safeguards inclusive of hearing to the originator and intermediary and that there are only two ways in which a blocking order could be issued- one by the Designated Officer after complying with the 2009 Rules and the other by the Designated Officer when he has to follow an order passed by a competent court. The proposed Amendment will bypass all these requirements and introduce a new third route for passing blocking orders⁴¹.

4.2.4.2 The Madras High Court⁴² held- 'There is a genuine apprehension, as the petitioners suggest, that a wink or a nod from appropriate quarters may result in the platform being inaccessible to a citizen.'

In light of the above observations by the Constitutional Courts, it is difficult to understand how MeiTy continues to make new amendments to the IT Rules of 2021 without correcting any of its identified drawbacks.

4.2.4.3 Justice Gautam Patel has made strong statements in his minority judgement⁴³- 'The 2023 amendment is not just too close to, but takes the form of, censorship of user content'.

'By shifting responsibility for user content to the vulnerable segment, viz, the intermediary, the amendment of 2023 effectively allows the government, through its Fact Check Unit (FCU), to be the final arbiter not just of what is fake, false, or misleading; but, more importantly, of the right to place an opposing point of view.'

4.2.5 How amendments have played out: the scenario at present

A research initiative, *Hindutva Watch*, which monitors hate speeches, hate crimes and human rights atrocities committed against marginalised communities in India, had its Twitter handle blocked by the government. They approached the Delhi High Court⁴⁴ under violation of issues of- the principle of proportionality test and the right to a fair hearing under Article 21 of the Constitution. The petitioner, in the said case, was not

⁴¹ Tanmay Singh, *Meity proposes another amendment to the IT rules: PIB's fact-check team will be able to take down "fake" news* Internet Freedom Foundation (2023), <https://internetfreedom.in/meity-proposes-another-amendment-to-the-it-rules-pibs-fact-check-team-will-be-able-to-take-down-fake-news/>

⁴² Supra 28

⁴³ Kunal Kamra vs. Union of India (31.01.2024 - BOMHC) : MANU/MH/0681/2024 MANU/MH/0681/2024

⁴⁴ Raqib Hameed v. Union of India, W.P. (C) 5820/2024

provided with prior notice or hearing, nor was he provided with a copy of the blocking order. This amendment, again, violates Shreya Singhal's case⁴⁵, wherein it was stated that both- the intermediary and the originator must be given a chance to be heard before blocking their content. The Ministry not only blocked pre-existing content but also forward-looking content based on the assumption that content generated in future will be illegal⁴⁶.

4.2.5.1 The Kashmiri Editor Fahad Shah's independent news portal '*Kashmir Walla*' was banned last year for undeclared reasons under the IT Act, 2000.

4.2.5.2 The Petitioners in the Kunal Kamra case of the Bombay High Court moved the Supreme Court⁴⁷ after the third judge refused to stay the formation of the Fact Check Unit during the pendency of petitions before it. The Apex Court stayed the notification of the Union government to make FCU functional under the Press Information Bureau. This order was a beacon of hope for the petitioners in their fight for press freedom in India.

4.3 The Telecom Act

The 'statement of objects and reasons' under the Telecom Act⁴⁸, 2023 acknowledges the need to create a "legal and regulatory framework that focuses on safe and secure telecommunication network that provides for digitally inclusive growth".

The definition of 'Telecommunication'⁴⁹, read with 'Telecommunication Services',⁵⁰ is now heavily diluted, creating ambiguity regarding the scope of applicability to Internet services. It now means any telecommunication service. This definition leaves room for online communication services to be included within its purview. If they do so, then issues of surveillance, censorship, suspension, and authorisation will be applied to those services as well, deepening the threats to our rights and freedoms.

⁴⁵ Supra 39

⁴⁶ Internet Freedom Foundation, *Delhi HC issues notice on Hindutva Watch and Indiahate lab's petition challenging the blocking of their entire websites*. Internet Freedom Foundation (2024), <https://internetfreedom.in/untitled-delhi-hc-issues-notice-on-hindutva-watch-and-india-hate-labs-petition/>

⁴⁷ Editors Guild of India v. Union of India, & Ors, C.A No. 4512-4514 of 2024

⁴⁸ <https://egazette.gov.in/WriteReadData/2023/250880.pdf>

⁴⁹ Clause 2(p) of the Telecom bill, 2023

⁵⁰ Clause 2(t) of the Telecom bill, 2023

The term 'licensing' as used in the 'Telecom Bill,2022' has been replaced, only in name, by 'authorisation'. The right to issue such authorisation rests with the Union government⁵¹.

The Act⁵² states the user's duty not to furnish false information while establishing their identity to avail of services under the Bill. This section would pose severe consequences for users who want to stay anonymous while disclosing information to journalists. Application of this clause can be reasoned to target cybercrime in this country.

4.3.1 The Supreme Court⁵³ has stated that 'protection of journalistic sources is one of the basic conditions for freedom of the Press. Without such protection, sources might be deterred from assisting the Press in informing the public on matters of public interest.'

4.4 Broadcasting Bill

The Broadcasting Services (Regulation) Bill⁵⁴, 2023 (Broadcasting Bill) is meant to replace the existing Cable Television Networks (Regulation) Act, 1995.

4.4.1 The framework

The bill is likely to have a huge impact on Journalistic freedom and the democratic functioning of the Media. Chapter III controls content standards, and the bill also⁵⁵ grants the Ministry regulatory powers over News and Current Affairs Programmes through online papers, news portals, websites, social media intermediaries, or other mediums. It provides⁵⁶ 'News and current affairs programmes' to include any newly received or noteworthy audio, visual or both, including its analysis of recent events of a socio-political, economic or cultural nature.

4.4.1.1 The Bill⁵⁷ gives any authorised Officer appointed by the Government- the power to seize and confiscate equipment of broadcasting networks or services. This section shall

⁵¹ Clause 32 (2) of the Telecom bill, 2023

⁵² Clause (29) of the Telecom bill, 2023

⁵³ Manohar Lal Sharma vs. Union of India (UOI) and Ors. (27.10.2021 - SC) : MANU/SC/0989/2021

⁵⁴ Broadcasting services bill, 2023.PDF, Google

Drive, https://drive.google.com/file/d/1ROw6fLMir_tXhsHY1cfHeDFvkhSblCmJ/view?ref=static.internetfreedom.in

⁵⁵ Section 20 of the Broadcasting Bill,2023

⁵⁶ Section 2 (v) of the Broadcasting Bill,2023

⁵⁷ Section 31 of the Broadcasting Bill,2023

also apply to Journalists and reporters live-reporting the news the way it applies to Over-The-Top (OTT) broadcasting networks⁵⁸.

4.4.1.2 It⁵⁹ empowers the government to prohibit the transmission of programmes or operation of broadcasting networks if it is likely to promote disharmony or feelings of enmity, hatred or ill-will between different communities. The application of this section is not limited to journalists alone but also applies to any person who chooses to broadcast news over the digital platform as part of a 'systematic business, professional, or commercial activity'.

4.4.2 It is just another legislation aimed at curtailment of the right to free speech and expression, and it is going to hinder accessibility to multiple websites for a user who is on the lookout to read news that delivers accurate information.

4.4.3 This section may curtail the broadcaster's functioning, given the high penalty associated with the bill for non-compliance with prescribed rules and government orders.

4.4.4 There exists no independent body to preside over such authorised officers who have the power to search and seize⁶⁰ equipment. The Authorized Officers mentioned in the act are appointed by the government to regularise content that it thinks appropriate. Criticism and free speech will be rendered immobilised under such a scenario, especially concerning independent journalists like Ravish Kumar, Faye Dsouza, and Anubha Bhonsle, who rely on digital platforms to publish news that may, sometimes be unpalatable to the government.

4.4.5 The only upside to the bill was the measures to include sign language, audio descriptions and subtitles of videos, the presence of a disability grievance redressal officer, etc.

4.5 The mysterious Digital India Bill⁶¹

The Bill aimed to overhaul the 20-year-old Information Technology (IT) Act of 2000. It is part of the government's overarching legal framework that shall comprise a 'new telecom law, information technology law, and user privacy law.' The new draft IT is still in the works and is

⁵⁸ Section 20(2) of the Broadcasting Bill, 2023

⁵⁹ Section 36 of the Broadcasting Bill, 2023

⁶⁰ Section 31 of the Broadcasting Bill, 2023

⁶¹ Meity, https://www.meity.gov.in/writereaddata/files/DIA_Presentation%2009.03.2023%20Final.pdf

yet to be released. The new bill will target Fake News⁶² content against national security, among other things.

4.6 Lack of deliberation before enactment of bills

The drafts of the bill were left open for consultation, and feedback too was collected from affected groups, but it did not find a place in the final draft of the bill. Some bills⁶³ were not even referred to any parliamentary committees. The Court⁶⁴ while noting the evidentiary value of Parliamentary Committee reports noted that fair comments on reports of Parliamentary Committees are fully protected under the rights guaranteed under Article 19(1)(a).

Such bypassing of review and leaving no room for effective consultation by Members of Parliament is unrecognized, keeping in mind the constitutional ethos of the country. The Constitution itself was a product of constant deliberation and made a subject of scrutiny as seen from the debates of the Constituent Assembly. The Rules also steal the public, the right to know⁶⁵.

5. Why censor at all?

The horrors of accessibility to anything under the sun with a single click also call for some semblance of control over what goes out in the public domain. We live in a world of clickbait, tailored videos and deep fakes. There are provisions in the IT Act⁶⁶ that provide for punishment for publishing obscene digital content containing sexually explicit acts and punish⁶⁷ child pornography, child grooming or exploitation.

Also, provides⁶⁸ for punishment for violation of privacy. Instances of data breaches via social networking sites are also common. The data then is misused by cyberstalkers to post unlawful content and engage in identity thefts, data mining, etc.

5.1 The menace of fake news and misinformation

⁶² Chetan Thathoo, Digital India Act: Govt plans category-wise regulations for online intermediaries Inc42 Media (2022), <https://inc42.com/buzz/digital-india-act-govt-plans-category-wise-regulations-for-online-intermediaries/>

⁶³- Digital Personal Data Protection Act, 2023, Press Act and the IT Rules

⁶⁴ Kalpana Mehta and Ors. vs. Union of India (UOI) and Ors. (09.05.2018 - SC) : MANU/SC/0519/2018

⁶⁵ Ibid., 'Parliamentary reports are published for public use.

⁶⁶ Section 67A of the IT Act,2000

⁶⁷ section 67B of the IT Act,2000

⁶⁸ Section 66E of the IT Act,2000

No legislation seeks to tackle the dissemination of fake news in India. The provisional safeguard to put a limit to its spread can be traced to the IPC⁶⁹ for crimes like -intentional insult with intent to provoke breach of peace, criminal intimidation by an anonymous communication⁷⁰ along with punishment for cheating by personation by using computer resources. The IT Act⁷¹, 2000.

The governments have often resorted to radical operations such as internet shutdowns to curb the menace caused by fake news. As stated earlier, the government even went to the extent of appointing an 'FCU' to curb this issue.

‘At the outset, determination of fake news cannot be in the sole hands of the government and will result in the censorship of the press’ - Editors Guild of India as stated in the Wire⁷².

5.1.2 News across social media channels like WhatsApp abound with misinformation and portray skewed narratives favouring the ruling government. It contrasts with what Media stands for. One prominent outfit among these, Alt News, reported⁷³ that even the most reputable ones- The Times Group, Zee Media and India Today Group were the top three media outlets that shared misinformation based on misleading claims in 2022. Such news, then, gives rise to heated discussions over platforms where mainstream media has no reach. Legal Research and Juridical Sciences

6. Journalism in Kashmir

6.1 Journalists- Fahad Shah, Aasif Sultan, and Kamran Yousuf were sent behind bars under draconian laws like the Unlawful Activities (Prevention) Act of 1967 and the Jammu and Kashmir Public Safety Act of 1978.

⁶⁹ Section 504 of the IPC, 1860

⁷⁰ Section 507 of the IPC, 1860

⁷¹ section 66D of the IT Act,2000

⁷² Anonymous, Any news pib’s fact-check unit calls “fake” must be taken down: MeiTy proposal The Wire, <https://thewire.in/government/any-news-pibs-fact-check-unit-calls-fake-must-be-taken-down-meity-proposal>

⁷³ Priyanka Jha & Kinjal, Roundup 2022: How parties, leaders, Media & Influencers Amplified misinfo this year Alt News(2023), <https://www.altnews.in/roundup-2022-how-parties-leaders-media-influencers-amplified-misinfo-this-year/>.

6.2 Under the former⁷⁴, the court can deny bail based only on police case diaries and other material. The Public Safety Act⁷⁵ allows for preventative detention without trial for two years if the person acts in a manner prejudicial to the security of the State.

6.3 The case of Peerzada Shah Fahad⁷⁶ rekindles faith in the Judiciary.

Shah was accused of 'glorifying terrorism' and 'spreading fake news' for publishing a piece by a scholar at the University of Kashmir, which reportedly talked about Indian 'occupation' and freedom for the region. The court has made a remarkable observation by stating that- "while the opinion called for the secession of Indian-administered Kashmir, its publication 'doesn't incite violence or an armed insurrection against the state'." It quashed certain charges against him under the UAPA.

6.4 The J&K High Court⁷⁷ has categorically stated that an arrest under the Unlawful Activities (Prevention) Act of 1967 without 'legal justification' would be an arbitrary exercise of executive discretion and would be violative of Article 14 and Article 21 of the accused.

6.5 The Indian Government stopped a Pulitzer Prize-winning photojournalist, Sanna Irshad Mattoo, at the Delhi airport from travelling abroad for a book launch. The government provided no explanation for violating her fundamental right to life and liberty and the norms of natural justice. Article 12 of the International Covenant on Civil and Political Rights, which India has ratified, gives everyone the right to leave any country, including their own. The right to travel⁷⁸ is included in Article 21 of the Indian Constitution's right to life and personal liberty.

6.6 At least 35 Journalists⁷⁹ in Kashmir have faced police interrogation, raids, threats, physical assault, or criminal cases for their reporting, according to the New York-based Human Rights Watch, an advocacy group.

⁷⁴ Section 43D (5) of the UAPA Act, 1967

⁷⁵ Clause (B) of Section 18 of the Jammu and Kashmir Public Safety Act, 1978.

⁷⁶ Peerzada Shah Fahad vs. Union Territory of J&K and Ors. (13.04.2023 - JKHC) : MANU/JK/0508/2023

⁷⁷ Peerzada Shah Fahad vs. UT of Jammu and Kashmir and Ors. (17.11.2023 - JKHC) : MANU/JK/1322/2023

⁷⁸ Maneka Gandhi v. Union of India, (1978) 1 SCC 248

⁷⁹ India: Kashmiri journalist held under abusive laws, Human Rights Watch (2022),

<https://www.hrw.org/news/2022/02/08/india-kashmiri-journalist-held-under-abusive-laws>.

7. SEDITION- THE ARCHAIC BRITISH LAW

7.1 Pre-Constitution rulings

The initial outline of Sedition law was laid down in case⁸⁰ of the Pre-Independence-India. The Editor of the Magazine was tried for sedition as the magazine critiqued the Age of Consent Act enacted by the British Government and the negative economic impact of British colonialism. A very pertinent question was put forth before the Jury by Justice William Petheram- whether it 'intended to excite feelings of enmity against the government or were they expressed, in strong language, the disapprobation of certain government measures?'

7.1.1 It was also the time when India saw Bal Gangadhar Tilak⁸¹ being charged multiple times under the said provision for his public speeches and writings in *Kesari* that raised incitement against British rule. The judge widened the scope of 'disaffection' towards the government to include disloyalty.

7.1.2 The Court in *Kamal Krishna Sircar v. Emperor* (AIR 1935 Cal 636) refused to give a negative connotation to criticism of government legislation and held that if that were labelled as seditious, it would suppress freedom of speech and expression in India.

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7.2 Constituent Assembly debates

The law of sedition was widely criticized⁸², and it was termed as a 'shadow of colonial times that should not see the light of the day in free India'.

7.3 Post Constitutional developments: Means to an end

7.3.1 The Supreme Court⁸³ held that the imposition of pre-censorship on a journal is a restriction on the liberty of the press that is an essential part of the right to freedom of speech and expression declared by Art. 19 (1)(a).

⁸⁰ *Queen-Empress vs. Jogendra Chunder Bose and Ors.* (25.08.1891 - CALHC) : MANU/WB/0073/1891

⁸¹ *Emperor vs. Bal Gangadhar Tilak* (22.07.1908 - BOMHC) : MANU/MH/0101/1908

⁸² See K.M Munshi, *Constituent Assembly of India Debates- Volume VII*, Sansad Digital Sansad, https://sansad.in/uploads/const_Assmbly_Debates_Volume4_30_July1947_e1c7dee625.pdf?updated_at=2022-09-15T06:17:03.947Z.

⁸³ *Brij Bhusan v. State of Delhi*, AIR 1950 SC 129

- 7.3.2 The constitutionality of section 124A of IPC was challenged post amendment in the case of Kedar Nath Singh case⁸⁴ wherein the Court recognized the right of a citizen to say or write whatever he likes about the Government, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or to create public disorder.
- 7.3.3 A bench of the S.C.⁸⁵ quashed the FIR lodged against senior journalist Vinod Dua for sedition over his remark on the PM's handling of the COVID-19 crisis made in his YouTube show. The bench made observations on the lines of Kedar Nath Singh's ruling but missed a few notable issues. The '*clear and present danger*' test⁸⁶. The '*bad tendency test*' is the opposite of what this test holds. But, since there is no clarity over which test holds water, the freedom of speech and press is in a poor state of affairs.
- 7.3.4 However, at present, all pending trials, appeals and proceedings concerning the charge framed under this section have been kept in abeyance by the Supreme Court⁸⁷ till its re-examination is complete.
- 7.4 The union government introduced three Bills in the Lok Sabha last year. The Bharatiya Nyaya Sanhita Bill⁸⁸, 2023, meant to replace the IPC, includes Clause 150⁸⁹ which has a close resemblance to the sedition provision in the IPC, though without explicitly mentioning it by name. The Bill has only done away with sedition on paper and not in practice. The punishment accorded to the provision mandates imprisonment under all circumstances, unlike Section 124A, where the penalty could be limited to a fine.
- 7.5 With the inception of the new bill, seditious acts would be penalized even through 'electronic communications'. This step is an alarming danger and read with the Telecom Bill of 2023 (if the bill applies to online communication services such as WhatsApp and

⁸⁴ Kedar Nath Singh v. State of Bihar, 1962 SCC OnLine SC 6

⁸⁵ Vinod Dua vs. Union of India (UOI) and Ors. (03.06.2021 - SC) : MANU/SC/0363/2021

⁸⁶ Schenck v. United States (1919) [249 US 47 (1919), The US Court allowed restriction of speech on grounds of public order only if there is a real and not remote or indirect danger of incitement to violence.

⁸⁷ S.G. Vombatkere v. Union of India, (2022) 7 SCC 433

⁸⁸ The Bharatiya Nyaya Sanhita, 2023,

https://prsindia.org/files/bills Acts/bills_parliament/2023/Bharatiya_Nyaya_Sanhita_2023.pdf

⁸⁹ Clause 150 titled, 'Acts endangering sovereignty, unity and integrity of India, 'criminalize acts 'endangering the sovereignty, unity and integrity of India [which include using electronic communications] to excite armed rebellion, subversive activities, secession, separatism, or to endanger India's unity, sovereignty, and integrity'.

Instagram), the online service providers would be required to disclose, detain or suspend any message keeping their privacy-protecting practices (end-to-end encryption) aside.

7.6 The new bills and the said clause, especially, have come at a time when the SC⁹⁰ had referred to review the judgement in the Kedar Nath Singh case to a larger bench of at least five judges. Since the new law will only apply prospectively. The pending cases shall be dealt with post-reconstitution of the bench.

7.7 The Road Ahead:

The court, on numerous occasions, has held⁹¹ - criticism to be the hallmark of democracy. So, strong condemnation towards the State can never qualify for punishment under this section because no institution represents the whole country in its entirety. India is known for its representative character. The citizens can, therefore, express their disappointment in their chosen elected representatives from time to time.

8. RAIDS, IT SURVEYS, AND DETENTION

The Supreme Court⁹² has stated that criticism of governmental policy can, by no stretch of imagination, be brought within the fold of any of the grounds stipulated in Article 19 (2) of the Constitution.

8.1.1 In 2021, the Enforcement Directorate launched simultaneous raids at eight locations associated with the digital news portal NewsClick. The 113-hour raid was done on the pretext of the Portal's acceptance of foreign remittances. The Editor, Prabir Purkayastha, stated the Caravan⁹³, 'All the information regarding our financial investments and transactions is there, in public documents- every detail is available on the government's website.'

In the same interview with the Caravan, he stated,-'The process becomes the punishment'.

⁹⁰ Supra 87

⁹¹ Javeb Habib v. State of Delhi, 2015 221 DLT 29

⁹² Madhyamam Broadcasting Ltd. v. Union of India, 2023 SCC OnLine SC 366

⁹³ Shahid Tantray, The process becomes the punishment: NewsClick's Prabir Purkayastha on the Ed Raids The Caravan(2021), <https://caravanmagazine.in/media/newsclick-prabir-purkayastha-ed-raids-process-becomes-punishment>.

Last year, again, the media house was raided under the garb of an 'illegal funding probe', and it ultimately led to the arrest of Purkayastha under the UAPA.

8.1.2 In January 2023, the present government banned the dissemination of a BBC documentary titled 'The Modi Question' that examined the PM's connection with the riots in Gujarat in 2002 when he was the state's Chief minister. The ban further led to raids on offices of the BBC in New Delhi and Mumbai.

8.1.3 Two Imphal-based editors of The Frontier Manipur, a news portal, were detained two years ago for an article titled 'Revolutionary Journey in a Mess' that got published on the website. The Editors were booked for Sedition and criminal conspiracy and were also charged under the UAPA. The article critiqued 'the armed revolutionary movement' in Manipur since the 1960s. The editors were later freed of the charges upon a 'certain declaration' without having to present themselves before the judge⁹⁴.

9. Methodology and key findings

The claims of arrest on press freedom are backed by data as well. India now ranks 12th in the 2023 Global Impunity Index, compiled by the Committee to Protect Journalists. In the Paris-based Reporters sans Frontiers's annual Press Freedom Index, the country is now down to 159th rank out of 180 countries. Other indices, like the Economist Intelligence Unit, Freedom House, and V-Dem, corroborate these findings.

According to the Rights and Risks Analysis Group (RRAG)⁹⁵, 194 journalists, out of which seven are women, were targeted in India in 2022. These journalists were targeted by both- the State actors and non-state actors, including political activists.

Jammu and Kashmir had the biggest number (48) of targeted journalists; followed by Telangana (40).

⁹⁴ Kimi Colney, Editors detained, citizens booked for Facebook posts: Manipur's crackdown on dissent The Caravan(2021), <https://caravanmagazine.in/government/manipur-crackdown-on-dissent-social-media>

⁹⁵ Admin, PRESS RELEASE: 194 Journalists Targeted, Eight Killed During 2022 In India Rights & Risks Analysis Group (2023), <http://www.rightsrisks.org/press-release/press-release-194-journalists-targeted-eight-killed-during-2022-in-india/>.

First Information Reports were registered under various provisions of the IPC and IT Act, 2000⁹⁶.

10. MEDIA AND ITS OWNERSHIP

If 'change' is to come, those who seek to author it must have credibility. And that, a credibility of record. Not one invented by a media chorus that has no link at all to what hundreds of millions of Indians are thinking. This growing disconnect of the 'mass' media from mass reality is getting worse.⁹⁷

RSF's⁹⁸ report on India states, 'Reliance Industries Group owns more than 70 media outlets that are followed by at least 800 million Indians'. The NDTV channel's takeover by Gautam Adani signalled the end of pluralism in the mainstream media. The Indian media are primarily funded by advertisements. The majority source of this revenue comes through the Government.

10.1 Lack of scepticism makes for poor journalism and wearisome copy⁹⁹. The traditional media must strictly steer clear from feeding a particular narrative or a majoritarian ideological bent. While the fear of self-censorship is real, freezing ads for major newspapers is the reality for many, Media must practice restraint from amplifying false narratives.

10.2 In covering development, it calls for placing people and their needs at the center of the stories, not any intermediaries, however saintly. It calls for better coverage of the rural political process. Of political action and class conflict, not politicking¹⁰⁰.

10.3 A fine definition of the minimum duty of a decent press is to signal the weaknesses in society. The traditional Media has become inept at covering development processes. The more elitist it gets, the less it will be able to do this¹⁰¹.

10.4 Traditional Media outlets often find themselves at the mercy of the government - MediaOne News, a Kerala-based news and current affairs TV channel, arbitrarily had its

⁹⁶ Sections 124-A (Sedition law), punishment for defamation (Section 500), Section 67-C, Section 67 and Section 69 of the Information Technology Act.

⁹⁷ P. Sainath, *Everybody loves a good drought: Stories from India's poorest districts* (1998).

⁹⁸ India, *Bienvenue sur le site de Reporters sans frontières* (2024), <https://rsf.org/en/country/india> (last visited May 31, 2024).

⁹⁹ *Supra* 97

¹⁰⁰ *Supra* 97

¹⁰¹ *Supra* 97

license revoked by the Ministry of Information & Broadcasting after citing unspecified 'national security' concerns raised by the Ministry of Home Affairs.

10.4.1 The decision by the Kerala High Court that refused to overturn the cancellation of the News license by the MIB & MHA was another nail in the coffin.

10.5 The Apex Court¹⁰² categorically held:

'The critical views of the channel MediaOne on the government's policies cannot be termed anti-establishment. Such terminology in itself represents an expectation that the press must support the establishment. Such denial, the court noted, 'produced a chilling effect on free speech and particularly on press freedom.'

11. A RAY OF HOPE: INDEPENDENCE OF JUDICIARY AND INDEPENDENT MEDIA

11.1 Post-Independence, India saw a history of government-led surveillance, one example of which is the Indian Telegraph Act of 1885. In a historic moment in the history of surveillance law, the Apex Court¹⁰³ affirmed that the tapping of telephones was a breach of privacy and a restriction on free speech.

11.2 Siddique Kappan, a journalist from U.P, was arrested while travelling from Delhi to report on the gangrape of a Dalit woman in Hathras, Uttar Pradesh. The journalist charged under the UAPA and the PMLA Act was released by the Court¹⁰⁴ after 28 months in jail. The Bench stated, - 'Every person has the right to free expression. The Journalist tried to show that victims need justice and raise a common voice. Is that a crime in the eyes of the law?' the Hon'ble court asked.

In the absence of evidence that showed his indulgence in rioting, the Apex Court granted bail to Mr Kappan.

11.3 The Supreme Court¹⁰⁵ while granting bail to journalist Mohammed Zubair, stated-

¹⁰² Supra 92

¹⁰³ People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301

¹⁰⁴ Sidhique Kappan v. State of Uttar Pradesh, MANU/SCOR/79169/2022

¹⁰⁵ Mohammed Zubair v. State of NCT of Delhi & Ors., W.P (Crl.) No. 279 of 2022

‘Merely because the complaints filed against the petitioner arise from posts made by him on social media, a blanket anticipatory order preventing him from tweeting or expressing his opinion cannot be made.’

11.4 Independence of the judiciary is the only means to maintain a system of checks and balances on the working of the Legislature, and the Executive¹⁰⁶.

12. INDEPENDENT MEDIA

'A society that does not know itself cannot cope'¹⁰⁷.

After watching 'Writing with Fire: 20 Years of Work By Minority Women', a documentary that acts as an eye-opener compilation of the work that Khabar Lahariya has been doing for the last two decades, one would be reminded of what Indian Media set out to do from its inception. The documentary centred around the evolution of the Independent News channel- 'Khabar Lahariya', the country's only women-run brand of ethical and independent rural news network.

The Dalit women journalists in the state of Uttar Pradesh have moved beyond the traditional norms of questioning the power holders by holding them accountable for their actions and inactions alike. The public, then, is left to ponder over issues of rape, the failure of the Police to file FIRs upon victims' reports and caste discrimination that the mainstream media conveniently brushes under the carpet. The documentary ends with a message by Mrs Meera Devi, the Bureau Chief, that the journalists across the country must hold close to themselves- 'we will continue to hold a mirror to society'.

12.1 ‘While We Watched’, a documentary based on Ravish Kumar’s resolve to do independent journalism in the face of media bias, has won a Peabody award this year.

12.2 People's Archive of Rural India (PARI Network) aims to report and record the most complex part of the planet, Rural India. A special mention must be made to M. Palani Kumar, a Staff Photographer at PARI, whose documentation 'We don't know how to live anymore' has struck a chord among the masses.

12.3 The Internet Freedom Foundation has filed RTIs in which it has asked the Ministry of Electronics & IT (MeitY) and the Ministry of Information & Broadcasting (MIB) on issues

¹⁰⁶ Rojer Mathew v. South Indian Bank Ltd. & Ors. (2020) 6 SCC 1]

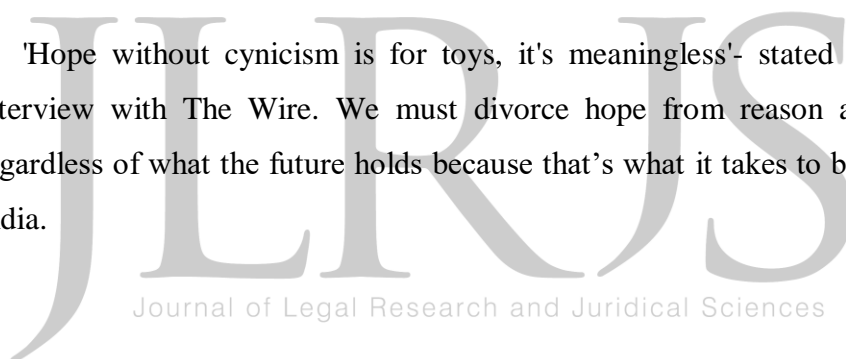
¹⁰⁷ Supra 97

of- content censorship, takedowns, and blocking. They have asked MeitY and MIB about the suspension of the Media Swaraj channel from YouTube and continue to fight the good fight for citizens' digital rights against arbitrary internet shutdown, and so much more.

12.4 Works of Khabar Lahariya, Internet Freedom Foundation, Chitrakoot Collective, Chal Chitra Abhiyan, PARI Network and Bahujan Lives Matter have unleashed a new wave of journalism that is fierce, transparent and is not afraid to ask questions to those in power. They have upheld the ideals of justice across social, economic and political hierarchy, devised pathways to carve out liberty of thought, and helped us shape our opinions, bringing to our attention the realities of parts of India where equality of status and opportunity is only a far-fetched ideal. They give us hope and instill faith in the Constitution.

12.5 As Sir Malcolm X stated, 'The media is 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.'

12.6 'Hope without cynicism is for toys, it's meaningless'- stated Arundhati Roy in an interview with The Wire. We must divorce hope from reason and continue to hope regardless of what the future holds because that's what it takes to be an Indian in today's India.



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