

# The Fourth Estate in Indian Polity: Status and Challenges

Ashwin Venu<sup>1</sup> & Rose Joy<sup>2</sup>

## Abstract

The mighty Fourth Estate carries with it the responsibility of keeping the governors in check and the governed, well-informed. But whether today's media really does justice to these duties entrusted to it is indeed debatable. While there have been instances like the Bofor's Expose and numerous other scams where the media has proved its mettle, there have also been several, often repeated instances of 'mind-rigging' and biased news reporting by this very institution. The system, as it exists today, has certain elements that are causing it to rot from within. Through this essay, the authors wish to shed light on how deep this rot actually persists.

The introduction briefly traces the development of media from the time of Ashoka to the 21<sup>st</sup> century, after which, the constitutional aspects of its freedoms have been addressed. Then, the positive impact that the media has on society and on politics has been highlighted, succeeding which its uglier side has been looked into. Here, the different wrongful means adopted to tinker with the truth have been discussed. This article also discusses the inadequacy of the existing laws in matters of providing protection to undaunted journalism and provides suggestions for the same. In conclusion, it has been suggested that the media should not be given indefinite powers and should be subject to supervision by the PCI and EC.

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<sup>1</sup>Fourth Year Student, National University of Advanced Legal Studies, Kochi.

<sup>2</sup>Third Year Student, National University of Advanced Legal Studies, Kochi.

## **Introduction**

Jim Morrison once rightly said, ‘Whoever controls the media, controls the mind.’ The media occupies a unique position in a democracy, exposing its flaws when required and focusing the spotlight on its positives when something worthy of praise unfolds. It has the power to either make or break a person’s reputation. It is also the perfect force to influence impressionable minds, to educate the uneducated and to keep aflame the accountability of persons elected to power. It is no wonder that Edmund Burke christened it the all-pervading, ‘Fourth Estate’.

The press in India as we know it today owes its existence to the pioneering efforts of James Augustus Hicky, the luminary behind the first printed newspaper in India, ‘Hicky’s Bengal Gazette’. While this may have been the first paper to be printed in India, the evidence of media can be traced back to the times of Ashoka (c. 273-236 BCE) where much like the news content in modern media, rules and regulations used to be engraved on Rock Edicts.<sup>3</sup> To have come as far as electronic news interfaces since those times is an indication of the developments in science and technology over the years. The social platform ‘Twitter’ is an example of this development; a means of instantaneous, uncensored communication, between people from all walks of life, all over the globe. Eminent personalities, such as Donald Trump, use Twitter to reach out more easily. As science and technology developed, so did the press and its freedoms.

Justice Cardozo calls the freedom of expression the matrix, an indispensable condition, of nearly every other form of freedom. Justice H. R. Khanna, eulogized for his fearlessness and judicial courage, opines freedom of speech and expression to form the basic prerequisite of a democratic system.<sup>4</sup> Article 19 (1) (a) enshrines this concept, making it one of the keystones of the Indian Constitution. The Constitution makes no mention of an explicit right to press freedom, which is why the freedom of the press has been brought under the ambit of Article 19(1)(a) and is subject to restrictions under Article 19(2).<sup>5</sup>

The apex court of our country has on various occasions observed that the freedom of the press does not have any special status other than that guaranteed under Article 19(1)(a). The press deserves to remain unfettered; a body free from external influences, for the press does not seek to serve the governors, but the governed. If one were to look at the media from this perspective, it ought not to be restricted in any manner. Being the fourth estate, this body has no concept of elections like the legislature, selections like the executive or appointments like

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<sup>3</sup> C.A. Rajkumar S. Adukia, *Media Laws in India – An Overview*, TAXGURU (Mar 26, 2018), <https://taxguru.in/corporate-law/media-law-india-overview.html>.

<sup>4</sup> H.R. KHANNA, *MAKING OF INDIA’S CONSTITUTION* 92 (2<sup>nd</sup> ed. 2008).

<sup>5</sup> DURGA DAS BASU, *2 COMMENTARY ON THE CONSTITUTION OF INDIA* 2571 (8<sup>th</sup> ed. 2007).

the judiciary borders an utopian institution. However, since we do not live in Utopia, this sort of freedom of the press would undoubtedly get abused. In reality, the press cannot be given a carte blanche to do as it pleases. In *Romesh Thappar's case*,<sup>6</sup> the court held that the freedom of expression of the press would not supersede the freedom of expression of any individual, indicating that the press too is subject to certain limitations.

### **Constructive interference of the media in Indian Politics**

The Indian media has had its own share of glorious 'Watergate' moments during its history. The Emergency of 1975 proved the first litmus test where pre-censorship; jail and confiscation were unleashed to gag the media into toeing the line with the government's stance. However, publications such as 'The Indian Express'<sup>7</sup> and 'Himmat'<sup>8</sup> refused to buckle under pressure and continued their crusade against excesses being perpetrated by an insecure government, thus epitomising fearless journalism. In 1987, another watershed moment in Indian journalistic history unfolded with The Hindu's Bofor's expose. This was not only significant because it embroiled names of top profile politicians including the then Prime Minister Rajiv Gandhi, but also because it brought into the spotlight corruption as an intensely public and political issue. The public fury led to the then ruling government's disastrous defeat in the subsequent elections. Corruption and combating its growth has since then remained an agenda which determines electoral choices, which no political outfit can turn a Nelson's eye to.

Since then a slew of scams including CoalGate, the ChopperGate, the Railgate, the Sarada Chit Fund scam have been extensively covered by the Indian media and brought to the knowledge of the general public. The media has evidently taken up the job of a vigilante, keeping the state of affairs in the Indian polity under constant surveillance.

### **Pitfalls of the influence of media in the Indian political spectrum**

The media is vested with the unique power to set the agenda.<sup>9</sup> Nothing fetters it apart from 'auto-regulation.' With most of the people living in a sort of news bubble today, people are constantly exposed to what could be called an 'opinion bombardment' which in itself may not be bad. This slow poison starts working its palpable effects on the impressionable minds of

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<sup>6</sup>Romesh Thappar v. The State of Madras, AIR 1950 SC 124.

<sup>7</sup>Manjunath Pendakur, *Mass media during the 1975 National Emergency in India*, CAN J COMMUN, SPECIAL ISSUE 41, 41 (1988).

<sup>8</sup>Kalpna Sharma, 'Himmat' during the Emergency: When the Press crawled, some refused to even bend, SCROLL (Apr. 13, 2018), <https://scroll.in/article/735844/himmat-during-the-emergency-when-the-press-crawled-some-refused-to-even-bend>.

<sup>9</sup>James Painter, *India's Media Boom: The Good News and The Bad*, REUTERS INSTITUTE (Mar. 28, 2017, 7:30PM), <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-12/India%E2%80%99s%20Media%20Boom%20the%20good%20news%20and%20the%20bad.pdf>.

the people causing what is known as ‘mind-rigging’. The thin line between news, views and advertisements which is becoming increasingly hazy can be attributed to this.

The fact that the media proprietors have the freedom and authority to choose what ought to feature in the pages of their newspapers, be it news, views or ads, is not disputed, the Supreme Court favoured this position as iterated in *Sakal Papers v. Union of India*.<sup>10</sup> However, the media, considered as a gateway for the free flow of unadulterated information, is increasingly under onslaught, leading to dilution of ‘media–neutrality’.

Mere merging of news with commercially paid information or just blatant display of bias may not be legally wrong. However, questions of ‘ethics’, ‘breach of code of conduct’ or ‘impropriety’ are matters which remain unanswered.<sup>11</sup> In fact, this has evolved from ‘planting of news’ to more institutionalized and organized forms of corruption which are in consideration of favours, cash or kind, referred to as ‘Paid News’. Views that endorse political parties, their representatives and candidates are purported to be news and sold to the masses as plain white truth. This is an extension of the increasingly disapproved Lutyen’s sculpture, which provides only selective content, generally of the ruling government, often focusing on ‘non-issues’ to sway the stance of the public.

Crony Journalism, fuelled by corporate ownership, cross-ownership and political ownership as well as restructuring of media-houses at the behest of those who have nothing to do with journalism, presents a trying challenge. The insider-outsider nexus between those in power and the media houses does not bode well for independent journalism as well as editorial discretion. The scandalous Radia tapes and the doublespeak of media on the Malda violence<sup>12</sup> dented the already wafer-thin credibility of the media considerably and proved a testimony to the media’s political interests.

The recent influx of troll media into political discourse is a new development. However, apart from tickling some funny bones, the real question to be considered is whether the same is able to contribute effectively to the political picture. More often than not, trolls and memes tend to trivialise very important political issues and might not do good for both Indian politics and the democratic setup.

Investigative journalism or ‘Sting operations’ made familiar to the Indian Public, particularly by Tehelka, involves walking a tight rope between the issues of privacy, trust and reputation

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<sup>10</sup>*Sakal Papers v. Union of India*, 1962 SCR (3) 842.

<sup>11</sup>Madabhushi Sridhar, *The Mind Rigging By Media: Electoral Offences And Corrupt Practices*, 1 M.L.R. 62, 62 (2010).

<sup>12</sup>Ipsita Chakravarty, *Why did the media ignore the Malda communal violence?*, SCROLLIN, (Mar. 28, 2018), <https://scroll.in/article/801459/it-was-localised-violence-in-a-crime-prone-area-why-some-newspapers-were-low-key-on-the-malda-violence>.

of individuals on the one hand and larger public interest on the other. 'False pretence' being at its core makes it an ethical minefield. The sordid sleaze-gate controversy involving a honey-trap and consequent resignation of a minister in Kerala, explains the inimical influence that media can have on politics.

The million-dollar question is, what larger public interest is served by exposes like these which essentially deal with private content? Is there an imminent necessity to bring this truth before the people?

In the light of the recent privacy judgement,<sup>13</sup> the press needs to keep in mind the privacy of the individual/s it is reporting about as privacy has now been recognised to be a fundamental right. The Supreme Court in its judgement re-iterated what was stated in *R. Rajagopal's case*.<sup>14</sup> As per this decision, no person can publish any matter concerning the private life of a person, be it true, critical or even laudatory, without his consent. Publication on any of these grounds can be made only if the matter is one of public record. The only instance when this condition can be overlooked is in the case of public officials when the matter is pertaining to the discharge of their duties. Therefore, there presently exists a certain restraint on the media post the Puttaswamy judgement.

Elections form the bulwark of democratic India. With the advent of technology, came the exit polls and opinion polls to supplement the entire process. However, they seem to be fading into intellectual oblivion except for the fact that they are used by media organizations to fuel the race to 'call' elections earlier and serve recreational purposes. However, what is pertinent is the potential these processes have in order to alter the election results considerably. For instance, the 'bandwagon' effect and the 'underdog' effect<sup>15</sup> and their influence on vacillating voters, particularly referred to in local parlance as 'Hawa'.

While exit polls in its true sense have been shown the door, it has resurfaced in the form of opinion polls. Looking at the chicanery of opinion polls to influence swing voters thereby leading to a 'domino effect', the undoubted politico-corporate interest that media-houses harbour, spotlighting the agenda and the emergence of crony-journalism as well as the shenanigans that follow, the threat remains at large. The media has immense potential to call the shots, which is unhealthy for a thriving democracy.

### **The Need for Change and the Path Forward**

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<sup>13</sup>Justice K.S. Puttaswamy (Retd.) v. Union of India, W. P (Civil) No. 494 of 2012.

<sup>14</sup>R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632.

<sup>15</sup> Manasa Patnam, *Learning From Exit Polls In Sequential Elections*, ENSAE (Apr. 07, 2018), <https://pdfs.semanticscholar.org/b0c1/c540abd9282a1c3e6bb4862c1c11e54e2ba7.pdf>.

During the draconian Emergency Period, newspapers ran blank protest columns, portraying exceptional fearlessness and responsibility for bringing untainted news to its readers. From such a period of stalwart journalism, neo-media in the country has hit a new low with paid news, manufactured opinion, stifled editorial discretion, cheap investigative journalism and sensationalism. Such deterioration has affected politics in India in a very significant manner. A check on such high-handedness is essential for both journalism and politics, as they form the backbone of our democracy.

The deaths of journalists such as Gauri Lankesh, Shantanu Bhawmick and K.J Singh all within a span of a month, tell the story of how being unafraid could also prove fatal. Journalism is fast turning into a dangerous profession where political parties and influential people mercilessly silence the voices of the intrepid, for good. This brings one to the question of whether the freedom of the media in India is under attack.

Unfortunately, even the Whistle Blowers Protection Act, 2014 has proven to be a failure and the new Whistle Blowers Protection (Amendment) Bill, 2015 has provisions which defeat the very purpose of the Act.<sup>16</sup> With a backdrop of this kind, the possibility of the fourth estate performing its 'watchdog' duty is put in a quagmire. It is essential that the Whistle Blower's Act be operationalised instead of bringing in new amendments that negate its objective. Furthermore, even the criminal laws ought to be revisited in this regard. Attack against media personnel should be considered a distinct offence wherein the burden of proof would rest on the accused. This could reduce the offences committed against media personnel.

Considering the special niche the media has carved for itself, any external control over it can prove detrimental to its independence and functioning. However, reasonable restrictions to media activities are permissible. Press freedom should not outweigh public interest. Therefore, what is required is a self-cleansing process. A perfect beginning could be the overhaul of the Press Council of India, which is to a large extent dysfunctional today. Giving it a constitutional status along the lines of the Election Commission of India can ensure independence and prevent executive interference. Also, a special body to investigate poll crimes conducted by media personnel should be constituted, with accountability to the Press Council of India (PCI) and during elections, to the Election Commission of India (ECI) too. This can be along the lines of the election monitoring cells set up by the ECI during the assembly elections in five states back in 2011-12. These cells should closely follow election

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<sup>16</sup> Anjali Bhardwaj and Amrita Johri, *Don't shoot the Messenger*, THE HINDU (Apr. 14, 2018), <http://www.thehindu.com/opinion/op-ed/dont-shoot-the-messenger/article19397939.ece>.

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campaign trails; investigate instances of paid news allegations and other electoral malpractices under the Representation of People's Act, 1951.

Another solution is to take cue from the concept of independent directors in Companies, and to establish independent editorial directors and ombudsmen in media houses, who can keep a check on the illicit activities and bring them to light. The panel of independent editors and ombudsmen will have to be updated on a regular basis by the PCI and these persons should have considerable expertise and experience in the field. The ombudsmen for each media house should change periodically much like auditors and independent directors of companies, to prevent them from becoming too familiar with their peers and thereby losing their independence. Additionally, the ombudsmen will consider complaints regarding any media activity. The PCI should have the power to call upon these ombudsmen for getting more information on any allegation.

Also, open dialogue avenues involving media persons, politicians, the public and press council officials should be devised to foster dialogue, transparency and accountability.

### **Conclusion**

In the democratic set up of today, the power wielded by the press is indeed formidable. A body having the ability to stimulate the masses into rebellion, to shatter the hopes and dreams of people through one small news clip, to enrapture or enrage the sentiments of a particular community, should exercise this power with valour, but also, with trepidation. Though the press has to be an unfettered and uninhibited one, it should not exist as an extra-constitutional body. Even though it holds the position of being the fourth estate, this cannot be the root for indefinite power. It must function transparently and with accountability. It is only when the press functions upholding the true ideals of journalism that it validates the special position granted to it.