The big debate on Media self-regulation in India: scope and limitations

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Abstract

In India, the increasingly complex media landscape has thrown fresh challenges to an unsettled ecosystem of media policy. Conventional media such as print has witnessed an explosive growth in the last two decades, while private television has proliferated across the country. India's pay-TV market now boasts one of the largest subscriber bases in the world, rising from approximately 75 million in 2007 to about 130 million households in 2012, (PwC's India Entertainment and Media Outlook, 2012). Ministry of Information & Broadcasting has permitted 410 News & Current Affairs and 438 Non-News & Current Affairs channels as on dateand 165 proposals are at various stages of Inter-Ministerial clearances. This kind of growth in media is posing many challenges. Today, the media is often criticized for exceeding its brief. Citizens often complain of invasion of privacy or misrepresentation while the government is always concerned about the influence the media has on citizens and how that influence is managed. This has often led to calls for regulating the media by both citizens and the government. There is a noisy debate in India on whether the media should be self-regulated or have a tough, outside authority do the job for it. This paper tries to trace some of the challenges posed by the new communications technologies and the existing media practices. Finally, it tries to argue that self-regulation, with all the criticisms against it, whether is the best form of regulation for the media industry, if the media is to serve its role as a platform for the exchange of ideas and a watchdog on government?

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Introduction:

"The newspaper press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within."

- Mahatma Gandhi

Media is an institution of considerable power and the exercise of power in a democratic context brings with it proportionate responsibility for the consequences of choice to do so. Moreover, where power is exercised purportedly in the public interest, then there is a particularly acute responsibility to account for the exercise of that power to the public in whose name it is exercised. In order to understand the responsibilities incumbent on the media, it is necessary to consider the nature of media power and the potential to impact society. In India, the increasingly complex media industry has thrown fresh challenges to an unsettled ecosystem of media policy. Conventional media such as print, television and radio has witnessed an explosive growth in the last two decades, while private television has proliferatedacross the country (Udupa, 2012).India's pay-TV market now boasts of one of the largest subscriber bases in the world, rising from approximately 75 million in 2007 to about 130 million households in 2012. Union Ministry of Information & Broadcasting has permitted 410 News & Current Affairs and 438 Non-News & Current Affairs channels as on dateand 165 proposals are at various stages of Inter-Ministerial clearances, (PwC's India Entertainment and Media Outlook, 2012).While many of them provide a variety of entertainment content, there was also rapid expansion of news media. More than 50 satellite networks were 24-hour satellite news channels, broadcasting news in 11 languages (Mehta 2008). In contrast to the shrinking print news markets in the West, news media in India has expanded across platforms, regions and languages (Udupa, 2012). India has more daily newspapers than any other nation in the world, surpassing China for the first time in 2008, (World Newspaper Congress, 2009).

Since mobile phones have become an important instrument for dissemination of news and entertainment, it would be pertinent to state the obvious – the rapidly growing multi-million mobile telephony subscriber base. India's total mobile subscriber base rose by over 8 million to 929.37 million, whereas overall teledensity (telephones per 100 people) in India reached 79.28 percent in May 2012, (TRAI, 2012). This kind of growth in media is posing many challenges. Today, the media is often criticized for exceeding its brief. People often complain about the invasion of privacy or misrepresentation while the government is always concerned about the influence the media has on citizens and how that influence is managed in today's scenario.

The media has hogged more limelight than it has in the last decade in India. Incidents like the Guwahati molestation case, where a journalist continued to record the act of a teenage girl being molested by a mob for half an hour and later justified it by saying that he did so to enable the authorities to identify the perpetrators of the crime. In Mangalore, where the cameraman of a news channel was accused of conspiring with a group of self-proclaimed "activists" in an attack against guests of a homestay in the city, accusing them of carrying on illegal activities. The Press Council of India (PCI) Chairman, Justice MarkandeyKatju, commenting on the reportage of Anna Hazare's agitation, said that a large section of the print and electronic media was swayed by emotions and became a part of the movement, ("*Katju slams media coverage of Anna's movement*", 2012).

Following these incidents, the role of the media in covering sensitive issues was put to test.Many feel that the way much of the media has been behaving is often irresponsible, reckless and callous. Justice Katjucrticised media for involving in yellow journalism, cheap sensationalism, highlighting frivolous issues and superstitions and damaging people and reputations, while neglecting or underplaying serious socio-economic issues like massive poverty, unemployment, malnourishment, farmers' suicides, health care, education, dowry deaths, female foeticide, etc., are hallmarks of much of the media today. Astrology, cricket, babas befooling the public, etc., are a common sight on Television channels, ("*Media cannot reject regulation*", 2012).

Did the media exceed its mandate, becoming the news maker instead of playing the role of a news disseminator?Such incidents often led to calls for regulating the media**.** Questions like, "If red lines can be drawn for the legal and medical professions, why should it be any different for profit-making newspapers and TV channels?" are echoing from across all sections. There is a noisy debate in India on whether the media should be self-regulated or have a tough, outside authority do the job for it. If you cannot do it yourself, then someone might just have to do it for you. That is what stands out from the Indian media debate. The contention has however remained what is the best model for holding the media accountable. This paper tries to analyse some basic principles of the accountabilityprocess, reviews the means available for achieving accountabilityand some general guidelines for future policy and practice.

Media and Accountability

The media is not just the fourth pillar but also the backbone of any democratic society. Here the legislature makes laws; the judiciary interprets them while the task of implementing them is that of the executive.It is the media which acts as the watchdog of the three pillars, to ensure that they are performing their constitutional duties, thus calling for accountability. The

word 'accountability' which came into English usage in 1583 in the context of financial transaction means metaphorically "keeping an account of one's conduct' (Srivatsava, 1992). In a democracy, the mass media,gather news for wide dissemination. In the process of discharging its chief function of disseminating information, the behaviour of the media is central in the discourse of media accountability. Thus, media accountability is defined as a process by which media organisations render an account of their constituents (Pritchard, 2000). A constituent is an individual, or a group, or an organisation whose goodwill is important for any media organisation. However, media accountability is classified into four viz., accountability to employers, accountability to sources, accountability to subjects and accountability to the public.

In these four classifications, accountability to the public is much more important.With regard to the prominent role mass media play in modern societies, a growing number of media scholars have emphasized the urgent need to hold mass media accountable (Nordenstreng, 1999). This call has been echoed by concerned media professionals, and discussed worldwide. Observers agree that the quality of the media has to be monitored because of their unique function for democratic societies (McQuaail, 1992): They create a public sphere, where controversial arguments regarding political matters are being exchanged. Scholars also assume that the agenda-setting function of the mass media will continue even though the Internet has a considerable impact on the traditional gate-keeper role of journalists (Burns, 2005). Therefore, societies must have a genuine interest in the quality of information provided to them by the mass media. However, journalists and media organizations often do not live up to expectations and "media can cause serious harm" even "without violating law" (Bertrand, 2000a). Therefore, various "non-state means" (Bertrand, 2000b) have developed to hold the media accountable in past decades. Tettey (2006), notes that the concept of media accountability in Africa is contested, which has led partly to African media having a chequered record regarding media accountability.

This indeed is evident in regard to the debate around a proposal in 2008 to introduce a pan-African "media observatory" in which a government-dominated structure would mediate conflicts around media across the entire continent. For its part, South African press history has also been one in which there has been much contestation around self-regulation.Bertrand (2004, 2006) has identified at least 80 media accountability systems, extending from self-critical evaluations to corrections boxes, letters to the editor, web feedback, accuracy and fairness questionnaires, petitions, ethics columns, critical blogs, in-house critics, ethics committees and coaches, reader clubs, internal whistleblowers, etc. Press councils, ombudsmen, commissions etc. all have the task to monitor journalists'

professional performance and follow up on journalistic malpractice in countries which guarantee freedom of the press and 2009, the Press Council of India appointed a Sub-Committee to examine the phenomenon of paid news observed during LokSabha elections in 2009. The report was originally scheduled to the released on April 26, 2010, but it was deferred and the report was referred to a large group of Council members who were to decide within three months on how it should be presented because "some council members argued that it would destroy the publishers' credibility and hurt their long term interest".

On July 30, 2010, the PCI came out with a much diluted version of the report without any of the specific detailed in the original report which explicitly named newspapers and channels – including some of the biggest groups in the country – seen as having indulged in the "paid news" practice. As P. Sainath, Rural Affairs Editor wrote in a opinion piece titled "*The Empire strikes back – and how!"*in (The Hindu, August 5, 2010) on how the PCI has simply buckled at the knees before the challenge of "Paid News." Its decision of July 30 to sideline its own sub-committee's report — which named and shamed the perpetrators of "paid news" — will go down as one of the sorriest chapters in its history. A chapterthat will not be forgotten and the impact of which causes immeasurable damage to the fight against major corruption within the Indian media.A chapter that saw the PCI back down in the struggle against the suborning of the media by money power; though its "final report" pretends to fight it in a flood of platitudes.And a chapter that does grave damage to the image and credibility of the PCI itself. Leave aside for the moment the harm it has done to the public interest. Or to the future of the Indian media as a free and honest institution (Sainath, 2010).

The media keep harping on Article 19 (1) (a) of the Indian Constitution which guarantees the freedom of speech and expression. But they deliberately overlook or underplay Article 19 (2) which says that the above right is subject to reasonable restrictions in the interest of sovereignty and integrity of India, State security, public order, decency, morality or in relation to defamation or incitement to an offence.If the media repeatedly flout journalism ethics and standards they loose the public's confidence and threaten their own existence. But who should overseewhat the media does? Should it be the government through statutory regulation or the media industry itself through self-regulation? If the latter is to hold true, how does one draw the line between regulation and freedom of speech?

Self-regulation Vs Statutory regulation

Liberal theorists of press freedom believe that the press can only account to the public. They argue that the Government, which the press is meant to watch over, cannot be allowed to dictate the rules, hence, the need for self-regulation by the press or media. The peer review system inherent in self-regulation serves as a powerful check on the media.Puddephat

(2011) defines self-regulation as "the combination of standards, setting out the appropriate codes of behaviour for the media that are necessary to support the freedom of expression and the process how those behaviours will be monitored or held to account." Experts argue that if the media is to serve its role as a platform for exchange of ideas and a watchdog on government, self-regulation remains the best option.

Advantages of Self-Regulation

Self–regulation has several advantages. A significant advantage is that it lends credibility and trust to the media. In jurisdictions where the media is seen as strictly regulated or not independent, citizens tend to loose interest in the media and the quality of freedom of expression and consequently public debates are diminished. A good example is the Nigerian media which is divided into state owned broadcast media and privately owned print media. The public media sector is dominated by the Nigerian Television Authority (NTA) which is spread across the country. However, due to its close association with the government and the perceived lack of independence in its news content, it has lost its audience to independent television stations considered more credible. Another reason for self-regulation is the ease with which self-regulation responds to changes and new developments. Another good example of self-regulation is the way Press Complaints Commission (PCC) in the United Kingdom works and how it has responded to the criticisms of its operations following the phone hacking scandal. The unique nature of online media which operates without boundaries makes it almost impossible for statutory regulation, which makes self-regulation the best option.

Criticisms of Self-Regulation

Several criticisms have been raised against the self-regulatory model not being effective. The recent example is the failure of the PCC in not stopping incidents like the phone hacking scandal in UK(Hadwin&Bloy, 2007). Criticisms include the fact that "self-regulation means that complaints are handled by an old boy network where journalists shrug off problems and defend the indefensible". Other criticisms include the fact that self-regulatory bodies are ineffective since they cannot impose penalties, and that corrections, which is the common type of remedy for complaints imposed by the press councils, are often buried in the publications. Further, the press councils and most self-regulatory models do not entertain third party complaints. Other criticisms of the self-regulatory model are that it allows newspapers to avoid ethical and legal responsibilities, allows the press to engage in excesses where there is no complaint, does not prevent excesses in the tabloids, is weak at safe guarding privacy and does not provide room for appeal.This has led to calls for statutory regulation. (Nielsen, 2004) defines statutory regulation as "The imposition of rules by a government backed by the use of penalties and the authority of the state, that

are meant to change the behaviour of individuals or groups" or broadly as "any technique or approach designed to control, alter or influence behaviour." Forthe media, this would mean a government putting in place any form of law or rules designed to control alter or influence media behaviour. Proponents of statutory media regulation argue that the government's power to impose penalties keeps the media in line. They also argue that a democratic government passing a legislation to control the media is in the public interest. However, they fail to disclose that in practice, the government is made of people and in most cases regulating the media has been used to protect the government in power and not public interest.

Criticisms against Statutory Regulation

Freedom House, an NGO which advocates media rights globally published in September 2011 instances where statutory regulation has been used as tool forcensorship. The three common ways in which statutory regulation is used to restrict press freedom include statutory controls on licensing and registration, the creation of nominally independent regulatory bodies with built in avenues for political influence and legal imposition of vague or burdensome content requirements (Karlekar, Radsch, & Sierra, 2011).

Media and Co-Regulation

The tendency for statutory regulation to be abused and the perception that self-regulation is weak has led to calls for co-regulation by critiques of the statutory and self-regulatory models. A co-regulatory system combines elements of self-regulation as well as traditional statutory regulation to form a new and self-contained regulatory system (Palzer&Scheuer, 2004).An example of co-regulatory system is the proposed News Media Council (NMC) in Australia. The NMC, which was proposed by an independent media enquiry set up by the Australian government, will be statutorily backed but operate independently and be in charge of print, broadcast and online media regulation with the stated aim "to promote the highest ethical and professional standards of journalism" (Ramsay, 2012). The government will fund the NMC while an independent committee is supposed to appoint members of the NMC. The proposal fails to state clearly the process for the appointment of the independent committee though they are expected to consist of senior lawyers and academics.

Media legislations in India

Any future legislation seeking to exert any form of control or censorship on the media needs to take into account a multitude of complex factors like viability of a publication as a business, national security vis-à-vis journalistic anonymity, competition in the media, amongst other things. In April 2012, a Private Member's Bill called the "Print and Electronic Media Standards and Regulation Bill, 2012" was circulated in the Parliament, drafted by Congress MP MeenakshiNatarajan. However, she was absent the day it was scheduled to introduce in the Parliament

and hence the Bill, till date, has not been placed before the House. The Bill calls for the establishment of a media regulatory authority which has the power to ban or suspend the coverage of an event or incident that may pose a threat to national security from foreign or internal sources, (Dasgupta, 2012). The seven-member regulatory body, which would be selected by a panel consisting of a Supreme Court judge, the Information and Broadcasting Minister and three members appointed by the central government, would have powers equivalent to that of a civil court.

Thus, it excludes the stakeholders in the media and deprives them of a voice in issues that affect them directly. The Bill also proposed a fine of uptoRs 50 lakh on media houses that commit offences specified under the Bill. The other penalties included a ban of upto eleven months on the offenders, or in severe cases, even cancellation of their license. While the Bill purports to create a water tight regulation for the media, it excludes the regulatory authority from the purview of the Right to Information (RTI) Act, thus giving itself total control to oversee media activities without itself being accountable to any other body. Besides, a provision in the Bill – "no civil court will have jurisdiction of any matter which the Authority is empowered to determine" – takes away any scope of appeal, thus branding the authority as the most empowered one to decide on matters which comes under its purview.It is not surprising then that various sections of the media and even the Parliament have left no stone unturned to criticize the Bill, calling it a Bill that purports to impose a gag on the media and control it from every angle possible.

However, this is not the first time that an attempt has been made by the Legislature to keep a check on the media. The first major "attack" on the Indian media came during the Emergency in the 1970s when "The Prevention of Publication of Objectionable Matters Ordinance, 1975" was issued by Indira Gandhi Government. This ordinance required news articles to be censored even before being published, along with penalties for a 'hostile press'. At that time, the media relented; and "crawled, when asked to kneel down" (Ramakrishnan, 2012). However, the said ordinance was withdrawn soon after Indira Gandhi lost the elections held immediately after calling off the Emergency. In 1988, in a clear reminder of the days of the Emergency, Rajiv Gandhi sought to get the Anti-Defamation Bill passed, a legislation which aimed to target journalists who wrote critical articles about politicians and placed the burden of proof on the accused in defamatory suits. The Bill also provided for summary trials and prescribed a minimum period of imprisonment for journalists. It took a long struggle by Indian journalists including a protest march for the Bill to be ultimately withdrawn.

It is not that there isn't any watchdog for the media. The Press Council of India was first set up in 1966 on the recommendations of the First Press Commission with the object of preserving

the freedom of the press and maintaining and improving the standards of the press in India. It is a statutory, quasi judicial body that functions under the aegis of the Press Council Act of 1978. The PCI is headed by a Chairman, who has by convention, been a retired judge of the Supreme Court of India. There are twenty-eight other members of whom three are from LokSabha, two from RajyaSabha, six editors of newspapers, seven working journalists, six persons in the business of managing papers, one person from a news agency and three persons represent cultural, literary and legal fields as nominees of the Sahitya Academy, University Grants Commission and the Bar Council of India.

The PCI also acts as an advisory authority to the government on matters affecting media freedom and has drawn up a set of norms on media reporting. While the genesis behind the formation of the PCI was noble, its existence is merely superficial in the present day, serving little or no purpose. Neither is it representative of the views of the media, nor does it have any real legal power to take any punitive or corrective action against the offending publishers. It has merely been an authority that publishes reports analysing the actions and words of the media, reports which are not acted upon.The independent functioning of any organisation is also dependant on where it derives its funds from. The PCI is funded by revenue collected by it as fee levied on the registered newspapers in the country on the basis of their circulation. No fee is levied on newspapers with circulation less than 5000 copies. The deficit is made good by way of grants by the Central Government, through the Ministry of Information and Broadcasting.

However, it is not an authority created by the press voluntarily, and the press at large considers the council to be non-reflective of its interests and stake (Ramakrishnan, 2012).It is imperative to look at how press regulatory bodies across democratic countries in the world function to understand where the Indian press is missing the point. The press in the UK has been governed by self-regulation for the last five decades. In 1953, a voluntary Press Council was established in the UK which aimed to maintain high ethical standards of journalism and promote press freedom. However, it failed to be effective as it was observed that some publications failed to follow the basic ethics of journalism. The British government then considered either enacting a law relating to privacy and a "right of reply" or making the Press Council a statutory body capable of enforcing legal sanctions. However, it was inevitable that the consequences of such a move will be far reaching and hence discussions began in 1990 on what would be the most effective way to ensure the independence of the media without compromising on ethics and standards. The Committee entrusted with the task suggested the formation of a Press Complaints Commission (PCC) and gave it a time period of eighteen months to demonstrate "that non-statutory self-regulation can be made to work effectively.

This is a stiff test for the press. If it fails, we recommend that a statutory system for handling complaints should be introduced." The UK press left no stone unturned to seize the moment and swiftly established an independent PCC in the beginning of 1991.

Till date, the PCC has been functioning as an independent body administering the system of self-regulation for the press. It deals with complaints against any article in any publication or the general editorial content and the conduct of journalists. The PCC is funded by an annual levy it charges newspapers and magazines. All newspapers and magazines voluntarily contribute to the costs of, and adhere to the rulings of, the Commission, making the industry self-regulated. Besides, in 2011, the newspaper and periodical industry framedthe 'Editor's Code of Practice', which was ratified by the PCC and is effective from 1 January, 2012. The PCC website shows that it received more than 7,000 complaints in 2010, the last date for which reports are available. The PCC was able to reach an amicable resolution in respect of 1,687 cases. However, like the Press Council of India, the PCC does not have any legal powers and it largely banks on the press accepting its recommendations, which it mostly does considering they have come forward to form it. The sanctions that it is authorised to impose include negotiation, critical adjudication, letter of admonishment, and formal referral of an editor to their publisher for action. Thus, there are no monetary penalties that can be imposed or suspension of licenses by the PCC. Also, another disadvantage of the self-regulatory body is that there is a possibility of it overlooking some wrong-doings of the press, in order to protect the large interests of the media as an industry.

Conclusion

While there are pros and cons for both statutory regulation and self-regulation, in India, legal regulation in the form of a statutory body which has merely been a 'toothless tiger' has not served the purpose for which it was constituted. Neither has the PCI been able to ensure press freedom, nor has it been able to keep an effective check on the malpractices in the media. The way forward in India could be to empower the Press Council of India, allowing it to take punitive action in the form of monetary penalties, suspension of license, etc. Also, it must be made more representatives of the stakeholders in the media, thus giving them a voice. Is India ready for a regulator like Ofcom in the United Kingdom which, among other things, is tasked with ensuring that people are protected from being unfairly targeted in TV and radio programmes, and from having their privacy invaded? In fact, the British model of PCC may be adopted with members of the presscoming together to draft a code of practice.Advances in modern technology, which has led to the convergence of media platforms makes it almost impossible for countries to insist on statutory regulation or they may end up regulating just a tiny fraction of current

sources of media consumption as cyberspace does not take kindly or easily to statutory regulation.The media may not be blessed with a regulatory authority such as the ones governing, say, the telecom industry, the power sector and the stock exchanges. However, it is not above the law. Today media in India is not exempt from the statutes governing defamation, obscenity, incitement and official secrecy. Where necessary, the state also has the authority to ban publications and black out TV broadcasts. The police possess powers to prosecute journalists and media houses it holds to be engaged in blackmail and extortion. There is a full-fledged statutory regime that governs the media, including a Working Journalists Act. The Fourth Estate is not above regulation. The media is already governed by law in India.

In the 67th year of India's democracy, the debate over regulation will help focus on the larger role of the media, especially in the television arena, and where it is headed. But, as far as regulation goes, many believe imposing a solution from the outside may not do the trick - instead, healthy and open consultation between the government, media owners, editors and journalists might be the way ahead.

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