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Assessing the Efficacy of Self-Regulation in Broadcast and Digital Media in Deterring Media Trials in India

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ABSTRACT

In this article, the author introduces the topic through a brief discussion on the role played by the media, which includes the broadcast and digital media while covering criminal cases and explains the meaning of media trials. It then explores the dimension of self-regulation in broadcast and digital media in the Indian context. It first conceptualises the concept of regulation of media with a special focus on self-regulation by discussing the advantages and disadvantages of the said mechanism. It also talks about the constitution and powers of the various self-regulating bodies (SRB) for the regulation of media along with their grievance redressal mechanism and its effectiveness in deterring the menace of media trials or in upholding journalistic principles or media ethics.

Keywords: Self-regulation, Media, Media trial, Self-Regulating Bodies (SRB).

I. INTRODUCTION

The media, specifically the broadcast and digital media have emerged as powerful means of transmission of information and tools for communication which also plays the function of entertaining and inspiring audiences on a global scale. The broadcasting media through its reporting has evolved to play a central role in shaping public opinion³ The manner of framing of the narratives by the media significantly influences the thought process or the perception of the general public often creating the collective conscience of the population. Likewise, the advent of the internet and now social media has transformed the way society communicates. It has fostered information access and its diffusion. It has also created an optimal environment for the proliferation of tainted information and content, often argued to be co-causes of the polarisation phenomenon.⁴ Digital platforms are even more potent in creating such influence

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³ Catherine Happer & Greg Philo, *The Role of the Media in the Construction of Public Belief and Social Change*, JSPP (2013).

⁴ Valentina Pansanella, et.al., *Mass Media Impact on Opinion Evolution in Biased Digital Environments: A Bounded Confidence Model*, Nature (Aug 25, 2024, 4:00 PM), <https://www.nature.com/articles/s41598-023-39725-y>.

and prejudicing a criminal trial. For instance, the media portrayal of a particular individual as a hero or villain in a criminal case influences society's perception, which can have devastating consequences for that individual during the investigation as well as the trial.

Media trials have become a great menace in recent times where the media, in the guise of exercising the right to freedom of speech & expression, have begun to transgress the cherished right to a fair trial, which has been accorded to every accused person under the Indian Constitution.⁵

Although the concept of media trial has not been defined under the law but the Hon'ble Supreme Court had explained the term in the case of *R.K Anand v. Registrar*⁶ as, “....the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in the court of law. During high-publicity cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception, the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny”

Of late, the media has also come under scrutiny for biased reporting and incomplete coverage of major events or highlighting a particular event to garner more audience attention by agenda-setting.⁷ Thus, opinion-led journalism tends to be delivered to news consumers, featuring overstimulated news screens and loud anchors.⁸ To name a few, the manner in which the media had parallelly tried *Arushi Talwar's murder case*, *Sunanda Pushkar's death case*, or *Sushant Singh Rajput's suicide case*, and now, the approach of the media in trying the heinous case of Kolkata's RG Kar Medical College⁹, rape & murder of the young doctor, by the wide circulation of the victims' sensitive information & photographs, and other vital information related to the case in the mainstream media, as well as digital news media casts a shadow on its role as the fourth pillar of democracy.

In the pursuit of sensationalism and instant justice, media by the portrayal of the accused as 'guilty' impedes the process of investigation and trial in various ways. Media coverage in these cases was not limited to the transgression of the rights of the accused it also extended to the

⁵ Article 21 of the Indian Constitution.

⁶ (2009) 8 SCC 106.

⁷ Maxwell et al., *The Agenda Setting Function of Mass Media*, JSTOR (1972).

⁸ Muskan Bansal, *An Instagram-First Approach to Decluttering News in India*, IJNET (Sep 02, 2024, 5:00 PM), <https://ijn.net.org/en/story/instagram-first-approach-decluttering-news-india>

⁹ R.G Kar Hospital rape-murder case: Calcutta HC seeks CBI report, *The Hindu*, (Sep.05, 2024, 10:AM), <https://www.thehindu.com/news/national/west-bengal/rg-kar-hospital-rape-murder-case-calcutta-high-court-seeks-cbi-report-on-nasty-social-media-posts-on-victim/article68608680.ece>.

victim's rights to privacy and mental health. This enhanced scrutiny by the news channels and digital media platforms or even the social media platforms has amplified various concerns regarding the ethical dimensions of media reportage which calls for an effective regulation.

II. THE REALM OF MEDIA REGULATION

Lord Atkin once said *“Liberty does corrupt into license and is prone to be abused. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy.”*¹⁰

The realm of media regulation in India is complex and still in the phase of evolution. It has always been a debatable issue, as there is a need to maintain the delicate equilibrium where on one hand, there is the need to preserve the freedom of media, for them to act as the fearless watchdog of the democracy. On the other hand, there is also a dire need to ensure that the media in the exercise of the freedom of the press must not encroach upon the rights of the individual or tarnish the sanctity of the judiciary.

India's regulatory framework is a blend of statutory regulation, self-regulation and Judicial oversight. There are various statutory laws governing the media, for the press, there is the Press Council of India Act, on the other hand, broadcast media, as well as digital media, is dealt with by the Cable Television Networks Regulation Act, 1995 and its allied Rules and the Information Technology Act, 2000 and its allied Rules. Apart from this, several bodies have been formed by the media channels which include the digital news media channels to exercise self-regulation and are bound by the oversight mechanism created by the statutory mechanism. Media has always resisted government control as they feel governmental regulation will interfere with their right to freedom of speech & expression, therefore self-regulation has been preferred by the media, which while preserving their autonomy also preserves the best interest of the public.¹¹

III. CONCEPT OF SELF-REGULATION

Self-regulation by media, in simple terms may be understood as 'regulation by itself'. In this form of regulation, the media themselves create or develop self-regulation mechanisms that are

¹⁰ Express Newspapers v. Union of India, (1997) 1 SCC 133.

¹¹ Shakuntala Banaji, *Regulating the Media in India Urgent Policy Priority*, London School Of Economics And Political Science Media Policy Project Blog, (Sep. 24, 2024, 5:00 PM), <http://blogs.lse.ac.uk/mediapolicyproject/2013/08/07/regulating-the-media-in-india-an-urgent-policy-priority/>.

¹¹ Saumya Ramakrishnan, *Can the watchdog watch itself? Indian Media and Self-Regulation*, First Post (Sep. 24, 2024, 8:00 PM), <https://www.firstpost.com/politics/can-the-watchdog-watch-itself-indian-media-and-self-regulation-431499.html>.

mostly independent of governmental control and are designed to uphold ethical or journalistic principles.¹² These can be done by creating ethical codes, constituting press and media councils, or complaints commissions and in-house ombudsmen.¹³ However, governmental control is not entirely lacking, it may be present in any of the three components of regulation, i.e. the government may either define rules, initiate actions against violators or take up the adjudicatory role in deciding whether a violation has taken place and impose appropriate sanctions.¹⁴

A) Advantages of Self-regulation

There are various claimed advantages of self-regulation over state regulation and are greatly favoured by the media. Firstly, it helps in the preservation of media independence by preventing state censorship, thereby offering greater autonomy, which is essential for the exercise of press freedom. Secondly, as the self-regulatory bodies themselves draft and implement the self-regulatory codes it offers greater flexibility and adaptability and it allows them to deal with the new challenges of the industry in a better manner. Moreover, the journalistic/ ethical codes drafted by them are likely to be better because they have superior knowledge of the subject and the challenges of the industry as compared to government agencies.¹⁵ Thirdly, self-regulation has often been found to be more appropriate in comparison to governmental regulation when it comes to the prevention of the potential misuse of regulatory powers for political motives. Fourthly, and most importantly, a robust self-regulatory mechanism offers a quick and easy grievance redressal mechanism that would allow resolution of the complaints of the aggrieved individuals or groups without having to go through the complex legal procedure.

B) Disadvantages of Self-regulation

While self-regulation has a plethora of advantages, as has been discussed, it is also tainted with certain notable disadvantages that may greatly hinder the effectiveness of media regulation and the maintenance of ethical standards and accountability. Firstly, the biggest disadvantage of this mechanism is the absence of enforcement power which has often proved to be ineffective in tackling issues of media trials or hate speech. Most self-regulatory bodies (SRB) do not possess the power to enforce their decisions or even impose hefty penalties, which makes such bodies toothless which allows the media bodies to disregard the guidelines or ethical codes and

¹² Dunja Mijatović, *Media Self-Regulation Guide Book* (OSCE Publication, Vienna, 2013).

¹³ *Ibid.*

¹⁴ Angela Julia Campbell, *Self-Regulation and the Media*, 51 FCLJ, (1999).

¹⁵ Michael C. Douglas, *Federal Agency Use of Audited Self-Regulation as a Regulatory Technique*, 171 ALR 181-182 (1995).

ultimately make the mechanism ineffective. Secondly, the participation of the media bodies in the self-regulatory framework is voluntary, which means they may choose to be a part of any of the self-regulatory bodies at a point in time and may even choose to be out of it as per their whims and fancies. Thirdly, it is often said that the industry possesses greater technical expertise than the government does, but it is questionable if the said expertise will be used for the benefit of the public or are more likely to employ them for the maximisation of the industry's profit neglecting the grievances of the public. Fourthly, self-regulation is often found to be inconsistent and incomprehensive across the different media types, for example, print media is regulated by the PCI which has its own standards and mechanism, while electronic and digital media have a different set of ethical codes.

IV. SELF-REGULATORY MEDIA BODIES FOR REGULATION OF ELECTRONIC AND DIGITAL MEDIA IN INDIA

Various self-regulating media bodies have been constituted to frame & uphold the ethical standards of journalism in India and address the grievances of the viewers in a swift and easy manner. Some of the most prominent self-regulatory bodies for the regulation of electronic & digital media have been discussed hereunder:-

1. News Broadcasting and Digital Standard Authority (NBDSA)

News Broadcasters and Digital Association, a self-regulating media body was established on July 3rd, 2007 by the news broadcasting industry for the promotion of responsible and ethical journalistic practices.¹⁶ It, therefore comprises private news, current affairs channels and digital broadcasters such as TV 18 owned by Reliance, Times Network, ABP News etc. It has set up a grievance redressal body known as the News Broadcasting and Digital Standard Authority (NBDSA) for redressal of the complaints against the member broadcasters for violation of the broadcasting code/ content code set up by the body.

This body ensures high standards of ethics and journalistic practices for its members by setting a broadcasting code that seeks to achieve¹⁷ impartiality and objectivity in reporting; Ensuring neutrality; Reporting on crime and safeguards to ensure crime and violence are not glorified; Depiction of violence or intimidation against women and children; Abhorring sex and nudity; Ensuring privacy, Endangering national security; and Refraining from advocating or

¹⁶ NBDA, (Sep.08, 2024, 7:30 PM), <https://www.nbdanewdelhi.com/>.

¹⁷ Code of Ethics & Broadcasting Standards, (Sep. 26, 2024, 8:00 PM), https://www.nbdanewdelhi.com/assets/uploads/pdf/1_CODE_OF_ETHICS_BROADCASTING_STANDARDS_1_4_081.pdf.

encouraging superstition and occultism.

In discharging its functions as aforesaid, The authority shall act consistently with the following precepts:¹⁸

- Maintaining and improving the standards of broadcast and maintaining the independence of broadcasters, television journalists and/or news agencies.
- Ensuring compliance by broadcasters, television journalists and news agencies with the said code of conduct and adherence to high professional standards.
- Ensuring the maintenance of high standards of public taste and fostering a new sense of both the rights and responsibilities of citizens.
- Fostering and encouraging the growth of a sense of responsibility and public service among all those engaged in and associated with the profession of television journalism and the business of broadcasting.
- Keeping under review and scrutiny any developments likely to have the tendency to restrict the gathering supply and dissemination of news of public interest and importance.
- Such other aspects as may be incidental, consequential, related and/or otherwise materially concerned with the above precepts.

The NBDA has thus framed guidelines or journalistic codes according to which the members must operate while reporting about any matter or criminal case otherwise if the NBDSA receives any complaint against any broadcaster for violating the ethical code as mentioned above, shall first inquire and give the broadcaster an opportunity of being heard and then may deal with the erring broadcaster in the following manner-

- warn, admonish, censure, express disapproval, regret, apology and/or
- impose a fine upon the broadcaster which shall not exceed two lakh rupees on the first violation, five lakh rupees on the second violation, and up to 1% of the total annual turnover of the channels may be imposed as a fine which shall not exceed Rs. 25 lakhs for the third or subsequent violation and/or
- additionally, upon the third violation of the code of conduct, the concerned authority may direct for suspension for up to 1 week and/or direct the broadcaster to suspend the anchor for up to one month and /or issue any other direction as the authority deems appropriate to the broadcaster or digital publisher and/ or recommend to the concerned

¹⁸ *Ibid.*

authority for suspension or revocation of the licence of such broadcaster.¹⁹

The authority may also direct the broadcaster/ digital publisher to remove or edit the broadcast immediately.

NBDSA is not under the oversight mechanism of the Ministry of Information & Broadcasting and therefore they are governed by the ethical code set by them and not by the Cable Television Network Regulation Act, 1995 or the IT rules.

2. News Broadcasters Federation-Professional News Broadcasting Standards Authority (NBF- PNBSA)

The News Broadcasters Federation was established in 2020 to improve and maintain news broadcasting standards in India. It was constituted following the action taken against Republic TV by the NBSA for alleged hate speech, in disregard of the directive of the NBSA to air an apology the channel, Republic TV made an exit from being a member of the NBSA and formed the NBF. At present, it consists of 50 news channels like Republic TV and several other regional news channels such as Orissa TV, Prag News First News etc.²⁰ The NBF for the redressal of the grievances against its members channels has constituted the self-regulatory body known as the News Broadcasting Standard Organisation (PNBSO) (now known as the News Broadcasters Federation- Professional News Broadcasting Standards Authority (NBF-PNBSA)²¹.

The NBF-PNBSA entertains and decides upon the complaints against the member channels for violating the broadcasting code or engaging in unethical journalistic practices. It may issue such guidance or advisories to the publisher to ensure compliance of the code of ethics, which may be in the form of²²-

- warning, censure, admonish, or reprimand; or
- an apology to be telecast by the publisher;
- include a warning card or a disclaimer;
- in case of any content where it is satisfied that there is a need for taking action to delete or modify content to prevent incitement to the commission of a cognizable offence

¹⁹ Guide to the Complaint Process of the News Broadcasting & Digital Standards Authority, NBDA, (Sep. 19, 2024, 6:00 PM), <https://www.nbdanewdelhi.com/guide-to-complaint-redressal>.

²⁰ Largest Group of Broadcasters- News Broadcasters Federation (NBF) consolidates Structure, Republic, (Sep 20, 2024, 7:00 PM), <https://www.republicworld.com/india/news-broadcasters-federation-nbf-consolidates-structure>.

²¹ Created under rule 12 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

²² Rule 12, sub-rule (5) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

relating to public order, or in relation to reasons enumerated in Sec. 69A (1) of the Act may refer it to the CG for consideration of the oversight mechanism.²³

3. Digital Media Content Regulatory Council (DMCRC)

Indian Broadcasting Foundation (now rebranded as Indian Broadcasting and Digital Foundation and includes the OTT platforms) a unified representative body of television broadcasters was founded in 1999. It had several prominent broadcasters as its members which included non-news general entertainment channels such as sports, movies, infotainment etc, and current affairs TV channels.

It regulated the content of television and radio, to ensure that the content telecasted is appropriate and balanced. To achieve this objective in the year 2011, the *Broadcasting Contents Complaints Council (BCCC)* was constituted to receive and review content-related complaints against the member channels that violate the programme codes set up by the MIB.²⁴ And for the said purpose of redressal of the grievances of the complainants it had set up a two-tier grievance redressal mechanism.

After a decade of operation, BCCC had to pave the way for a self-regulatory body for non-news channels known as the DMCRC. To regulate such content the IBF (now IBDF as it covers digital streaming platforms) formed the self-regulatory body named Digital Media Content Council (DMCRC) which would act as the non-news Online Curated Content Publishers (OCCP) in line with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 as the tier-II SRB.²⁵

The composition, powers and functions of DMCRC are as per rule 12 sub-rules (2),(4) and (5) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The DMCRC has framed a few codes of ethics for the OTT platforms.²⁶

4. DIGIPUB News Indian Foundation

The DIGIPUB News Foundation is a self-regulatory body for digital media organisations that covers news and current affairs and is governed by Rule 12 of the Information Technology

²³ Cable Television Networks (Amendment) Rules, 2021 comes into force, SCC Times (Sep. 20, 2024, 8:30 PM), <https://www.scconline.com/blog/post/2021/06/21/cable-television-networks-amendment-rules-2021-comes-into-force/>.

²⁴ Self-regulatory content guidelines for Non-News & Current Affair Television Channels, (Sep. 12, 2024, 5:00 PM), <http://www.ibfindia.com/sites/default/files/pdf/Self%20Regulatory%20Guidelines%20for%20non-news%20%26%20current%20affairs%20programmes.pdf>.

²⁵ Rohini Honap, *Harnessing and Tightening the Legal Noose Around the Media and OTT Platforms*, MDJ (2022).

²⁶ Ministry of Information and Broadcasting, *Digital Media Ethics Code*, MIB GOVT (Sep. 22, 2024, 8:00 AM), <https://mib.gov.in/sites/default/files/FAQs%20on%20Digital%20Media%20Ethics%20Code.pdf>.

(Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.²⁷ It was formed to help ensure the creation of a healthy and robust ecosystem for news broadcast on digital platforms. It aims to represent, amplify and evolve best practices that are independent and upholds the highest standards of journalism.

Apart from the above-mentioned self-regulatory bodies (SRB) that regulates the media, there are a few others such as Journalist and Media Association Grievance Council. (JMAGC), Print and Digital Media Association (PADMA), Digital Media Publishers & News Portal Grievance Council of India, Working Journalist Media Council, Media 9 Digital Media Federation, Indian Digital Publishers Content Grievance Council (IDPCGC), Web Journalists Standards Authority (WJAI), Digital Publisher Content Grievance Council (DPCGC) which functions under the MIB.

V. STATUTORY OVERSIGHT MECHANISM

The Self-regulatory bodies under the MIB are bound by the Programme code and the Advertisement code laid down by the CTVN Rules, 1994. Which initially provided for a two - tier mechanism for the redressal of the grievances, but the government gave effect to the SC judgement in *Common Cause v. Union of India*²⁸, in 2021 and brought forth an amendment to the CTVN Rules by which it had made the grievance redressal mechanism more formal & transparent and, provided legal recognition to several self-regulating bodies (SRBs). Most importantly, it now introduced a Three-tier grievance redressal mechanism for the broadcasters. The Three- Tier structure comprises of- (i) Self – Regulation by the Broadcasters (Tier I); (ii) Self-regulation by the self-regulating bodies of Broadcasters (Tier -II); and (iii) an Oversight mechanism by the Central Government (Tier III)²⁹.

- i. ***Self-Regulation by the Broadcasters (Tier-I):*** In this tier, every single broadcaster has to establish a grievance or complaint redressal mechanism and appoint a grievance officer for redressal of the complaints that may be received from any viewer who has been aggrieved by the content of any programme telecasted for not being in conformity with the Programme Code. The broadcaster on receipt of any complaint from any viewer must resolve the complaint within 15 days of receipt of such complaint.³⁰

²⁷ *Supra note.*

²⁸ WP (C) No. 387 OF 2000.

²⁹ See, Rule 15 Cable Television Networks Amendment Rules, 2021.

³⁰ *Ibid.*

- ii. ***Self-regulation by the self-regulating bodies of Broadcasters (Tier-II):***³¹ If any complainant is dissatisfied with the decision of the broadcaster or if the broadcaster has not been able to dispose of the complaint within the stipulated period of 15 days, then the complainant may prefer an appeal to the self-regulatory body of the broadcasters (SRB). The self-regulating body of broadcasters is mandated to dispose of the appeal within 60 days of receipt of the appeal and convey its decision in the form of guidance or advisories to the erring broadcaster which may be in the following ways-
- Advisory, warnings, censure, admonish or reprimand; or
 - An apology to be telecasted by the broadcaster; or
 - Inclusion of warning card or a disclaimer; or
 - In case if it is satisfied that the contents of any programme need to be deleted or modified, then refer such case to the central government for consideration of the oversight mechanism.
- iii. ***Oversight mechanism by the Central Government (Tier-III):***³² Any complainant who is not satisfied with the decision of the self-regulating body, may prefer an appeal within 15 days of such decision to the MIB for its consideration under the oversight Mechanism. Under the oversight mechanism, the central government may coordinate and facilitate the adherence to the Program Code and Advertising Code and perform the following functions-
- Publisher charter for self-regulating bodies, including codes of practices for such bodies;
 - Establish an inter-departmental committee for hearing grievances or complaints;
 - Issue appropriate guidance and advisories to the broadcasters;
 - Issue appropriate orders and directions to broadcasters for maintenance and adherence to the Programme code or Advertising code;
 - Take action for the non-compliance of its orders or directions and that of the self-regulating body.

VI. CONCLUSION

³¹ *Supra* note 29.

³² *Ibid.*

Media's presence in today's world is unparalleled, from being a tool for information exchange to shaping opinion and mode of political discourse. However, its omnipresence comes with several challenges, such as biased reporting for TRP, sensationalism, and media trials. To avert these challenges there is a need for a robust regulatory mechanism. In India media is mostly self-regulated but post 2021 with the introduction of new Rules under the CTVN Act, and the IT Rules there has been a shift to statutory oversight.

The self-regulatory bodies that oversee the media in India, such as the NBDSA, or NBF-PNBSA have demonstrated significant shortcomings in effectively dealing with the issues of unethical media practices, specifically media trials and even hate speech. While self-regulation ensures freedom of speech to the press, the voluntary membership of the broadcasters makes it difficult for the enforcement of its orders against the erring broadcaster, as happened in the case of Republic TV's exit from the NBDSA for ordering them to air an apology for hate speech and forming a new SRB. Secondly, the fine that may be imposed on finding a broadcaster to have violated the Programme code is insufficient and does not ensure deterrence hence, the news channels hardly bother to stick to the ethical code. Moreover, multiple SRBs with non-uniform content codes lead to confusion and inconsistency. For instance, if one SRB flags content to be in the nature of media trial but the other might not, also some of the digital news platforms are not members of any of the SRBs. Hence, it is high time that a common program code may be formulated for the different segments of media such as news & non-news and an autonomous regulatory body for the media should be formed, which shall provide clear guidelines and strict enforcement mechanisms for all the three types of media.
