

## **EFFECT OF MEDIA ON LAW**

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When Abraham Lincoln was assassinated in 1865, it took 7 months for rest of the world to know it. Nowadays, it takes less than 7 seconds for people to get any information.

‘A pillar of democracy’, ‘fourth estate of state’, media certainly have many roles to play in a society.

### **Media**

Media is communication channels through which news, entertainment, education, data, or promotional messages are disseminated. Media includes every broadcasting and narrowcasting medium such as newspapers, magazines, TV, radio, billboards, direct mail, telephone, fax, and internet. Media is the plural of medium and can take a plural or singular verb, depending on the sense intended.<sup>1</sup>

It is basically a medium through which information is carried to large masses. It is a very significant part of everyday life of every individual. It keeps general public aware of the news from all around world. It is a major factor in shaping up public opinion. Media has made communication a lot easier and now is used as a tool by almost everyone on this earth. It was in 20<sup>th</sup> century that broadcast media emerged and brought news from all over the world to people’s living rooms. Media has always played a major role in decision making and manipulating people’s thoughts over the course of its existence. People tend to believe in what they see and whatever media shows them is perceived as truth without checking its authenticity. There are many areas where media’s influence can be seen on law. On many occasions media helps in putting forward social issues which are in need of new laws or more stringent method of enforcing. There are many new issues that are brought to limelight by media and the

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<sup>1</sup> Business dictionary

government is forced to pay attention to them. This helps in communicating public opinion to the government and vice-versa. There are many questions that come to people's mind.

Who all does media influences? Is the influence good or bad? Are there any restrictions on media's power?

**As to answer the first question media influences the masses and also it influences the people ruling these masses.**

### **Organs of state**

Our country follows doctrine of separation of power as given by Montesquieu. According to him placing all the power in only one organ or group will lead to tyranny. As a solution for this, he gave the idea of separating the powers between three organs that will run the state. These organs were to be:

Legislature – the one who make the Law

Executive – the one who enforce the Law

Judiciary – the one who interprets the Law

Executive is the authority who executes and enforces the law. In many political systems that don't follow the doctrine of separation of powers, the executive makes the law and enforces them as well. But in separation of power executive is only in charge of enforcing the law so as to avoid concentration of power. The executive body consists of a head of the state and head of the government. In presidential head of the state and head of the government are the same, whereas on the other hand, in parliamentary system head of the state is ceremonial monarch or president and head of the government is cabinet ministers who are liable to legislature. Head of the cabinet ministers is prime minister. Members of executive are indirectly elected by the public.

Legislature is the authority whose function is to formulate laws for a political entity (nation or state). Laws passes by legislature come to be known as legislations. Indian legislature is called the Parliament which consists of two houses – Rajya Sabha (upper house) and Lok Sabha (lower house). Members of legislature are directly elected. Number of members varies from state to state. China has the largest legislature with 2987 members.

Judiciary is system of courts which interprets law and solves disputes. In many states judiciary's function also include making the law but in India the only law judiciary makes is in the form of precedents. Indian judiciary consists of Supreme Court at centre level, High Courts at state level and Districts Courts and Sessions Courts at district level. Indian judiciary is hierarchal in nature, Supreme Court of India being the Apex Court.

All the three organs of the state don't function in water tight compartments. To avoid concentration of power in any one particular organ, each and every organ's functions overlap and they keep an eye on each other. This is known as check and balances system, where every organ keeps an eye on the action of other organs and make sure that other doesn't go out of its jurisdiction or is functioning properly. This checks and balances system is important to ensure that none of the organ wields too much power and become arbitrary. It is popularly believed that free media is necessary to maintain the spirit of democracy in the state.

And day by day media is playing a role of importance in this check and balances system. Directly or indirectly all three organs are sources of law and contributes in the law formulating process. So, influencing any of the organ is indirectly influences the law. In recent times, media as an institution has grown and now function as a watchdog. Media ensures that people are aware about what the three organs are doing. This function of media has become integral in these days as people want to know how the nation is working and who is responsible for what. Media has become such an important asset that many people rely on it entirely. The power wielded by media has been growing and now it is accepted by majority that media has become fourth estate of a state. Earlier, media was controlled by the government. Everything shared by mass media has to go through scrutiny of the government. But globalization and privatization has changed this whole scenario around. The law in a society changes as society changes and evolves. The media has enough power to change the demographic of a society and opinions of people living in it. Due to this media is highly influencing the law for the society. There are certain specific media outlets dedicated to sole act of scrutinizing the governments and its estates.

For example- Many journals, magazines, newspaper columns are dedicated to the government's daily actions and public's opinion on it. Many media outlets also vey openly express their distress about a situation and demand a change of law. This can be seen recently done in the case rape laws after 'Nirbhaya case'. Media was outraged by the heinous acts that

were committed against an innocent girl and his friend. Media openly critiqued the legal system and law for not being stringent enough. This surely influenced the changes made to rape laws by the judiciary. More details were added to it and the punishment was made more stringent. Even though the influence of media is in a very considerable amount but still media's popular demand to change the punishment rape to that of capital punishment (death penalty) was overlooked by the court. So, even the influence of media has its limits.

Media's influence can also be seen in the case regarding LGBT rights. Media has very often challenged the validity of Section 377 of IPC (Indian Penal Code). This talks about 'unnatural offences'. It says;

*Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation. —Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.<sup>2</sup>*

In layman terms, this mean sexual relationship with same sex or some other unnatural thing is a punishable offence. Media helped in highlighting the unfairness of this section and motivated the public to file curative petition against the same in the court. Right now, the matter is pending in the Supreme Court.

**To answer the second question, is the influence good or bad?**

In recent years, media has become so powerful that its influence is seen over all the three organs. Media has always been a platform for sharing ideas, worldwide news and debate forums. This makes it highly likely to influence the public and governmental action. The effect of media on law is growing rapidly due to this.

Law is made by the executive who consists of democratically elected MPs. These MPs are generally influenced by the media in their agenda making and political campaigning. During campaign, these candidates use media to reach masses and request for votes and after winning the election they are influenced by the same media in policy making. The judgments passed by the court are regarded as precedents, thus, influencing judgments is also influencing the law.

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<sup>2</sup> Section 377 of Indian Penal Code, 1860.

But many critics put forward the notion that this influence is not beneficial for smooth functioning of the nation. But there are many who strongly support media and say it is the best way to keep check on other organs. Media has always been a medium of communication and making people aware of the happening and non-happenings of the world. But in recent times, media is being considered as a fourth estate itself because of its ever-growing influence on other organs. Media helps in shaping the public opinion and affects law reforms.

A state is a society and every society needs law to ensure smooth functioning. These organs are established to ensure that the society doesn't go rampant and state doesn't become arbitrary. As law is such an integral part for smooth functioning of the state, a lot of ways are used to make sure that it is fair and benefitting the public. It's not like media doesn't have any restrictions or limitations on them. The power of influence has grown so strong that every person wants to be on good terms with the media. But it's also known that media freedom is generally accepted as a corner stone of modern democratic society.

Over time many politicians, political scientists, journalists have put forward many questions as to media's influence on government and law. Media's role has been questioned upon a lot of times. Its influence is seen as arbitrary and biased by many. Media is an institution run by the people and people tend to have certain prejudices which make their influence biased. It is believed that media shows what it wants and hides what it wants. It is a common belief that media exaggerates to a point where the information is far from the truth. Critics also emphasize the fact that media can be easily manipulated.

**William James Willis discussed that:**

“Sometimes the media appear willing or unwitting participants in chasing stories the government wants them to chase; other times politicians find themselves chasing issues that the media has enlarged by its coverage.”<sup>3</sup>

It is a two way street when it comes to media and law. Media affects law just as law affects media. The question is whose influence is in greater proportion. And what amount of that proportion is actually for the better. It is seen a lot of times these days that a case was heard and decided faster because of the media coverage or a bill has been reintroduced just because

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<sup>3</sup> *The Media Effect: How the News Influences Politics and Government* (Westport, CT: Praeger, 2007)

of the spur created by the media regarding it. It is observed that if the right amount of pressure is administered by media then it can get anyone to do anything.

But the attention paid by media is very selective; many unnecessary things are focused on rather than the actually important things. Some issues catch media's eye and get put on the front line whereas similar cases are neglected. This selective attention in itself is sign of biasness. If the main source of information for general public is biased, how the reality of things can be known. There are always two sides to a story and media only tells one, the one that suits itself. Many benefit from the media's attention but many face loss too. Cases of defamation have increased since increase in media's scope. Sometimes, media leads to indecision among public by showcasing two contradicting sides of a story.

After the riots of 2011 an MP reprimanded judiciary for being too lenient while on the other hand it was accused of being too harsh by the government opposition. Judiciary's statement that they were being pressured left little to imagination regarding who was pressuring the judiciary. It is no secret that the media has the power to influence the court's decision. Media puts a lot of pressure on the judiciary as every step is scrutinized and criticized. Media's involvement is seen in mostly all the high profile case. Media can also influence public opinion regarding a passed judgment by reacting favorably or unfavorably to it. In India, media has played an important role in many trials. Some of them are- Jessica Lal case<sup>4</sup>; Aarushi murder case<sup>5</sup>

It is often seen that media has passed its verdict on a case even before court's judgment. Media has now turned itself into a 'Janta Adalat' and started interfering in court's proceedings. Although interference of media has been helpful in many cases, it is also unwelcome in many circumstances. Many a times media forgets to practice certain principal of natural justice, for eg. The accused is innocent until proven guilty. Media treats an accused as guilty even before he is proven guilty.

This interference should be considered as contempt of court as it is hindering the administration of justice. It is principal of natural justice that every accused should get a free and fair trial and media interference somewhere makes people involved biased and fair trial is not rendered.

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<sup>4</sup> 2001 IIIAD Delhi 829, 2001 CriLJ 2404, 90 (2001) DLT 548

<sup>5</sup> 2013 (82) ACC 303

Attention of media makes many jurors conscious of their acts and an unconscious pressure is created.

In *Shalab Kumar Gupta and Ors. v. B.K. Sen and Anr*<sup>6</sup>, it was held by the Supreme Court that:

“No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case.”

There is no doubt that media is doing more good and bad. But the bad effects need to be controlled as many times they get out of hand. Media has a huge amount of power which is vulnerable to manipulations and can easily be misused.

“The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power. Because they control the minds of the masses.”<sup>7</sup>

“As most of the population suffers through life, barely surviving, disappointed and confused day after day, hopeless, wondering what happened to their strong and beautiful country, it is in the media's power to restore, if not some of our quality of life, at least a bit of our peace of mind.”<sup>8</sup>

“Social media websites are no longer performing an envisaged function of creating a positive communication link among friends, family and professionals. It is a veritable battleground, where insults fly from the human quiver, damaging lives, destroying self-esteem and a person's sense of self-worth.”<sup>9</sup>

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<sup>6</sup> 1961 AIR 633, 1961 SCR (3) 460

<sup>7</sup> Malcom X (Activist)

<sup>8</sup> Steven Van Zandt (Musician)

<sup>9</sup> Anthony Carmona (Statesman)

**To answer the last question – are there no restrictions on media’s power.**

Just like any other institutions, media has rights but they are not absolute rights. Even media has certain restrictions to keep its functioning under control. Media’s power is restricted by laws like:-

1. The Press and Registration of Books Act, 1867 – This Act regulates printing presses and newspapers and makes registration with an appointed Authority compulsory for all printing presses.
2. The Press (Objectionable Matters) Act, 1951 – This enactment provides against the printing and publication of incitement to crime and other objectionable matters.
3. The Newspaper (Prices and Pages) Act, 1956 – This statute empowers the Central Government to regulate the price of newspapers in relation to the number of pages and size and also to regulate the allocation of space to be allowed for advertising matter.
4. Defense of India Act, 1962 – This Act came into force during the Emergency proclaimed in 1962. This Act aimed at restricting the Freedom of the Press to a large extent keeping in mind the unrest prevailing in India in lieu of the war against China. The Act empowered the Central Government to issue rules with regard to prohibition of publication or communication prejudicial to the civil Defense/military operations, prevention of prejudicial reports and prohibition of printing or publishing any matter in any newspaper.
5. Delivery of Books and Newspapers (Public Libraries) Act, 1954 – According to this Act, the publishers of books and newspapers are required to deliver, free of cost, a copy of every published book to the National Library at Calcutta and one copy each to three other public libraries specified by the Central Government.
6. The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955 – It lays down the minimum standards of service conditions for newspaper employees and journalists.
7. Civil Defense Act, 1968 - It allows the Government to make rules for the prohibition of printing and publication of any book, newspaper or other document prejudicial to the Civil Defense.
8. Press Council Act, 1978 – Under this Act, the Press Council was reconstituted (after 1976) to maintain and improve the standards of newspaper and news agencies in India.



Although on one hand, the Constitution confers the fundamental right of freedom of the press, Article 105 (2) provides certain restrictions on the publications of the proceedings in Parliament.

In ***K. A. Abbas v. Union of India***<sup>10</sup>, the petitioner for the first time challenged the validity of censorship as violative of his fundamental right of speech and expression. The Supreme Court however observed that, “pre-censorship of films under the Cinematograph Act was justified under Article 19(2) on the ground that films have to be treated separately from other forms of art and expression because a motion picture was able to stir up emotion more deeply and thus, classification of films between two categories ‘A’ (for adults only) and ‘U’ (for all) was brought about.”

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<sup>10</sup> 1971 AIR 481, 1971 SCR (2) 446