



Who should be prosecuted for the Mistake? A brief look at a few case studies concerning Journalism in Indian Scenario

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Abstract

Journalists, in their profession, fulfill their duties while facing various challenging conditions. They often prioritize their commitment and responsibility over their own lives in many situations. This commitment extends to instances where their professional position exposes them to legal threats, placing them in the eye of the storm. The crucial question arises as to who will navigate the ship through this typhoon of trouble, assuming the role of the captain, as all eyes are on them. From a legal standpoint, this responsibility can be shouldered by a particular individual. In the context of Indian journalism, there have been instances when this specific individual had to stand in the dock multiple times to defend their fellow newshound associates. This study presents several case studies from the Indian legal landscape, aiming to assist journalism students and professionals in identifying who this unique individual might be.

While a conclusive decision may not be reached, this critical overview seeks to plant an idea, urging experts to exercise caution in their work.

Keywords: Freedom of speech and expression, journalism, editor, democracy.

Introduction

We commonly acknowledge the media as the '*fourth pillar*' of democracy, as it informs us about societal occurrences in every conceivable way. The media, undeterred, fulfills its role as a watchdog, often overcoming perilous circumstances. When examining the imprint of journalism in India, it becomes evident that Indian journalists, in their commitment, sometimes pay a price that extends beyond mere financial considerations. Numerous instances highlight the challenges faced by journalists who, driven by a sense of duty, operate covertly under intense media scrutiny to unearth information for the betterment of society.

As a result,¹ it is evident that the media has often found itself entangled within the web of legal and administrative scrutiny. This phenomenon has been observable since the inception of *Hickey's Bengal-Gazette*, extending to *Amrita-Bazar Patrika*, and resonating

¹ Natarajan, J. "Restriction & Relaxation." In *History of Indian Journalism*, Publication Division, Ministry of Information and Broadcasting, Govt. of India, 1955.

in recent events such as the Sheena Bora murder case, the Jessica Lal murder case², the Delhi Rape case, and numerous other incidents, including those that remain unknown.³

However, at every chance, it is not held due to the praising credentials of the media that they are accurate and the rest of the institutions are faulty; it often ensues many a time that due to the delinquency of a single individual can lead to the entire media bearing its liability. In some instances, the media becomes accountable for someone else's mistakes, while in other cases, it is responsible for its own missteps. The 1989 case of Bennett Coleman Co. Ltd. and Ors. vs. J.B. Patnaik⁴ raises questions regarding the ethics and legal implications of the press. In this case, two consecutive articles in the then-published Weekly strongly implicated the chief minister, resulting in a defamation suit even if the media outlet did not intend to retaliate against the Chief Minister. Initially, there was a reluctance to back down from the Weekly. However, after a prolonged legal battle lasting three years, the Weekly eventually withdrew its claims before the Honorable Supreme Court of India. This was followed by an apology submitted by their correspondent and editor for their erroneous actions. Still, it is imperative to know 'who' will pay the

² *Legal Service India*. "Trial By Media." Accessed November 21, 2022. <https://www.legalserviceindia.com>: <https://www.legalserviceindia.com/article/l237-Trial-By-Media.html>.

³ Rao, Sudheendra. *Indian Journalism in a New Era: Changes, Challenges, and Perspectives*. Oxford: Oxford University Press, 2019.

⁴ *.B. Patnaik vs Bennett Coleman & Co. Ltd. And Ors.*, AIR 1990 Ori 107 (Orissa High Court, September 18, 1989).

penalty for 'whose' mistakes because journalists and media face this question differently in all probable circumstances, which is very meaningful to address.

Although the Constitution of India, unlike the Constitution of the United States, does not guarantee any place to the media, the hierarchical Hon'ble Court of India has made it clear through its judicial interpretation of its role and position in society in various contexts such as in case of Ramesh Thappar vs. the State of Madras, Indian Express Newspapers vs. Union of India, Sakal Papers vs. Union of India, and many more⁵. However, if the media makes a mistake, there is always a question of 'whose' shoulders will bear responsibility. The verdict of such judgments is also upheld and revised occasionally by all the judicial institutions.

Reports under Article 19(1) (a) of the Indian constitution, which prompts Freedom of speech and expression, Freedom for promoting independent journalism by letting the people voice their opinions are also encouraged⁶. At the core of the mandate⁷, Article 19 reads:

⁵ *Indian Kanoon*. Accessed November 12, 2022. <https://indiankanoon.org>: <https://indiankanoon.org/search/?formInput=search%20engine>.

⁶ Thakur, J. "Explained: How The Indian Constitution Guarantees Freedom Of Speech To Every Citizen." *India Times*, November 21, 2021. <https://www.indiatimes.com>: <https://www.indiatimes.com/news/india/freedom-of-speech-and-expression-in-india-554739.html>.

⁷ Rubio, Marco, Casey, Bob, & Wyden, Ron. 2017. "Rubio, Casey, Wyden Press Freedom Resolution Passes Senate Unanimously." Washington, DC: MENA Report.

Everyone has the right

“To liberty of opinion and expression”

This right retains the Freedom to maintain ideas without interference which interests in cultivating and imparting thoughts and knowledge through any form of media⁸.

Consequently, media freedom is supposed to be protected beneath this freedom; accordingly, the privileges of a media or press house are similar to those of an ordinary individual or an Indian citizen. The communication of opinions may be through any medium, such as a newspaper, magazine, or movie, involving electronic and audiovisual media. However, the query surrounds that phenomenal individual 'who' will be made the scapegoat:

Who should be prosecuted for making the Mistake?

As stated under sub-clause 1 in section 1 of 1867's Press and Registration of Books Act, where Section 1 (1) reads the 'Editor' as the individual who manages the preference of the matter that is to be printed in a newspaper, and under Section 7 only realizes the editor as the lawful entity and no one else, in the issue concerning the publishing of matter in a newspaper. However, Section 8 (A) of the Act also provides a provision for correction by giving a declaration

⁸ ((December 2017). "United States Rubio, Casey, Wyden Press Freedom Resolution Passes Senate Unanimously." *MENA Report*.

before a Magistrate within two weeks in case of a mistake in printing the editor's name.

Usually, people consider the editor as the only figure responsible for defamatory dissemination matters or inaccurate dispatch. However, the facts are any authority other than the editor, such as the distributor, including the owner, can also be gripped for the unsuitable deed causing a vicarious penalty that may emerge, grounding the owner to pay damages. Further, as a medium of opinion sharing and communication, it also means other involvement; hence, it may apply to those associated with it in various forms. As media converges always recreates an essential role in discoursing the masses about typical formations; hence the coverage are of supreme preference. However, when conflict situations emerge, the real battle starts between the actual credit owners paying the bread to disseminate the objective viewpoint. In his overview of selected case studies of media coverage on the Kashmir conflict between two neighbours Pakistan and India, Rafael Hernandez believes the priority of global information sources should be held to high standards. A nice balance between the international and national authorities should be there to refute false and vague allegations and, as a result, to safeguard oneself from the millstone of law and legal justice⁹.

⁹ Hernandez, R. 2020. "The Media and Conflict: Case Study Overview Reporting on the Kashmir Conflict between India and Pakistan." *Global Media Journal* 18: 1-4.

A brief look at the following case studies in the Indian scenario will help professionals related to journalism to see a small quantity of direction.

Objectives

1. Guiding professionals involved in journalism with a legal perspective involving Media Laws.
2. To take a look and analyze the case studies concerning Media Laws to gain a glimpse into it.
3. To gauge the dynamicity and static boundaries of Media Laws.

Methodology: This research has employed a qualitative procedure including elucidative and analytical methodology of case studies; analysis is based mainly on secondary references gathered from newspapers, journals, case files, websites, investigation articles, and texts of various authors. In a few sets, the researcher used interactions and interviews through a snowball sampling to attain primary data for case facts¹⁰. Through the information from past studies, case study examination entitles the exploration and interpretation of complex

¹⁰ Gulsecen, Sevinc, and Ahmet Kubat. 2006. "Teaching ICT to Teacher Candidates Using PBL: A Qualitative and Quantitative Evaluation." *Educational Technology & Society* 9 (2): 96-106.

issues¹¹. It can be considered a robust analysis method, especially when an in-depth inquiry including holistic approach is needed. It is also more noted when the case surrounds community-based issues and education.

Case Studies and Discussion

In the newspaper's editor was charged with a defamatory matter by a petitioner, but accidentally that day, the editor was absent for a bona fide purpose,¹² and the editor entrusted the work to a competent person; hence the defamatory matter was published by that qualified person as per the statement, who is the sub-editor. The Hon'ble Madhya Pradesh High Court held that on the date as mentioned, the opponent (Editor) had gone out, that the Assistant Editor did not print the news item, and that, although the matter published was defamatory, the opponent (Editor) could not be held criminally liable. It, therefore, absolved him. The Hon'ble Court noting the editor's absence ruled out the editor's responsibility without sinful volitions.

In 1978 case of Ahaji C. H. Mohammad Koya vs. T. K. S. M. A. Muthukoya¹³, a politically controversial ground emerged with the

¹¹ Johnson, Michael P. 2006. "Decision Models for the Location of Community Corrections Centers." *Environment And Planning B-Planning & Design* 33 (3): 393-412.

¹² Narayan Singh v. Rajmal, AIR 1961 MP 12, 1961 CriLJ 91 (Madhya Pradesh High Court, August 19, 1960).

¹³ Ahaji C. H. Mohammad Koya vs T. K. S. M. A. Muthukoya, 1979 AIR 154, 1979 SCR (1) 664 (Supreme Court of India Septemeber 12, 1978)

issue of a publication in a Malayalam daily paper *Chandrika* where the term Editor and Chief Editor were at stake, and who would bear the responsibility was the primary concern. In this case, it was led out that the Press and Registration of Books Act maintain the editor as the only lawful body and no one else in printing issues in a newspaper. Nonetheless, in this case, the Hon'ble Court stated that after publishing or printing a controversial matter, it is imperative to see whether the editor's consent was obtained before it or not. The Hon'ble Court also stressed the word '*Consent*,' which is much more potent than Knowledge because it implies assent.

In another such case titled *K.A. Abraham and Others vs. K.M. Mathews, 2002*¹⁴, the book publisher was held in breaching the defamation violation. The person reconstructed the issue to the High Court, determining the purview imprinted under Section 7 of the 1867 Press and Registration of Books Act, where a newspaper editor can be held entirely liable instead of the Chief Editor. The plea was, however, discarded by the High Court. Afterward, the person made an additional pleading to the Supreme Court but has yet to receive a positive response further. The court reasoned that there could be instances of supposition not favoring the editor and considering the person accountable due to his action on verification and checking of yet-to-be-published content. Nonetheless, the issue is debatable, and

¹⁴ *K.M. Mathew vs K.A. Abraham & Ors* , Appeal (crl.) 701 of 1990, Appeal (crl.) 847 of 2002, Appeal (crl.) 848 of 2002 (Supreme Court of India August 23, 2002).

as per the Act mentioned in the Section, similar guesswork can arise for a different individual that requires evidence.

Similarly, in an earlier case of the late 1960s State Of Maharashtra vs. Dr. R. B. Chowdhary & 2 Ors, 1967¹⁵, concerning the Editorial board of a Marathi weekly named 'Maharashtra,' Hon'ble Court observed as follows:

“The term 'editor' is clarified as a person who maintains the selection of the matter published in an issue and is responsible for the material selection; section 7 raises a presumption regarding such a person. That person's name has to be printed on the printed issue. In the present case, the name of Madane(who declared himself as the Editor, Printer, and Publisher) was published as Maharashtra's editor for the Maharashtra copy, which contained the nefarious composition. The insistence produced shows the name of Madane not only as the printer and Publisher but also as the editor. The presumption will attach to Madane as having named the material for publication in the issue. In the circumstances, not only can the inference not be drawn against the others who hadn't declared themselves as review editors, but it's also fair to leave them cut because they had no concern with publishing the composition in question”.

¹⁵ State Of Maharashtra vs Dr. R. B. Chowdhary & 2 Ors, 1968 AIR 110, 1967 SCR (3) 708 (Supreme Court of India April 19, 1967).

Therefore, the standpoint judgment retains that where a person is not identified in the paper to be its editor, there is no such deduction under section 7 of the Press Act. In a similar case *Ashish Bagga vs. State & Anr, 2017*¹⁶, the Court recited and referred such an identical judgment where there was much speculation about the printing matter in the periodical of *India Today Magazine* published an Article titled "*Bharose Par Bhari Chot.*"

In *Arnab Goswami vs. Union of India, 2020*¹⁷, we find a reference to sub-clause (a) of Article 19 under clause 1 of the Indian constitution and reasonable restrictions when required under Article 19(2). However, this case corresponds to another ground where the Editor-in-Chief of the news media channel was accused of spreading news inciting riots in his subsequent news channel, where he was charged under several sections through FIR from distinct places. Although our analysis of this article is different, in this case, the Editor in Chief knocked on the door of the Hon'ble Supreme Court with his petitions, one of which was the story of Article 19(1) (a) through Article 32. Although the Court, in its direction, considered each petition's circumstantial importance, the Hon'ble Court observed in Article 19(1) that India's liberties would rest safely as long as journalists can communicate truth to authority without being decompressed by the

¹⁶ *Ashish Bagga vs State & Anr , Criminal Misc(Pet.) No.629/2007 (Rajasthan High Court - Jodhpur June 19, 2017).*

¹⁷ *Arnab Ranjan Goswami vs Union Of India , Writ Petition (Crl) No. 130 of 2020 (Supreme Court of India May 19, 2020).*

peril of reprisal. The practice of that fundamental right is not whole and is liable to the legal regime acting concerning the conditions of Article 19(2). However, to allow a journalist to be subjected to numerous objections and the pursuit of remedies spanning multiple states and jurisdictions when confronted with consecutive FIRs and protests enduring the same foundation has an oppressive effect on the practice of such freedom. This will conquer the independence of the citizen to comprehend the matters of government in the country and the privilege of the journalist to secure an informed society; hence the privilege of a journalist beneath Article 19(1) (a) is no more elevated than the privilege of the citizen to express and communicate accordingly, society never overlook that one cannot live without the other.

Conclusion

The primary goal of journalism is to serve the people with news, events, incidents, and opinions around them; in that regard, the freedom of speech and expression is a blessing for the citizen. The fact that the media has played a vital role in monitoring government functionaries must be considered. However, there are still much standing in which journalism must perform sincerely to protect itself from the grip of wrong slips. The media should restrain itself from publishing matters that directly call for judicial attention, as in all the cases discussed above that rely on the circumstances. However, in most possibilities, we have seen that sections and sub-sections of laws

in the Indian Constitution are strung like beads on the judicial garland, where in most of the chances concerning media and journalism formally; the Editors were targeted first, followed by the others. Hence editor always became the scapegoat. Although in some scenarios, we have also seen that situations like a consensus, good faith, exceptions, and availability of adequate evidence are also given priority while targeting the Editor or the Publisher. Journalism should be more accountable and inclined toward the interests of the general public but do with a certain amount of professionalism so that it does not unnecessarily fall into any mistaken entrapment. So that it only falls into the accurate web.
