

## JUDICIAL APPROACH TOWARD PREVENTION OF MEDIA VIOLENCE IN INDIA: AN APPRAISAL

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### ABSTRACT

*Our constitution has guaranteed us numerous fundamental rights including freedom of speech and expression. The right to freedom of speech and expression has been considered as “the very life of civil liberty” in the Constituent Assembly Debates.*

**KEYWORDS:** *Media Violence in India*

### INTRODUCTION

Our constitution has guaranteed us numerous fundamental rights including freedom of speech and expression.<sup>1</sup> The right to freedom of speech and expression has been considered as “the very life of civil liberty” in the Constituent Assembly Debates.<sup>2</sup> The freedom of the press, while not recognised as a separate freedom under Fundamental Rights, is folded into the freedom of speech and expression.<sup>3</sup> In *Bennett Coleman & Co. v Union of India*,<sup>4</sup> Supreme Court of India has described the freedom of speech and expression as a basic part of the democracy. With the passage of time various unethical practices have also been witnessed in the various media coverage’s. Fake news, paid news, inappropriate opinion polls, hate speech, media violence, pornography, and drug related contents, propaganda’s have become an integral part of the media. With the emergence of the problem of media violence the problem of youth violence has also emerged as a grave concern for the developing as well as developed nation.

The Judiciary in India has been playing an active role as a guardian of constitution, dispensing justice, protector of fundamental rights since independence. Indian Judiciary also plays a vital role to regulate the unethical practices of media agencies while broadcasting, publishing or posting of contents. From time to time the Supreme Court of India and High Courts of various States directs the cable service providers, media agencies, internet services providers, broadcast agencies to abide by the media laws and ethics while broadcasting or presenting various programmes or if the agencies fail to comply with such directions then the licence of these service providers or agencies shall be cancelled. With the emergence of various new deadly suicidal video games in October 2017 the Supreme Court of India said that a video game named

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<sup>1</sup> Part III of the Constitution of India and the freedom of speech and expression is provided under Article 19(1)(a) of the Constitution of India.

<sup>2</sup> Constituent Assembly Debates: Official Report, (Delhi, 1946-1950), VII, p. 18.

<sup>3</sup> *Brij Bhushan and Another vs. The State of Delhi*, AIR 1950 SC 129; *Sakal Papers (P) Ltd vs. Union of India*, AIR 1962 SC 305.

<sup>4</sup> AIR 1973 SC 106.

Blue Whale Challenge is a national problem.<sup>5</sup> Supreme Court also directed the Doordarshan channel to broadcast educational programmes to aware the public about the ill effects of the blue whale game and such programmes must also be aired on all private channels during the prime time.<sup>6</sup> The Court also directed the Director General of Police in the States of Punjab, Haryana and Union Territory, to ensure that no songs are played glorifying the liquor, wine, drugs and violence in any song even in live shows.<sup>7</sup> Again in 2018 the Uttarakhand High Court directed the Department of Telecom to issue order to the internet service providers for blocking 857 websites that host pornographic contents and the court also observed that such websites influenced the youth towards the offence of rape and offences against children.<sup>8</sup>

The various decisions of Supreme Court and High Courts of India given from time to time with respect to regulation of media, implementation of media laws and to curb the menace of media violence are given below.

#### **K.A. Abbas vs Union of India,<sup>9</sup>**

In this case petitioner produced a documentary movie called "A Tale of Four Cities", which distinguished the life of the rich and the poor in the four major metropolitan cities of the country. The petitioner file an application before the Censor Board of Film for obtaining "U" certificate for unrestricted exhibition of the film, but he was granted a certificate only for restricted exhibition to adults. As aggrieved by the action of Censor Board the petitioner then filed the writ petition in the Supreme Court. At the hearing of the petition the Central Government indicated that it had decided to grant a "U" certificate to the petitioner's film without the cuts previously ordered. Supreme Court observed that the censorship imposed on the making and exhibition of films is in the interests of the society. If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our constitution.<sup>10</sup> The standards that we set out for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in to and forever from human thought and must give scope for talent to put them before society. The requirement of art and literature include within itself a comprehensive view of social life and not only in its ideal form; and the line is to be drawn where the average normal man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth".<sup>11</sup>

The Supreme Court has upheld censorship of films under Art. 19(1)(a) on the ground that films have to be treated separately from other forms of art and expression because a motion picture is able to stir up emotions more deeply than any other product of art. The film can, therefore, be censored on the grounds mentioned in the Art. 19(2). On the question of obscenity, the Court has laid emphasis on 'the importance of art to a value judgment' by the censors. Art should be

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<sup>5</sup> Times of India, October 7 2017.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> "In the Matter of Incidence of Gang Rape in a Boarding School, situated in Bhauwala, District Dehradun" vs State of Uttarakhand and others, Writ Petition (PIL) No. 158 of 2018.

<sup>9</sup> AIR 1970 2 SCC, 780.

<sup>10</sup> Id at p.797.

<sup>11</sup> Id, at p. 802.

preserved and promoted in any scheme of censorship for, as the Court observed, "the artistic appeal or presentation of an episode robs it of its vulgarity and harm". In short what the Court meant was that there is a distinction between artistry and pornography.<sup>12</sup>

### **Raj Kapoor vs State**<sup>13</sup>

A complaint was lodged by the respondent as a private complainant. He was a president of the youth organization to defend as well as to protect the Indian cultural standards. In his complaint he alleged that the movie, "Satyam Shivam Sundaram," was obscene and indecent and the producers are liable under Section 292, of the IPC for committing an offence of producing an obscene movie. Under this case the main legal issue was that whether the issuance of a censor certificate to the movie by the specialised Board of Film Censors bars the jurisdiction of criminal court to try offences under Sections 292 and 293 of the Indian Penal Code with respect to obscenity or not. The Supreme Court observed that the certificate issued by the Censor Board does not exclude the jurisdiction of criminal Courts with respect to try for the offences under sections 292 and 293 of the Indian Penal Code.

### **The Bandit Queen Case (Bobby Art International vs Om Pal Singh Hoon)**<sup>14</sup>

In this case an appeal was filed before the Supreme Court against the order of the Delhi High Court banning the film 'Bandit Queen' on the ground of its being 'indecent' for public exhibition.<sup>15</sup> The Supreme Court observed that "It is not a pretty story. There are no syrupy songs or pirouetting round trees.<sup>16</sup> It is the serious and sad story of a village born female child who turned into a dreaded dacoit.<sup>17</sup> An innocent who subjected to lust and brutality easily turns into a vicious criminal.<sup>18</sup> The film accused the members of society who had tormented Phoolen Devi and driven her to become a dreaded dacoit filled with the desire to revenge.<sup>19</sup> After making the above observation the court summed up with the words that "the message of a serious film should be applied to the individual scene and an adult Indian citizen should be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene.<sup>20</sup> On the basis of above observations the Supreme Court allowed the appeal for the exhibition of the said movie and set aside the decision of the High Court and the "a" certificate issued to the film "Bandit Queen" upon the conditions imposed by the Appellate Tribunal is restored.<sup>21</sup>

### **Ranjit D. Udeshi vs State of Maharashtra**<sup>22</sup>

In this case Supreme Court applied the Hicklin test<sup>23</sup> relating to obscenity. Supreme Court while disposing the appeal filed

<sup>12</sup> Ibid.

<sup>13</sup> AIR 1980 SC 285

<sup>14</sup> AIR 1996 (4) SCC 1.

<sup>15</sup> Id p.1.

<sup>16</sup> Id p.11 Para 4 .

<sup>17</sup> P.11 Para 3.

<sup>18</sup> Id para 2.

<sup>19</sup> Ibid.

<sup>20</sup> P.12 para 3.

<sup>21</sup> P.12 para 6.

<sup>22</sup> AIR 1965, 1, SCR 65.

<sup>23</sup> R. v. Hicklin (1868) LR 3 QB 360 at p.371. In this case Justice Cockburn laid down the test on the effects of obscenity. It was laid down that obscenity have a tendency to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. It is quite certain that it would suggest to the minds of the young of either sex, or even person of more advanced years, thoughts of a most impure and libidinous character.

by an appellant dealing with the constitutionality of Section 292<sup>24</sup> of the Indian Penal Code explained the meaning of obscenity. The brief facts of the case were that the appellant with other four partners of a firm owned a book- stall and all of them were convicted under section 292 of the Indian Penal Code, for possessing a book called 'Lady Chatterley's Lover' (unexpurgated edition), containing obscene matters.<sup>25</sup> The Trial Court and High Court held that the book in the possession of the appellant is to be obscene and they guilty of the offence under section 292 of Indian Penal Code. The Supreme Court also held the book to be obscene and upheld the decision of the lower as well as the High Court. Supreme Court also drew a difference between obscenity and pronograghy. It was held that pronograghy denotes writings, pictures etc. intended to arouse sexual desire and on the other hand obscenity may included publications not intended to do so but which have that tendency.<sup>26</sup> While both offend against public decency and morals, pornography is obscenity in a more aggravated form.<sup>27</sup>

### **Pratibha Naitthani vs Union of India<sup>28</sup>**

Pratibha Naithani, a political science teacher in St Xavier's College, Mumbai, filed a writ petition before the Bombay High Court against the telecast of "adult and obscene films showed by the electronic media" and "obscene photographs" in the print media. The court held that the various media agencies as well as television channels are violating the programme code as provided under the Cable TV Network Act and the Cable TV Network Rules. The court further held that only films sanctioned by the CBFC, under the Cinematograph Act and Rules, as suitable for "unrestricted public exhibition" could be telecast or transmitted on cable TV.<sup>29</sup>

### **Suo Moto vs State of Rajasthan<sup>30</sup>**

In this case the Rajasthan High Court makes it mandatory for the Government to verify the programmes and check their confirmation with the regulations of Cable Television Networks (Regulation) Act 1995 before their telecasting or broadcasting. The Court held that relevant steps should be taken to prevent the depiction of women in an undignified manner through broadcasting, telecasting and advertisements, etc, and prompt steps need to be taken against the responsible persons.<sup>31</sup>

### **Ajay Goswami vs Union of India & Others<sup>32</sup>**

The court held the view that, 'in order to shield minors and children, the state should not forget that same contents of newspaper might not be offensive to the sensibilities of adult men and women.'<sup>33</sup>

<sup>24</sup> Section 292(2) (a) &(e) provides that whoever sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object shall be punished<sup>263</sup> shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

<sup>25</sup> Divan Madhavi Goradia, Facets of Media Law, 2010, Eastern Book Company, p.55.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> AIR 2006 (Bom) 259

<sup>29</sup> Ibid.

<sup>30</sup> AIR 2005 Raj 300.

<sup>31</sup> Ibid.

<sup>32</sup> AIR2007SC493

<sup>33</sup> Ibid.

The court also held that a culture of “responsible reading” should be inculcated among the readers of any news article.<sup>34</sup> “Also, members of the public and readers should not look for meanings in a picture or written article which are not conceived to be conveyed through the picture or the news item.”<sup>35</sup>

The court dismissed the petition, but observed that the Central Government should seriously look into, and make appropriate amendments to, the provisions of Section 14(1) of the Press Council Act, 1978 in accordance with the request made by the Press Council of India to arm it with the authority to recommend official de-recognition of newspapers for government advertisements or for an appropriate period or withdrawal of the accreditation granted to a journalist to facilitate functioning and also to claim concessions in railways, etc.<sup>36</sup>

### **Indraprastha People vs Union of India**<sup>37</sup>

In this case the Delhi High Court directed the Central Government to establish an independent legislative body under the Cable Television Networks (Regulation) Act,<sup>38</sup> consisting of eminent personalities including women. It is also recommended that these members should not be removed without any reason and therefore reasonable security should be provided to their tenure against the unreasonable interference of the Government. Until the creation of Broadcasting Content Complaints Council (BCCC), the competent Court should be recognised by the Government of India as a competent authority to entertain complaints with respect to violation of the media laws by the broadcasters. The decisions of such authority shall be treated as the foundation to take appropriate action against the offender by the central Government.

### **Court on its Own Motion vs State**<sup>39</sup>

In this case the Delhi High Court on its own motion took a cognizance of a manipulated sting operation on a school teacher and that led to her suspension from the job. She was also subjected to assault by a mob. While deciding the case court held that government should frame as well as adopt guidelines to regulate the practice of sting operation.

### **Sahara India Real Estate Corporation vs Securities and Exchange Board of India**<sup>40</sup>

In this case the Supreme Court opined that while relaying the pending (sub-judice) cases the electronic as well as the print media should follow the proper directions of the government. The Court further stated that “it is well settled that it is inappropriate for comments to be made publicly (in the Media or otherwise) on cases (civil and criminal) which are sub-judice; this principle has been stated in Section 3 of the Contempt of Courts Act.” The Court also authorized the judiciary to prohibit as well as to postpone the publications on the basis of case by case tests which poses threat to the public interest and where there is a real and substantial risk of prejudice to fairness of the trial or to proper administration of justice.

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<sup>34</sup> AIR2007SC493, p.22.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> WP (C) No.1200/2011, (Del. HC)

<sup>38</sup> Cable Television Networks (Regulation) Act, 1995.

<sup>39</sup> (2008) 146 DLT 429.

<sup>40</sup> (2012) 10 SCC 603.

**Brij bhushan vs State of Delhi**<sup>41</sup>

This case was popularly known as 'The Organiser Case'. In this case Supreme Court was of the opinion that public order is allied to the public safety and it is also equivalent to security of the state. This interpretation of the Supreme Court was validated by the first constitution amendment and as a result of this public order was inserted as a ground of restriction under 19(2).<sup>42</sup>

**P.B. Sawant vs Times Global Broadcasting Co. Ltd and Another**<sup>43</sup>

In the present case a popular news channel named Times Now mistakenly showed the picture of Retired Justice P B Sawant's as a picture of another judge in the reporting of the Provident Fund scam. The picture was shown for fifteen seconds. The High Court of Bombay directed the said news channel to pay penalty of Rs. 20 crore in cash and is also liable for guarantee of Rs. 80 crore as the damages. The Court also directed that the news channel 'Times Now' to apologies for their mistake on their channel for a week.<sup>44</sup> The Supreme Court also upheld the decision of the Bombay High Court.

**Aditya Thackeray vs Telecom Regulatory Authority of India, (TRAI)**<sup>45</sup>

In this case the Telecom Disputes Settlement Appellate Tribunal quashed the limit of 200 SMSs per day as imposed by the Telecom Regulatory Authority of India. It was held that every citizen of India has a right to propagate or to convey his opinion and right to receive the same is absolute but it is subjected to reasonable restrictions as provided under Article 19(2) of the Constitution. The Tribunal further stated that due to lack of control over the contents of the SMSs and the time for sending of such messages the Regulatory authority could not impose a restriction on the number of SMSs on the ground of privacy. But Supreme Court on December 4, 2012 stayed the order of the Tribunal with respect to quashing the limit of the SMSs. As imposed by the Regulatory Authority.

**Gillette India Limited vs Reckitt Benckiser**<sup>46</sup>

In this case the learned Single Bench of Madras High Court passed an order to restrain the petitioner including its directors, proprietors, partners, officers, employees, agents, distributors, franchisees, representatives or assignees to communicate, to convey or to publish the disputed advertisements or providing any further such advertisement in any form of media including the print media, electronic media or the social media that depreciates the honor as well as goodwill of the respondent (plaintiff) in any mode.<sup>47</sup> The Court also restrained the appellant from making comparison or importing direct or indirect reference to hair removal creams conveying the message that hair removal creams are harmful.<sup>48</sup>

**Paramjit Kaur and Ors. vs Union of India (UOI) and Ors**<sup>49</sup>

In this case the Court held that the Section 5B of Cinematographic Act, 1952 empowers the Central Government to direct the Censor Board of Film Certification that while granting the certificate for the exhibition of movies it should follow the following principles as provided under the notification of 6.12.1991:

<sup>41</sup> AIR 1950 SC 129.

<sup>42</sup> The Constitution (First Amendment) Act, 1951.

<sup>43</sup> 2011(113) BomLR3801.

<sup>44</sup> Times of India, November 15, 2011.

<sup>45</sup> M.A.No.20 of 2012

<sup>46</sup> C.M.P.Nos.2116 to 2124 of 2018

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> (2004) 136 PLR 753.

“(A) The main theme of the movies must be responsible as well as in accordance with the values and standards of society.

(B) Unreasonable curbs must not be imposed on artistic works, expression and creative freedom.

(C) Certification of the movies must responsive to social change.

(D) The medium of film must provide clean and healthy entertainment.

(E) The film must be of aesthetic value and cinematically of a good standard.”<sup>50</sup>

The Court was also of the opinion that for the proper implementation of above mentioned principles the Board of Film Certification must confirmed that;-

- The anti-social activities such as violence, abusive language must not glorified or justified in the movies.
  - The modus operandi of criminals, other visuals or words likely to incite the commission of any offence must not depicted in the movies.
- Scenes which
  - Shows the involvement of children in violence as victims or as perpetrators or as forced witness to violence, or showing children as being subjected to any form of child abuse or
  - Shows abuse or ridicule of physically and mentally handicapped persons.
  - Shows cruelty to, or abuse of, animals must not presented needlessly.
- Pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of desensitising or dehumanising people must not shown in the movies.
- Scenes which have the effect of justifying or glorifying the drinking or consuming of other drugs must not shown in the movies.
- Scenes tending to encourage, justify or glamourise drug addiction must not shown in the movies.
- Scenes tending to encourage, justify or glamorise consumption of tobacco or smoking must not shown.
- Human sensibilities must not offended by vulgarity, obscenity or depravity.
- Words with double meaning must not be allowed in the films.
- Scenes degrading or denigrating women in any manner must not be shown in the movies.
- Scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of a similar nature must be avoided.
- Scenes showing sexual perversions shall be avoided.
- Scenes of racism or religious hatredness must not be shown in the movies.

<sup>50</sup> Section 5B of Cinematographic Act, 1952.

- Visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitude must not be presented.
- The sovereignty and integrity of India shall not be called in question.
- The security of the State must not be jeopardized or endangered.
- Friendly relations with foreign States must not be strained.
- Public order must not be adversely affected.
- Visuals or words involving defamation of an individual or a body of individuals, or contempt of court must not be presented. It is further explained that the scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of court will come under the term contempt of court.
- National symbols and emblems must not be shown in the movies except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.

The Court also stated that the Board of Film Certification shall also ensure that the film;-

- Must be reviewed or judged in its entirety from the point of view of its overall impact.
- Must be examined in the light of the period depicted in the film and the contemporary standards of the country and the people to which the film relates, provided that the film does not deprave the morality of the audience.

The Court also made a observation that while granting the certificate to the movies or films the Board of film certification must follow the above mentioned guidelines and the board is also empowered to censor that portion of the movies which are in conflict with the aforesaid principles of guidelines.

## CONCLUSION

From the above discussion it can be stated that judiciary has been playing an active and positive role with respect to control and regulate press, electronic and social media since after independence. In addition to implementing the freedom of press, right to information, right to share views and opinions, etc. the judiciary also restricts the unreasonable interference of the media in the privacy of the individual and functioning of the state. In the number of their judgments the Supreme Court as well as High Courts discussed the role of media in the human life, in the social, political, economic and cultural developments, its benefits to the society, as a fourth pillar of a democracy, as a cheaper and time saving means of information, communication, interaction and at the same time directed the governmental departments and media agencies to regulate and control the unethical, corrupt, illegal, anti social, anti national, immoral practices exercised by the mass as well as the social media. The judiciary while giving landmark judgments revealed that there is a great necessity to control and regulate the media violence because it leads the young generation towards criminal and anti social behavior. It is submitted that the judiciary should also guide the media agencies to follow media ethics and laws as enacted by the Central Government and State Governments. The judiciary should ensure the implementation of these directions in a proper and reasonable manner. So the need of the hour is to ensure that all the three organs of Government i.e Legislature, Executive and Judiciary shall take necessary initiatives to regulate and control the media violence to prevent the viewers from its negative influence and to provide them a safe and secure environment in which they develop and grow themselves into a good and law abiding citizen. It can be concluded that the mere role of the judiciary, executive and legislature is not sufficient unless the people come forward for the solution of the problem.







