



CHAPTER 5

Electronic and Digital Media; Accountability in the Age of AI and Digitalization: An Indian Perspective

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INTRODUCTION

Give me the liberty to know, to utter, and to argue freely according to
conscience, above all liberties.
John Milton

Speech and expression of thoughts have been considered to be a collateral facet of an individual's personality. This is an element the absence of which shall result in the paucity of the holistic development of an individual (Jacobson, 1995). Various international and national documents have recognized the importance of this right of speech and expression as an essential constituent of human rights (Bychawska-Siniarska, 2017).

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Efforts have been made constantly to preserve and promote the right to speech and expression (Das & Gochhait, 2021). Although the journey has not been smooth sailing, constant resistance has been witnessed through several means, in the name of law and order, national security, and public interest. In the current technological age, a new form of the challenge has been ushered (Sharan, 2015). Technology on hand has been facilitating the mode of speech and expression, and it has also posed serious challenges as well (Annappa, 2021).

Media has been considered the most potent mode of speech and expression. Globally, the media has impacted the masses, mobilizing not only crowds but also ideologies. In the Indian context, the period when an emergency was imposed print media played a pivotal role not only from the government's perspective but also from the perspective of those opposing it. The traditional form of media relied upon the manual parameters that took a considerable time for the information reach to the potential audience. Technology in form of digitalization has changed the entire facet of media. Currently, electronic media has to an extent overshadowed the other form or modes of media. Today the information in electronic form reaches the intended individual or audience at a blistering pace within a fraction of seconds (Balkin, 2004).

The positive side has been witnessed in the Nirbhaya incident of 2012, where a college student was brutally assaulted and raped. The mass mobilization for justice for the victim and her family not only perused but forced them to amend the law. Whereas on the negative side, the issues like fake news have somehow contributed to the shattering of the social fabric. As the information travel at a rapid pace, the authenticity and the source are not in a position to be verified. Up to the time, it is verified the damage has resulted. With pros and cons, digitalization has led to the creation of a chaotic atmosphere to an extent. Another form of new-age futuristic technology in form of artificial intelligence has raised more serious concerns concerning the future of electronic media (Thakar, 2019).

The media houses are implementing artificial intelligence not only to improve the quality of content which is not an issue, the issue is that the data collected through viewership is being analyzed by artificial intelligence applications not only to provide the suggestions to the intended viewer but sometimes appears to be manipulative due to the vested interest of the concerned content provider, especially on over-the-top

(OTT) platforms. The whole idea appears to be market-driven, more-over marketing strategies rather than information transmission. From the author(s)' perspective, the trend appears to be disturbing, as it to an extent erodes the essence of speech and expression.

As it is clear that the right to speech and expression not only includes the conveyancing of idea and thought it also includes obtaining information as well. This whole process enables the viewer to form an opinion and then express it in a manner convenient to the individual. But due to technological interventions through artificial intelligence, the opinion so formed cannot be said to be free and fair. The objective of this research paper is to analyze the above-stated point in light of prevalent regulations about electronic media in India. The review of the literature suggests that the studies have been conducted concerning regulating electronic media, but not through the perspective of digitalization and artificial intelligence. That is the research gap the author(s) intend to fill. The objective of this paper is to draw the attention of the government and the academic fraternity to deliberate upon the issue raised in this research paper.

REVIEW OF LITERATURE

The Indian judicial approach initially adopted a more balanced approach as far as the right or freedom of speech and expression was concerned. In the case (*Romesh Thappar v. The State of Madras*, 1950), the court believed that the impugned Act in question was unconstitutional and void for want of authorization, whereas the restriction within the constitutional limits is permissible. Whereas in another case (*Bennett Coleman & Co. & Ors vs Union of India & Ors*, 1973) the Supreme Court of India held that freedom of speech and expression extent to bring changes in the composition of the legislature and the government, hence it must be safeguarded. In the case (*Shreya Singhal vs Union of India*, 2015) where the validity of section 66A of the Information Technology Act, 2000, was challenged, the Supreme Court of India held that section 66A appears to be excessively arbitrary and inappropriate, that cast a shadow upon the right to freedom of speech and expression beyond the reasonable parameter. Electronic media has an influential impact as it has an expensive outreach toward the masses (Medoff & Kaye, 2020). Digital media has become an essential component in the working of various organizations. Several electronic mediums are being employed in intercommunication within and among organizations. The use of electronic media is creating a platform

for e-leadership, confirming the point of expansion of electronic media (Kraft, 2019).

Where the right takes a negative path in the form of fake or paid news, creating a question mark over the manner in which it should be exercised. Artificial intelligence on the other hand had given rise to deep fake as a new phenomenon. As the name suggests, deep fake is an offshoot of fake news. The deep fake phenomenon refers to the concept of creating a digital product that appears to be realistic although that was uploaded in the past two years on the social media platform. These types of content are generally created by individuals having minimal technical skill; counting on a computer application or software, such content can be circulated online very conveniently. The implication of social media is widespread, and the traceability of deep fake is an important issue in this regard (Karnouskos, 2020). Social media platforms have connected people overriding terrestrial boundaries, and it has become a potent tool of communication for the people uniting them. But the lack of responsibility in posting the content over these platforms has raised serious concerns (Tiwari & Ghosh, 2014).

METHODOLOGY

For this research paper, the author(s) have adopted the doctrinal method. The approach shall examine the relevant research papers connected with the issues raised in this research paper. Assistance shall be taken from the judgments of the courts to gather the judicial approach concerning the issues of the current paper.

ELECTRONIC MEDIA: TWO-EDGED SWORD OF SPEECH AND EXPRESSION

Where electronic media provides an alternative to other forms of traditional media, there are certain factors that make it lucrative. Some of the positive aspects of electronic media can be briefly discussed as follow:

1. **Constant and rapid updating:** The most beneficial aspect of electronic media is the rapid and constant updating, which provides the viewer and the user with almost real-time information, whereas in print media this benefit is not available. As the print media is based

upon raw materials such as paper and other stuff, even the amount of information is limited in the print media. Such limitations are not prevalent in electronic media, giving it an edge over print media.

2. **Large and widespread coverage:** The electronic media provides wide coverage in comparison to the traditional medium. As per the reports that around five billion people around the globe are Internet users, which is around 63% of the world's population, the media users are around 4.65 billion (Statista, 2022a), whereas in India as per the statistic there are around 6.24 active Internet users (Statista, 2022b).
3. **Accessibility:** Accessibility has been one of the vital factors in the overall popularity of electronic media. With the boom in the electronic and IT sector, digital devices have become much cheaper, and with the market expansion, the easy availability of these devices has also contributed to the growth of electronic media. This has led to the accessibility of information without and beyond territorial limits.

On one hand, where the electronic media shows a ray of hope in terms of the availability of information, it has also raised certain concerns that can negatively impact electronic media. Some of the points are briefly discussed as follow-up:

1. **Susceptible to Alteration:** With improvisation in technology concerning computers, there are several easily available tools through which the content available over the internet can be altered. The alteration might be of such a nature making it impossible to distinguish between real and fake. Since there is no mechanism to check the veracity or the authenticity of the information, creating a check is also quite difficult.
2. **Prone to Cybercrime:** Although the electronic or digital media is virtually connected, it is vulnerable to cyber-attacks by hackers or cybercriminals. As the cybercriminals work based on certain agenda, there are possibilities that they might intrude into the system of an organization and manipulate the information stored on their servers. Such information manipulated may be used to spread rumors or cause disagreements among the community (Grandon, 2020).
3. **Privacy Issue:** One of the biggest of electronic or digital media is the issue of privacy (Kaur, 2020). The information shared by

the user through various website or web-based platforms becomes vulnerable to breach, endangering the personal space and information of the user (Kaur, 2021).

ARTIFICIAL-INTELLIGENCE AND DIGITALIZATION IN E-MEDIA: IMPACT AND CONSEQUENCES

As the use of artificial intelligence has seen tremendous growth in a plethora of fields, the electronic media sector has not left being untouched. As the artificial intelligence, the electronic and digital sectors share a common genesis, and the role of artificial intelligence cannot be ignored. PwC's Entertainment & Media Outlook in its report stated that the media industry in the USA, in the year 2021, reached around dollar 759 billion (*AI in Media*, n.d.). With the COVID-19 pandemic restriction, majority of the population back home, a rise in OTT platform was witnessed. AI in the media industry has witnessed many facets, some are briefly discussed as follows:

1. **AI as assisting tool:** Several big banner and production houses are implementing AI in the media and entertainment industry, resulting in the hype about the use of AI. These media and production houses are not only using AI to manage their financial issues but AI is also being used in simplifying the technical aspect of the content i.e., captioning, segregating repeated tasks including the news distribution, and allowing the creative professionals to focus more of their basic task.
2. **Fake news filtration:** The Internet, being an ocean of information, is also a complicated place for determining the authenticity of information as far as the source is concerned. Taking benefit of this the unwanted element of the society uses it to spread the fake news for their ulterior motives. AI has shown a ray of hope in this respect (Berghel, 2017). The AI-infused deep learning tools are being programmed in a manner to compare both the source of the information and the news to identify the fake one. The 2017 Google algorithm-based search update was designed in a manner to detect and stop the circulation of fake news (*Google Search Changes Tackle Fake News and Hate Speech—BBC News*, 2017). An application developed by the University of Michigan showed around

76% accuracy in detecting fake news (*Fake News Detector Algorithm Works Better Than a Human* | *University of Michigan News*, 2018). Still, the technology hasn't achieved a 100% accuracy level.

3. **AI-based automotive news circulation:** The broadcaster always tends to devise cost-effective means and increase the rate of efficacy. The production of news through AI-based automation can not only play a vital role in enhancing the viewership, but it can also provide a cost-effective mechanism. The use of AI in the media sector has been referred to as automated journalism. Through this, the use of AI in the production process is helpful in the collection, composition, and distribution of the content with a single click.
4. **User-centric approach:** With the use of AI, the viewer or the user experience has reached a whole new level. The media houses are placing reliance upon AI to gather the information as to the interest of view history of the user to provide them with similar recommendations. The use of AI in the media industry through the "recommender system" provide optimized content to the viewer based upon his/her individual preference.
5. **Social media and AI:** The expansion and the growth of social media platforms have allowed the Internet to express individual opinions, and reach out to the masses. The growing use of AI in the social media industry has transformed the user experience (Al-Ghamdi, 2021). Several features like photo recognition and advertisements based on users' interests have played an effective role in the increase of the user base on social media (Garg & Pahuja, 2020).

There is no iota of doubt that AI has to an extent transformed the electronic media. Not only the efficiency and content quality have been enhanced, but it has also made social media popular and user-friendly.

CURRENT REGULATORY FRAMEWORK FOR ELECTRONIC AND DIGITAL MEDIA IN INDIA

Both pre-and post-independence, the role of media has been in the central stage. Not only it has been the source of communicating the information, but it has also in a patent manner promoted and conveyed ideologies as well. Although the regulation in pre-independence was to derail the independence struggle, the post-independence regulations were moreover

to maintain harmony, law and order, and public interest. There two major agencies for regulating electronic and digital media are the Press Council of India and the Telecom Regulatory Authority, respectively. The law that specifically deals with the regulation of digital media is the Prasar Bharati Act, 1990, and the Cable Networks Act, 1995, respectively. Some of the key features of these Acts are briefly discussed below:

1. Prasar Bharati Act, 1990

Implemented in 1997, although received presidential assent on 12 September 1990. India's biggest public broadcaster was established, providing autonomous statutory status. The Act conferred autonomy upon All India Radio and Doordarshan, which were previously under the control of the government of India. The major objective was to grant electronic media to operate in a free manner.

The objectives of this Act are reflected under section 12. Section 12(3)(a) states that broadcasting shall be considered a public service for this Act. Further, it states that collection and distribution shall be the sole duty of the broadcaster and it shall not be involved in any kind of propaganda. Clarifying the difference between public and State broadcasting, the Supreme Court of India in a case stated that the freedom of broadcasting means being free from the control of the government including the censorship imposed by the State. Further, the court held that State broadcasting cannot be at par with public broadcasting (*The Secretary, Ministry of Information & Broadcasting. v. Cricket Association of Bengal, 1995*).

Further, the court stated that Article 19(1)(a) embodies that the broadcasting must be free from government control, and the statutory authority is bound to ensure that impartiality is maintained in issues related to the public (*The Secretary, Ministry of Information & Broadcasting. v. Cricket Association of Bengal, 1995*)

2. The Cable Television Networks (Regulation) Act, 1995

The shortcoming left in the Prasar Bharati Act, 1990, was attempted to be fulfilled as it was not possible to minder broadcasting through foreign satellites. The Act was introduced to regulate the rapid uncontrol growth of electronic broadcasting.

Section 4 of the Act makes the registration of the satellite TV station mandatory, whereas section 5 enlists the procedure.

Sections 5 and 6 of the Act deal with providing the notice and program code, having similarities with link administrator.

Section 7 requires the link administrator to keep the record of the substance or the content transmitted; additionally, Section 4A of the TRAI (Amendment) Act, 2002, deals with an addressable framework related to project transmission. Section 9 makes it obligatory on the part of the link administrator to ensure that the satellite TV station doesn't deviate from the standard transmission framework. Section 11 authorizes the appropriate government to put a hold upon the link administrator, in the case where the utilization of hardware without authority or enlistment. The Act under Sections 16 and 17 deal with the power to manage the offense under the Act.

In furtherance of this Act, the central government on 17 June 2021 notified the Cable Television Networks (Amendment) Rules, 2021. The object of these rules is to provide a redressal mechanism related to broadcasting. The redressal mechanism is divided into three tiers i.e.,

1. Level I—Broadcaster's self-regulation
2. Level II—A common self-regulating body of broadcasters for self-regulation, like NBSA and BCCC.
3. Level III—The Union Government, constituted an inter-departmental committee

In context to social media platforms, recent efforts of the Ministry of Electronics and Information Technology on 21 February, 2011, notified The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

The highlighted provision of these rules is:

1. Classifications of significant social media intermediaries.
2. Compliance personnel (officers) are required to be appointed.
3. The information originator of the first level requires identification subject to certain conditions.
4. Measure based on technology to be applied for identifying a certain type of content.
5. The content related to online publishers, news, current affair, and audio–video content to be curated.

6. Grievance redressal mechanics to be placed in for the users and the victims.
7. Self-regulated three-tier redressal mechanism for grievances.

Despite certain positive steps being implemented through these rules, there are certain apprehensions as well:

1. The delegated power may outweigh in certain cases, especially related to the identification of the first originator.
2. The freedom of speech and expression may be affected by the grounds provided under the rules.
3. There is the absence of procedural safeguards regarding the request made by the law enforcement agencies to obtain information from the intermediaries.
4. Revealing the identity of the first originator may affect individual privacy.

CONCLUSION

The right to speech and expression is an essential facet of an individual's personality. The protection and preservation of this right are concomitant to an individual's life and personal liberty. With the advent of technology especially digitalization and artificial intelligence, the question of accountability has gained momentum. According to the above deliberation after examining the beneficial aspect of AI and digital media, it is crystal clear that determining the accountability of the electronic media in the technological age is not just a requirement rather a duty of the stakeholders. From the perspective of a legal obligation, the law is more concentrating on self-regulation, which in the opinion of the author(s) is not appropriate. If the argument that electronic media must be free from government control, there must be a framework classified based on the nature of the content and how it is to be presented before the redressal mechanism is pressed into force. Regulating electronic media through a statutory provision in the opinion of the author(s) will not hamper freedom of speech and expression but rather increase the credibility of the medium and lessen the chances of the conflict that are being witnessed on daily basis. One must bear in mind that freedom of speech

and expression is to convey our ideas and viewpoints and not to create disharmony among the people of the community.

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