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Laws And Regulations Relating
To Mass Media In Nepal

By

Narendra R Panday
A discussion on the laws relating to the working of media is essentially linked with the development of mass communication in a country. As is true of any other sector of national development, the development of mass communication also is inevitably influenced by, among other factors, the geography and history of a nation. It is therefore necessary to have some knowledge about the country's geographical situation, historical background etc. Then only the media development could be understood in proper perspective. May I therefore, briefly deal with Nepal's geopolitical situation and its historical background.

Situated on the lap of the Himalayas, Nepal is a mountainous Kingdom with an area of some 147,000 square kilometres and a population of over 16 million. Described as a yam between two boulders it is sandwiched between the world's two most populous nations, India and China. Nepal is a landlocked and least developed country with a per capita income of less than U.S.$ 200.

Nepal is an ancient country. More than 2500 years ago Buddha was born in South-West Nepal. It was however a conglomerate of petty states riven with feuds, mutual animosities and suspicions till the sixties of the 18th century. These small principalities were unified into one by the forefather of the present King in 1768.

Following the unification of Nepal, after less than 100 years, a family known as the Ranas usurped power from the King and made him virtually a prisoner within the precincts of his palace. The autocratic family rule of the Ranas kept Nepal completely isolated from the rest of the world. Foreigners were not allowed to enter the country. Foreign travel was severely restricted. Mass media was almost non-existent - with only one newspaper, one cinema hall, a few radio receiving sets owned by the ruling elite but no broadcasting house. This state of affairs lasted for over a hundred years until 1951 when the Ranas were overthrown in a revolution and democratic institutions introduced in the country. Nevertheless, while many countries of Asia were under colonial rule during those years, never ever did Nepal lose its independence and suffered colonial subjugation.

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Things started changing for the better following the political change of 1951 in every respect, including, of course, mass communication. Thus the mass media suffered an unusually long spell of birth pangs.

Laws and regulations relating to the working of mass media in Nepal may be categorised into three broad headings:

a) General
b) Directed related to one or the other medium of mass communication
c) Indirectly affecting the working of mass media.

In addition, there may at times come executive decisions or orders on adhoc basis that also regulate the role of media.

a) Under the General heading the prevailing legal provisions are:-
   i) The Constitution of Nepal, and
   ii) Civil Liberties Act

i) The Constitution of Nepal:
   Since all laws of the land emanate from the basis principles and foundations enshrined in the constitution, the laws relating to mass media also have their basis in the provisions of the constitution. The provision that concerns us is the one related to fundamental rights, in a particular the Right to Freedom, and more precisely freedom of speech and expression. Guaranteed in Part 3 of the Constitution of Nepal promulgated in 1962, these rights cannot be restrained except by making laws for 'public good' which means among other things 'preservation of the security of Nepal', 'maintenance of law and order', 'maintenance of friendly relations with foreign states', 'protection of minors or women', and for the maintenance of good relations among the people of different classes or professions or between the people of different areas.

The fundamental rights granted by the Constitution are not just pious exhortations but are equipped with a guarantee, provided as they are with Constitutional remedy to seek protection from the Supreme Court against any illegal and unconstitutional infringement of these rights. The Supreme Court has been empowered to exercise its extraordinary power of issuing different kinds of writs against such infringement. Hence a basic foundation has been laid down by the Constitution upon which the legal edifice relating to the mass media has been built.

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ii) The Civil Liberties Act 1955:

Among the different rights granted under this Act, the right to freedom of speech and expression is relevant to the mass media and the same is given legal protection by way of empowering the courts to issue injunction against any infringement of the same. The provisions under the Constitution and the Civil Liberties Act obviously apply to all kinds of mass media.

b) We now deal with the second category of laws, that is, laws that are directly related to one or the medium of mass communication. While doing so, it may not be inappropriate to mention in brief the development of that particular form of media in the country.

1) Press and Publication:-

Nepal's first newspaper was brought out in 1901 in the form of a vernacular weekly. Known as Gorkhapatra and owned by the Government this was the only newspaper till 1951 — which indeed marks a watershed in Nepal's history. In mere 35 years, the number of newspapers has now swollen to 458, 58 of which are dailies all but two owned privately. The number of printing press has similarly grown to 1070.

As regards legal provision regulating the press, the first ever written document was published in 1935/36. It mainly concerned itself with the procedure to be followed before publishing a book and protected the copyright of the publisher. Thus starting with the enactment of Fundamental Rights Act and Individual Liberties Act in 1948, between then and now, a number of Acts and Regulations have been promulgated at different times which are designed to regulate the print media. The latest among them, and naturally prevalent at present are the Press and Publication Act 1982 and the Press and Publication Regulation 1983. They mainly deal with:

(a) Establishment of printing press; (b) Publication of books;
(c) Publication of newspapers and journals, (d) Limitations of publications; and (e) Provision of a Press Council.

Some of the important provisions of the above Act and Regulation are listed below:

a) Every citizen in the country has a right to establish and run a printing press, after acquiring a license from the concerned authority by paying a certain fee and undertaking not to indulge in any activity contrary to the prevalent law on press and publication.
The printing industry is also brought under the Industrial Enterprises Act whereby the press is considered as an industry entitled to enjoy the facilities, exemption, promotion and protection enjoyed by other industries. This may explain for the rapid spread of printing press in various parts of the country, including small towns, which as mentioned earlier numbers 1070 at print.

b) Publication of newspapers and newsmagazines have been sought to be regulated in line with the Constitutional and legal rights granted to the citizens of Nepal. A newspaper/magazine may be published only after obtaining a licence. The publication has to start within thirty-five days of obtaining the licence. Newspapers/magazines are required to observe certain basic standard as regards the minimum size, and circulation.

The publishers are required to maintain proper accounts of their income and expenditures, the audited report of which is to be sent to the Press Council.

c) The law also prescribes certain limitations for a publication. No publication is allowed to publish anything which directly or indirectly aims at inciting hatred, malice of disgrace against the King or the Royal Family, infringes the indivisibility and sovereignty of the nation, infringes the fundamental principles enshrined in the Constitution or which procotes or encourages party politics which have been prohibited by the Constitution. Nor are they allowed to seek or accept any financial or other types of assistance from foreign government or agencies or to publish their advertisements without the prior consent of His Majesty's Government. Any violation of the limitations may be punishable to the extent of temporary suspension of the publication or cancellation of its licence or seizure of the publication, depending on the gravity of the offence, in addition to the imposition of fine or imprisonment. Any award of punishment is, however, appealable to the concerned regional high court.

d) The Act also provides for constitution of a Press Council. The Press Council is constituted under the chairmanship of a sitting or retired judge of the Supreme Court. The members of the Press Council include, among others, president of Nepal Journalists association and legislators. Its functions is to help raise the standard of journalism by way of providing suggestions and recommendations to the government on different aspects of journalism, on the basis of which the government takes policy decisions.
e) The regulation also provides for accreditation of journalist representing a foreign media on the recommendation of the Press Council.

2) Broadcasting:-

Broadcasting in Nepal came along with the political change of 1951. The beginning was very modest with a 250 watt medium wave transmitter and a couple of hour's programme in the morning and evening over those year, this media has grown tremendously with as many as ten transmitters upto 100 kw both in short wave and Medium wave and nearly twenty broadcast hours a day in two channels.

The only legislation on broadcasting in an act called Radio Act of 1957. The purpose of, this act is to regulate the ownership, manufacture, sale and repair and maintenance of radio receiving sets. It does not cover any other aspect of broadcasting. Until recently, Radio Nepal was run as a Government Department under the Ministry of Communications. It is now governed and run by an autonomous Board constituted by the Government under the Development Board Act. The new arrangement is aimed at developing Radio Nepal into a self-reliant institution. The change was effected by an executive decision.

3) Television:-

Television is the latest medium that has come to Nepal. It is just over a week old. It is now run as Nepal Television Project, a purely a government undertaking, with two hours' daily programme in the evening. However, with the help of boosters, one can also view India's Doordarshan. There is no legislation regarding television in Nepal. Except for the budget speech of the Finance Minister which levies custom duties on import of TV sets and VCR's and fixes licence fee for owning them, there is no other regulation. All is done on adhoc basis with executive decisions.

4) News Agency :-

In 1961, the government decided that there will be only one national news agency in Nepal which can collect and disseminate news about Nepal within Nepal. Accordingly, an Act was promulgated which established a national news agency called Rastriya Samachar Samiti (RSS) as a government corporation. The RSS is thus a semi-government undertaking. Besides collecting news within Nepal it has also subscribed to AFP and AP for international news. It has also singal agreements on news exchange with PTI, TASS and Xinhua. It has a network of correspondent all over the

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country. It supplies news to Radio Nepal and newspapers. Its services are also available to private individuals and foreign missions.

However, foreign news agencies can operate in Nepal after obtaining accreditation for the appropriate authority. There are some seven or eight such foreign correspondents representing news agencies or newspapers.

5) Cinema :-

Although movie houses in Nepal did exist since the late forties, film-making is still at its infancy in Nepal. The first Act on cinema was made in 1969 with a view to regulate the production, distribution and exhibition of films. The Act provides that a feature film or any other kind of film cannot be produced without obtaining a licence. Licence has to be obtained also for constructing and opening a cinema house. The Act also sets out the criteria and requirements of the cinema house. The Act also provides for a Censor Board to censor all movies meant for public show. The Censor Board, among other things, examines if a covie contains anything that is objectionable or illegal.

The Royal Nepal Film Corporation, a semi-government undertaking, was established in 1972 with an objective of producing feature and documentary films and to extend technical expertise to private film producers. The Corporation has so far produced six feature films and well over a hundred documentary films. Of late, it has started encouraging the private sector to join hands with the Corporation for undertaking joint ventures.

The last three years have been particularly notable in view of the fact that one-third of the Nepali films made so far in the country were completed during the period. It is largely due to the incentive given by the government to return to the producers as much as fifty percent of the entertainment tax collected at the box-office from the screenings of their films. As a result, several films are currently under production.

c) The third category of laws that indirectly affect the working of media are State Affairs (crime and Punishment) Act, the Defamation Act, Espionage Act and the Copyright Act.

i) The State Affairs (Crime and Punishment) Act :-

It regards as state crime an activity of publishing or writing anything amounting directly or indirectly to sedition.

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ii) **Defamation Act** :-

Under the Act, no materials shall be published with the intention of directly or indirectly disreputing an individual without evidence. But there is no law of torts in Nepal.

iii) **Espionage Act** :-

According to this Act, one shall be lured or act with the intention of providing information to foreign countries or agencies regarding matters such as the country's military, internal security and the like. Nor is he/she allowed to pass on matters considered secret by the government to foreign countries with or without the intention of making personal gain out of the transaction.

iv) There is also a copyright Act of 1964 which affects the working of media.

6) **Advertisement** :-

Advertisement has of late come to occupy an important place in Nepalese media. As many as 256 Advertising Agencies have been registered in the country. All these have been registered under Company Act, or as a private firm because there is no specific piece of legislation to regulate the advertisement through mass media. Therefore, the same laws and regulation applicable to print or any other specific media in general also applies to advertisement. However, government notices and announcement are by law required to be published in the vernacula daily Gorkhapatra published by a semi-government corporation. But this does not preclude government offices to advertise in private newspapers, although it is rarely done.

Examples of Executive orders or decisions that have affected the working of mass media have already been mentioned in the case of Nepal Television Project and the change in the management of Radio Nepal from a government department to a Development Board. There is not much to add to it.

**Conclusion :-**

From the above discussion it may be concluded that,

a) Since the development of mass media itself is in early stage, the laws and regulations relating to them are naturally far from being fully developed.

b) The legal lacunae in many aspects of media needs to be bridged.

c) Existing legal provisions need to be reviewed in the context of changing times.

d) Legal provisions that are unpracticable from the implementation point of view need to be changed or scrapped.

e) A constant feedback from persons engaged in the profession could be helpful for a healthy growth of media.

f) A clear cut communication policy is an essential pre-requisite for an effective legal management of media.