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PRINT MEDIA REGULATION

IN THE REGIME OF THE

NEW INFORMATION TECHNOLOGY

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BY MR JUSTICE P B SAWANT, CHAIRMAN, PRESS COUNCIL OF INDIA AND PRESIDENT, WORLD ASSOCIATION OF PRESS COUNCILS
Print Media Regulation

In the Regime of the New Information Technology

In a sense, any medium used to reach the spoken or written word to others is information technology. The messenger and the street platform are the earliest tools or devices which Man used to carry his message. The revolution in the information technology was ushered in by the invention of the paper, the ink and the printing press. With the printing press facilitating unlimited reproduction of the written word and its consequent reach to the wide audience, the then authoritarian regimes everywhere swung into action and subjected the printing presses to repressive restrictions including pre-censorship and post-censorship of the contents printed. This was in the 15th Century Europe. Although the distance between the books - "the permanent newspapers" so called - which were so subjected to the restrictions and the newspapers was not long, it took almost two centuries for the ancestors of the modern newspapers - the leaflets to see the light of the day. Their frequent appearance and cheap availability, and their interesting, salacious, appealing, entertaining and informative contents made them soon popular, and at the same time invited harsher reprisals and penalties including their confiscation and confiscation of the presses where they were printed. The print-media was thus born with restrictions and regulations. The later-day advances in communication with the telegraph, the cable, the camera, the telephone and the teleprinter coming on the scene and the progress in transport facilities gave boost to the print media attracting more taboos in non-libertarian States. In the meanwhile, the world society had
not remained static. In some parts of the world, the earlier authoritarian States had given way to free democracies as well as totalitarian States. But the developments in science and technology were at the same time taking place at geometrical progression. The off-set-printing and computerised type setting brought about far reaching changes in the printing industry. The invention of radio and television with all its incarnations from terrestrial to satellite broadcasting and from DBS to DTH and the Internet added unprecedented dimensions to information technology, changing the whole concept of news media. News and views which hitherto could only be read can now be heard and seen at any hour of the day and from anywhere in the world. This revolution in the communication technology has created its own problems for both the print and the electronic media as well as for the people and the governments everywhere.

**Dominance of Western media systems**

Although the prime stake of the news media is in local, regional and national news, the hot-spots of news in the world have always attracted the news media everywhere. With globalisation of economies, liberalisation, free market and competition, the need to cover political and economic news from abroad has assumed a special importance. However, global news has come to mean news in the dominant political, economic and military systems and particularly that which is relayed by the equally dominant media systems. In the developing countries in particular, the national mainstream communication environment remains dominated by foreign produced media-content. This dominance is en-
sured by the fact that most of the world’s information technology products are generated and installed in the industrially advanced countries of the North. The desire of the developing countries to purchase the latest technology in order to ensure that they are not left out of or behind the technological revolution induces technology driven development in these countries rather than their adapting technology to their specific needs. This increases their dependence on the developed countries for information technology and compels them to adopt their models of development in most of the fields. There is thus an insidious intrusion of the political, economic, educational and even cultural agenda of the North in the under-developed countries. That this is encouraged by one-way flow of information from the North needs no emphasis. As if this was not enough, the tendency of the media in the other countries to imitate the West has been further undermining not only the traditional values of journalism but also the social and cultural values in these societies.

Globalisation of free market economy, competition and liberalisation, domination of the Western media-system and particularly of the American media, imitation of the dominant media and its culture, coupled with the electronic colonialism have been responsible for the emergence of cultural imperialism threatening cultural sovereignty of the less developed nations. Globalisation has come to mean imposition of the dominant culture. Free market of ideas is a euphemism for unilateral flow of information from the West, and competition of thoughts is nothing but unchallenged play of thoughts coming from the industrially advanced countries. The dominant media systems are increasingly
setting the social, political, economic and cultural agenda for other nations as well. A neo-colonialism through mental and intellectual slavery has been making its presence felt in most parts of the under-developed world.

**Interaction Between Print and Electronic Media**

The interface between print media and electronic media is too obvious. In particular, the print media borrows news heavily from the electronic media. The sins of the electronic media are therefore reflected in the print media. With the easy availability of all kind of material on the Internet, from seditious and provocative to obscene and pornographic, the print media has to be selective in reproducing the material. But political and economic motives determine the choice. The laws of copy rights and intellectual property rights are undermined, and plagiarism has become a routine affair. These laws can now be circumvented by giving relevant references, and by reproducing almost all contents as extract of the original. With the print media going Internet, even the barriers on the import of the newspapers wherever they exist have become meaningless, and vilifying, disruptive, obscene and pornographic print material has now an uninterrupted access anywhere.

**Contentions In Support of Transnational Dissemination of Information**

The right claimed by some nations to disseminate any information anywhere including across the borders as a part of the right to free speech and expression, implicitly asserts the right to foist on others even information unwanted by them.
According to this claim, no individual, no institution and no nation can claim the right to be left alone, but must suffer bombardment of information from any source, whether they need it or not and whether it is beneficial or detrimental to them. They have no right to decide what is good or bad for them. It is the operators of the media in the disseminating countries which will decide what is helpful and harmful to the recipient countries.

This assertion even ignores that there are reasonable restrictions placed in every country including the disseminating countries, on the right of its citizens to freedom of speech and expression in the interests of the sovereignty, integrity and security of the State, its friendly relations with other States, public order, decency and morality, and to prevent defamation and incitement to offence. The U.N. Declaration of Human Rights 1948, the European Convention on Human Rights 1950, International Covenant on Civil and Political Rights, 1966 and the American Convention on Human Rights 1969 also recognise such restrictions as necessary. The assertion also undermines the right of every nation to safeguard its sovereignty and integrity, to plan and conduct its affairs according to its choice, and to protect its culture, values, traditions and beliefs. No country has a right to interfere with the internal affairs of the other countries, or to impose its views, ideologies and values on them. This is also guaranteed by the aforesaid International Declarations and Conventions. The rights of private individuals further cannot override the rights of community much less the rights of the other communities. The two rights have to be demarcated in the larger interests of unity, fraternity, peace and cooperation.
between the different peoples of the world.

It is now acknowledged on all hands that the right to the freedom of the media is not the right of the media operators. Every medium of mass communication aims at its recipients and without them the medium ceases to be medium. Hence, the right of the media is essentially, the right of the audience, whether the audience is local, national or international. If any section of the audience resents the medium, it cannot be imposed on it, without violating its equally important and valuable right to be left alone. To trample upon that right is to subject the recipients to mental and moral harassment by invading their right to live undisturbed and in peace.

This does not mean that new ideas, new thoughts, philosophies and ideologies or truth and discoveries should not be disseminated across borders. It only means that while the disseminator has the fundamental right to do so, he cannot impose them on an unwilling people. The willing recipients may interact with and benefit from them. The notions of progress, modernity and civilization vary from people to people. Hence even these notions cannot be foisted on others. One may be happy with what he is. Nobody has a right to impose his ideas of happiness on others. These elementary principles are forgotten while asserting the supremacy of the right of the freedom of the media over other equally vital rights of the nations and their peoples. All impositions are bad, however well-intentioned they may be.

Other Contentions In Support

The freedom of speech contention is augmented by other
arguments to make out a case for uninhibited entry of the media across the border. It is said that the new information technology will facilitate the development of a global village all to the benefit of humanity as a whole. This contention presumes two things: firstly that the problems and challenges before all countries are the same and that all countries are at the same level of social, economic and technological development. Both presumptions are unwarranted by reality. The world will not become one community unless it is drawn together by every day common concerns and fellowship among peoples. When one part of the world looks upon the other only as consumers of their products and services, and is otherwise not prepared to recognize its presence, and when communication according to it, means only unilateral communication from it to the others, the global village remains as distant a dream as it was in the past notwithstanding advanced information technology. Mere personal communications and contacts or exposure to other cultures through websites cannot develop camaraderie among the peoples of the world. On the other hand, it may prove counter-productive and induce fears of cultural and even economic and political enslavement, which is what is happening with demands for regulation of the media entering from across the border.

Allied to the above argument, is the contention that the media's spread across the border facilitated by the new information technology will serve international understanding, fraternity, unity, peace and co-operation. It is forgotten that unity and co-operation cannot exist between unequals. With technological products and services mostly generating in the advanced
nations which are not even prepared to part with them or their know-how, and with their media systems dominating and dictating others and setting the economic and political agenda for others to suit their own interests, the world has been increasingly experiencing more and more local and regional strife, and exploitation of the non-industrialized world in various ways. With control over media technology, and with superior economic and military power, some countries are even trying to bypass the UN with impunity. They are also trying to manipulate international financial, trade, aid and security agencies to suit their interests. The advances in information technology, far from being used to achieve peace, unity and understanding, are today unashamedly being used to carry on false media propaganda to unleash wars. The world has experienced this at least on two different occasions during this decade itself. The advanced technology seems to facilitate disinformation and misinformation campaigns, and contrary to the claims made, it has become possible to take the whole world for a ride with its help. Considering the damage that the advances in information technology are capable of inflicting on mankind, there is more and not less need for regulating its free play.

Will new technology help usher in free liberal democratic polities, free media and civil liberties? Will it ensure free flow of information from all and diverse sources? Will it empower developing nations to develop better and quicker by providing the masses the necessary information inputs? The answer to all these questions depends upon the purpose for which
the new technology is used. Information is power, and in the present information age, those who have it, not only can use it for their own advancement but also for subjugating and exploiting others. It is the Western countries which have always been the first beneficiaries of all shifts in power, since for various reasons, they have been in the forefront in the transition from one economic stage to the other. At every stage, they have used others as means for their development and strived hard to maintain the imbalance. When national interests as narrowly conceived by the dominating sections in the advanced nations rule the roost, nothing else can be expected. It is therefore futile to expect that the new power generated by the advanced information technology will be used for promoting democratic systems, ensuring human rights, uplifting and empowering developing nations or to establish peace and unity. These ideals run counter to the vested interests of the industrial-financial-military complexes of the developed nations. Their interests instead lie in promoting instability, tension and conflicts, keeping markets for raw material and finished products intact, and in propping up and preserving puppet regimes which will dance to their tunes. Hence new technology, though it can be used for all-round progress of humanity as a whole, is unlikely to be used for the purpose. On the other hand, it may provide yet another powerful means to strengthen and perpetuate the power of the national and international haves. The division between the haves and the have nots may widen and deepen, creating more tensions and conflicts. Already, the new technologies are creating more unemployment. The advantage of cheap labour which the developing nations had over
the developed nations hitherto, has given way to less and less labour intensive production processes ushered in by the computer revolution.

It is not necessary to go into these larger questions save and except to point out that the regulation of the print media in the wake of the new information technology raises questions which encompass areas other than those covered by the right to free speech and expression. Free speech and expression for whom and for what? Is it for the advanced nations to promote their political and economic agenda? Is it for the dominant media systems to impose their values and value systems and to serve the interests of their proprietors, financiers, advertisers and promoters? Is it for the dominant culture to establish its cultural imperialism and to destroy other cultures?

While new information technology has opened larger doors for human emancipation and progress, it has also placed in the hands of those who can afford to own, possess and operate it, tremendous power of exploiting others.

Regulating Print Media Amidst New Technologies

How can print media be regulated to prevent it from using the new technology to the disadvantage of the common man—the majority of the have-nots in the society? Is there a need for more regulations or a different set of regulations of the print media, in the wake of the new technology?

The problem may be approached by identifying the additional means made available by the new technology to the print media for collecting information legally or illegally and dissem-
inating it. Tape recorders which can be carried on person unpre-
tentiously and undetectably, long-lense cameras capable of cap-
turing far distanced images secretly, Internet, E-mail and fax -
services which provide any information within minutes of its
availability, and radio and television with varied national and
international channels and services are the off-springs of the
new technology, which have both widened the areas from which
information can be collected and increased the speed with which
it can be received. It has also facilitated clandestine collection
of news and indiscriminate forays into the private lives of
individuals for sensational publicity and blackmailing, for
manipulation of photographs to victimise and exploit individuals
as well as to spread disinformation about events and to carry on
false propaganda against targeted nations.

Distortion, manipulation, suppression and misinformation are not new. The technological advances are only adding to
and increasingly perfecting and sophisticating the means to do
so. The subtle and undetectable devices and methods through which
it is done has been a source of worry even to the ardent support-
ers of the freedom of the media. Even so, very few advocate legal
restrictions on the media much less their enforcement by adminis-
trative agencies. It is feared, and rightly so, that the power
may be abused and the remedy may be worse than the disease. It is
validly argued that a mere increase in the capacity for mischief
does not justify measures which may go beyond the need to curb
the abuse of the freedom by some. The freedom of the media which
is primarily the right of the people to be informed adequately
and accurately can be interfered with only for reconciling it
with the other equally weighty rights and freedoms, and the availability of the additional means to render that service to the people, does not justify imposition of restrictions which may negate the freedom itself.

However, every one agrees that the threats posed by the new technology to the rights of the individuals and social groups may be ignored only at the cost of perverting the freedom itself and hence some restrictions have to be devised to take care of them. These restrictions have to be in the form of self-restraints and ethical guidelines based on consensus of all the media players, to be enforced by the peers in the profession and without intervention by third parties. It is also contended that no law can enforce such restrictions and the subjective value-judgments of the authorities may pervert the operation of the law, if enacted. The self-regulatory mechanism, such as the media-council, can be equally efficacious to take care of the infractions of the code of journalistic ethics, which substantially remains the same, notwithstanding the advanced technology.

Very few will disagree with this proposition. When it comes to the freedom of the media, self-regulation is to be preferred to legal restrictions which in practice has come to mean restrictions in the interest of the government of the day. As a watch-dog of the society's interests, the media has an adversarial role to perform vis-a-vis the government. Hence, legal restrictions almost always tend to discourage the media from performing that role. The general laws of the land relating to defamation, privacy, obscenity and pornography, sedition and
incitement to offence, copyright, official secrets, imports, etc. are considered enough to take care of the print media delinquencies internally, in each nation. The grey areas as well as the uncovered areas are best left to the ethical guidelines to be evolved by the internal self-regulatory mechanisms like the Media Councils or the media establishment itself. Their violations can be monitored by the Councils or the internal Ombudsman expeditiously and with the least cost and trouble to the parties. The effectiveness of the self regulatory mechanism however depends upon several factors such as the alertness of the readers and the monitoring body, the quickness of the disposal of the complaints, the faithful compliance of the directions given by the monitoring body and the acceptance of the decision for future guidance.

The new information technology has at least till this day given no cause for a change in this legal situation obtaining internally in free societies. However, it is creating transnational problems. The import of objectionable print material can be banned and the material can also be confiscated by the recipient country under its import law. But the Web-sites and Internet today make these laws obsolete. Not only sex, violence and pornography but anti-national, disruptive and seditious propaganda can make its entry freely through the computer screen. As yet no effective technology has been developed to prevent its intrusion nor is national law capable of dealing with this situation. It is also as yet a grey area in the international law. Civil actions in private cases of defamation lie in the countries of defendants and are governed by the laws of those countries. Although crimi-
nal actions may lie in the countries where offences are committed, to be tried by the laws of those countries, the offences of the kind referred to above cannot be proceeded against, in the absence of provision for extraditing those accused of the said offences. The Extradition Treaties are generally silent on the subject. The International Conventions on the subjects are only pious declarations of good intentions and cannot be enforced. Although therefore by going Internet, the concerned print media exposes itself willingly to the jurisdiction of all the States, there is practically no legal remedy available to discipline it.

**Trans-national Complaints Machinery**

The alternative is to establish a trans-national complaints machinery, an international media council to deal with such complaints. The alternative implies for its effective functioning an evolution of an agreed international code of ethics and willingness of the international media to submit to the jurisdiction of the machinery. The World Association of the Press Councils and Similar Bodies has taken a lead in this matter and has been pursuing this proposal with vigour for the last about three years. To begin with, through this mechanism, at present the international conventions relating to the free and fair press can be enforced and a code of ethics can be gradually evolved on case to case basis. There are also some minimum common journalistic ethics accepted by the media every where which can serve as an initial basis for action by the machinery. They cover subjects like:

(1) honesty and fairness; duty to seek the views of the subject of any critical reportage in advance of publication;
duty to correct factual errors; duty not to falsify pictures
or to use them in a misleading fashion;
(2) duty to provide an opportunity to reply to critical
opinions as well as to critical factual reportage;
(3) appearance as well as reality of objectivity; some codes
prohibit members of the press from receiving gifts;
(4) respect for privacy;
(5) duty to distinguish between facts and opinion;
(6) duty not to discriminate or to inflame hatred on such
grounds as race, nationality, religion, or gender. Some
codes call on the press to refrain from mentioning the race,
religion or nationality of the subjects of news stories
unless relevant to the story; some call for coverage which
promotes tolerance;
(7) duty not to use dishonest means to obtain information;
(8) duty not to endanger people;
(9) general standards of decency and taste;
(10) duty not to divulge confidential sources;
(11) duty not to prejudge the guilt of an accused and to
publish the dismissal of charges against or acquittal of
anyone about whom the paper previously had reported that
charges had been filed or that a trial had commenced.
The details of the procedure to be adopted by the trans-national
machinery for entertaining and adjudicating complaints and for
recommending and enforcing its actions may be worked out in
consultation with the subscribing countries.

If such an alternative is evolved, the problems created
by the New Information Technology at the international level and across the borders, may be solved at least to some extent. At present, this appears to be the only feasible way out. The relevant agencies of the U.N. can also be involved in it to make it a success.

(Paper submitted at the Workshop on "Media Regulations for the New Times" organised from April 15-17, 1998 at Bangkok, by Asian Media Information and Communication Centre, Singapore)