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Natural Law, Constitutionalism and Media Laws: What's Amiss in Media Regulations?

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ABSTRACT

The adverse effects of media today mandate the mulling of appropriate reforms for effective regulation of media. The research in hand attempts to study the adverse impacts of biased reporting and subsequently suggests suitable reforms for improving media legislation. The methodology is descriptive, comparative, and critical. Findings propose minimum content of media laws for all jurisdictions based on naturalism and constitutionalism. Naturalism and constitutionalism are the ends of the law and provide protection of life, liberty, property, dignity, etc. Naturalism means natural law i.e. ultimate values to which all laws must conform. Constitutionalism in this research connotes the ultimate law in a country based on natural law e.g. U.S. Constitution which is based on natural law. Results have significance across the world for improving the standards of media reporting. Studies of this kind proposing media reforms have been attempted before without any meaningful results proposed. U.S., India, and the Islamic Republic of Pakistan have been chosen for case studies of media laws due to the rise of increasing intolerance in these countries.

Keywords: media laws, reforms, adverse influences of media.

Introduction

The adverse influences of media require appropriate reforms to media laws balancing inter-alia the effect of free speech, and independence of media with unbiased coverage. Media is largely under the influence of stakeholders who have their own vested interests. This requires restructuring by directing the focus of media to constitutionalism and natural law through relevant media councils or governing bodies so that free speech is not exploited. This research proposes appropriate reforms to media laws espousing the cause of mental development, maturity, growth, and peace in all jurisdictions. Such research from this point of view is novel since no other research has considered media to be instructive for mental development and growth. Further, previous readings have not considered the role of media diverse from ordinary

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speech being a huge responsibility towards society in its forward movement towards the ends of laws. The addiction to sensationalism and dopamine rushes produced by media today are reducing humans to vegetative states and the reforms mulled in the instant research proposes to counter the current trends. Comparative laws of mostly India, Pakistan, and the U.S. have been relied on for the purpose of the study.

Literature Review

The Communications Act, of 1934 regulates media laws in the U.S.; however, sufficient safeguards are not provided in the said Act to counter prejudicial and biased coverage (Communications Act). Likewise the Press Council of India Act, 1978, and the Indian Penal Code, 1860 fail to provide effective checks against adverse consequences of media prejudicial and biased coverage (Press Council of India Act) (Indian Penal Code). Similar results are observable in the Islamic Republic of Pakistan where healthy trends in media are less observable due to a non-proactive Media Council resulting in a divisive society (Press Council Ordinance) (Pakistan Electronic Media Regulatory Authority Ordinance). The key instruments of law regulating information content in Pakistan are, the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002, Defamation Ordinance, 2002, Official Secrets Act, 1923, Prevention of Electronic Crimes Act, 2016, PEMRA deals with the code of conduct relating to electronic media outlet while Press Council Ordinance deals exclusively to code of conduct for the press. The First Amendment to the U.S constitution and Federal Constitution Commission regulate the media laws in the U.S. The Federal Constitution Commission sets rules of media content in the U.S. India in relation to media content is primarily regulated by, Press Council Act, 1978, Cable Television Networks (Regulation) Act, 1995, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Cinematograph Act, 1952. Various studies have been conducted to prove that media is generally biased and disseminated to procure prejudicial results (Sutter, 2001) (Tucker, 2018). It is also evident through various research that biased dissemination of knowledge through media has harmful effects on society and the human mind (*The psychological effects of TV news*).

Research Methodology

The methodology is conceptual, comparative, and critical legal analysis. The research is conceptual in observing the phenomenon of media and media laws and then proposing reforms. Media Laws of India, Pakistan, and the U.S. are comparatively seen as a test study for proposing reforms to the legal framework of media. Conceptual legal research is undertaken of laws in U.S., India, and Pakistan to propose meaningful reforms considering natural law and constitutionalism as a benchmark. India and Pakistan have been particularly chosen as test study due to the intolerant behavior pattern in these societies which may be attributed to media. The U.S. has been chosen as a case study because the legal regime there is generally considered superior to other countries because it is the leading nation. The role of media is critically examined in these countries to weigh the efficacy of media laws vis a vis mental growth, peace, and development. The reforms are proposed for the betterment of the media laws with an

analysis of media laws of India, Pakistan, and the U.S. while critically examining the biases of media and its impact on humans socially and individually. The research is primarily a legal analysis involving the study of the consequences of legal principles while proposing reforms.

Objective:

It is indicated in this research that media today is predominantly biased resulting in negative influences and therefore requires mulling of appropriate reforms. Hence appropriate reforms were proposed considering natural law and constitutionalism considering the overall well-being of society.

History Of Media Regulations

The concept of free media has been inextricably linked to free speech since the inception of laws on mass communications. U.S.A Constitution forms the inspiration for all modern constitutions being the initial most comprehensive document about the constitution covering all aspects of governance. The first amendment to the U.S. Constitution is the foundation on which the bulwark of myriad media laws is built. The first amendment to the U.S.A constitution states,

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances' (*First Amendment*).

This amendment culminated after a lot of struggles for free press regulations. The printing press since its inception in England around 1450 remained in the control of the monarchy regarding anything against monarchy or religion as sacrilegious (Trager et al.,2016). English poet John Milton in the 1600s argued for opening the truth so that truth and falsehood may grapple resulting in the truth prevailing (Trager et al.,2016). John Locke and Rousseau similarly favored the lifting of complete censorship of freedom of speech against the government (Trager et al.,2016). John Stuart Mill grounded his theory on free speech on the premise that free speech helps to evolve the truth and promotes good governance, democracy, and autonomy (Datta,2021). Till 1694, the printing press was controlled by both prior and subsequent restraints but this ended by 1694 due to failing of the British parliament to renew the Licensing Act (Trager et al.,2016). Media laws control history also saw a changing of hands from monarch to parliament with the shift in changing of power source from King to parliament in England. The breakthrough in shifting the balance from government control to press freedoms around the world was the 1st Amendment to the U.S Constitution inter-alia initiating the movement of the evolution of competing rights among diverse concerned groups affected by media and media laws.

Principles In Media Regulations

Now we look at some of the basic postulates of media regulations in a few countries. This will provide the foundation for proposing reforms to media regulations considering recent practices.

U.S.A

As mentioned earlier, the basis for media regulation in the U.S.A and around the world

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generally is the first amendment to the U.S. Constitution proclaiming freedom of the press as an inherent right. The Communications Act of 1934 in the U.S. regulated all media except the print one and some valuable provisions were added to it in the interest of fairness e.g., the parity of time awarded to presidential running candidates on T.V. channels for presenting their views (*Course hero*). However, this parity of time was not extended to news items covering a presidential election which is out of place. The fairness doctrine in the U.S. for covering controversial reports in a balanced manner was given up in the 1980s being thought to put limits on freedom of speech resulting in misuse of freedom of speech through biased reporting (Creech, 2014). The media law in the U.S.A. is constricted by defamation, slander, libel, and national interest as is generally the case with media regulations around the world (Pember,2001). Despite the laws in the U.S. leaning towards unbiased reporting, U.S. media is seen under the clout of biases and sensationalism (Carmichael,2017).

India

Sub-Continent India inherited the British masters' legislations from the colonial era about the press which was entirely directed at controlling speech against colonial masters.[i] The foundation for free press and media laws was provided by the promulgation of the Indian Constitution and the fundamental right of free speech as is mentioned in Article 19 of the Indian Constitution, 1950 (Constitution of India). Subsequently, the Press Council of India Act, of 1978 provided the outline for press laws mandating the press council to set up guidelines for the working of media houses. The Press Council Act of India provides only admonishment as punishment in case of journalistic breach of ethics (Press Council of India Act). However, the ethical conduct set out under the Act is an elaborate document covering all matters of journalistic ethics (*Home: Press Council of India*). It delineates fair, unbiased, accurate, sober, and decently depicted news in the public interest as the supreme object of journalism (*Home: Press Council of India*). A non-discriminatory policy in respect of accepting advertisements is outlined but no culpability for false advertisement due to the jurisdiction vested with food authorities in this regard. Safety measures for journalists are also outlined but no special mechanism for prosecuting encroachment on journalistic freedoms is outlined in the regulations about media (Press Council of India Act). The composition of press council for monitoring the press, in general, is constituted of the diverse intelligentsia from nearly all professions in India (Press Council of India Act). In case of inquiry into malpractices or breach of journalistic ethics, the decision of the council is pronounced in terms of most of its members after duly hearing the concerned involved through notice, etc. (Press Council (Procedure for Inquiry) Regulations, 1979). Despite, journalistic ethics proclaiming in India unbiased reporting as the supreme agenda, Pakistan bashing is normal Indian media discourse (*Enough with the Pak Obsession. True patriotism isn't about bashing others*, 2019). The Information Technology Act, of 2000 in India regulates social media norms inter-alia prohibiting all content against public policy besides prescribing punishments of imprisonment for handlers of such web content. Courts' proceedings in India

can only be reported in the public interest moreover, the Information Technology Act of 2000 in India prohibits electronic media circulation from affecting friendly relations between India and other countries and parliamentary privilege, etc. (Vyas,2018).

Section 66-A of this Act regulating the conduct of social media was declared against Constitution by the Indian Supreme Court on grounds of the section being open-ended and not specific in detail *(Shreya Singhal and Ors. Vs Union of India)*. However, the censorship of public policy concerns for electronic media is still being met under provisions of the Indian Penal Code providing punishments for obscene, blasphemous, and libelous content, etc. The code of ethics and broadcasting in India mandates dispassionate reporting as an objective. It states that channels shall not advance any particular opinion or belief. (*Code of Ethics & Broadcasting Standards - NBDA New Delhi*).

Pakistan

The Press Council Ordinance of 2002 regulates print media while the Pakistan Electronic Media Regulatory Authority of 2002 regulates the transmission of channels in Pakistan. The electronic media regulatory authority as aforesaid doesn't have a code of ethics for channels and is primarily regulated on Government directions in Pakistan. In the case of print media, the code of ethics formulated under the Press Council Ordinance mandates unbiased reporting among others provisions as the supreme objective for journalistic writing (*Press Council to implement 17-point ethical code of practice* 2002). However, media reports are both person-specific and routinely arbitrary in Pakistan (Dr. Usman Quddus Et al,2022). Moreover, there is no international coverage, particularly of issues like Palestine and Kashmir atrocities in Pakistan in electronic media (*Geo news-talk-shows*). The pattern of discussions on Pakistani electronic media is mostly dominated by political arbitrary talk. Prevention of Electric Crimes Act, 2016 regulates social media platforms in Pakistan, and an amendment to the said ordinance that penalized statements against certain institutions was declared unconstitutional by a superior court in Pakistan. The said electronic crimes Act in Pakistan prescribes heavy penalties in cases of outraging the modesty of any person and hate speech (Prevention of Electric Crimes Act, 2016), but just like the case of other laws imperative to life like the environment, etc. this one also is in law books without much effect in Pakistan.

Media Bias

Presently, media is dictated by economic considerations, being primarily a business-making concern. Media is also regulated to achieve political and other ends (Sutter,2001). One study on black people in the U.S. has demonstrated that there is inherent media bias against black people in media by creating stereotypes. The study explains that stereotypes have been created for black people in the media which has affected the population at large including the justice sector in rendering decisions (Tucker, *Modern hegemony implicit bias, media, and the criminal justice system* 2018). It reveals that the implicit media bias against black people in the U.S.A. has prejudiced white judges (Tucker,2018). This manifests that media now controls our preferences, biases, and prejudices affecting every segment of society and there is no positive duty on media owners to disassociate people from such unhealthy biases (Bartholomew,2018-2019). Further, another study reveals that court decisions are also

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given coverage in the U.S. to suit ends (Conklin & Nadelson,2018).

In terms of psychology, people are governed by their stimuli. These stimuli are shaped by external influences like environment and so on with media as an important element in shaping thought and prejudices (McCarty,1960). The bias shaped by media influences decisions making in daily routine, sometimes adversely affecting society (Ginsey Varghese Kramarczyk,2019). The stream of news media today is based on sensationalism mostly (*A qualitative analysis of sensationalism in media - WVU*). This sensationalism which is mostly negative in many countries e.g., Pakistan and India have its' many disastrous effects both medically and socially (*The psychological effects of TV news*).

Grounding Media Laws In Jurisprudence

Aristotle is one of the earliest known thinkers on natural law. He laid much emphasis on the pursuit of knowledge (Morrison,2016). His pursuit of knowledge was grounded in empiricism, objectivity, and practical knowledge (Morrison,2016). Aristotle postulated the relation of means and ends which has an important bearing on media laws in today's times. We must ask ourselves whether the media with its sensationalism and biased attitudes is good for us or not. Is it reducing us to a vegetative state, or some human mental evolution is being achieved? Thomas Aquinas also laid stress on the pursuit of scientific knowledge and objective truth like Aristotle. Locke is one of the most influential thinkers on natural law. His thesis on natural law is premised on the right of self-preservation (*The Basis of the Natural Law in Locke's Philosophy*). However, the schisms that have been created by media bias are huge resulting in the loss of many lives continually. These schisms will be further shown in the analysis paragraphs below. Rawls is the most notable jurist in the present era. His idea of truth as the primary virtue of thought says all about the need for intellectual honesty (Meritt,2022). Finnis' theory of natural law is preceded by the pursuit of knowledge as the highest ideal which has been regarded by him as the search for truth (Hon,2022). Thus, laying focus on unbiased knowledge or objectivity as the highest ideal in natural law.

Constitutionalism And Media Laws

The Constitution of India, 1950 in the opening words proclaims the establishment of social, economic, and political justice as the primary criteria. It also instructs for the establishment of democratic norms in India (Constitution of India). Free speech is an important ingredient of democratic norms but free speech in India is subject to concerns about friendly relations with neighboring countries and the integrity of India. The Official Secrets Act in India and Pakistan alike have punishments for breaches in cases of media infringement relating to friendly relations between states or the integrity of respective countries (Official Secrets Act). This poses the question that whether media is independent in India to foster justice and mental development.

The Constitution of the Islamic Republic of Pakistan, 1973 has similar trends in establishing an egalitarian society as the highest objective with restrictive freedom of speech (Constitution of Islamic Republic of Pakistan). The U.S. Constitution

also affirms justice and setting up of tranquility as the highest objective in its preamble (*Preamble*).

This brings us to the analysis now as to whether media is fostering egalitarianism, tranquility, mental development, or producing un-bridgeable schisms.

Analysis

A study in Pakistan by professionals of a prestigious medical institution shows that there is a direct link between negative mental health trends in Pakistan and violence being shown in media (Begum, Khowaja & Ali,2012). Pakistani media is dominated mostly by politically prejudiced news as per the specific inclination of media house owners. The society in Pakistan is now almost at a standstill due to political divisions with opposing political groups labeling others as corrupt and neglectful to duty. There are increasing instances of strikes with cities being jammed for work eventually leading to a standstill at the capital of Pakistan. Moreover, during such strikes, there is damage to life and property too *(Amid protests & violence in Pakistan, Imran Khan's rally reaches Islamabad 2022).* The heated political debate is given coverage most of the time in Pakistani media with an increasing instance of shouting, loud arguments, and counterarguments. The violence that is being shown in media has taken trends in Pakistani society too since the coming of media and now there is no breaking away from the cycle of violence. Media in today's times is labeled as the fourth pillar of the state. This is so because it provides a check on government excesses. However, the media is now a saleable commodity represented by interest groups including advertising agencies and there is no check over it. The division in Pakistani society is similarly evincible in U.S. and India as discussed in the study. There is now an extremely less level of tolerance observable in India, Pakistan, and the U.S. with the media giving vent to the hatred that has been embedded. The positive role of media in the interest of constitutionalism, fairness, and reasonableness is scarce to be seen now. Media is mostly now a blackmailing tactic and supporter of a prejudicial narrative in mentioned countries (Kaye & Johnson,2016). Free speech is imperative only to the extent it advances the public interest. Beyond the point of public interest, free speech may lead to consequences that have been seen in India, Pakistan, and the U.S. where people have been killed due to political divisions without proper retribution from any quarter (Al Jazeera, 2022). The influence of media in shaping thoughts is huge as seen above. The culmination of a mature responsible society requires an effective media ethic base with an implementation mechanism. Most of us are glued to the media nowadays and unless a transformation in media regulation is made, no effective health trends in societal thought are possible. The Swat area in Pakistan was taken by terrorists a few years back by the misutilization of the radio by a local cleric there. The cleric who was subsequently killed in Afghanistan garnered the support of the people by using radio transmission and inciting the public eventually take over governmental affairs in that region. This manifests that fair handling of media is extremely essential and requires an effective code of ethics that can be balanced vis a vis free speech.

Constitutionalism implies limiting government to constitutional jurisdiction *(Constitutionalism).* While naturalism means limiting the law to certain values like inherent rights in the Constitution (Quddus and Khong, 2023).

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Constitutionalism and naturalism both mandate protection of rights to life, liberty, property, and dignity etc. As aforesaid, these require proper protection, particularly with reference to media which affects individuals' lives daily. Without violating any of the enshrined fundamental rights, it is necessary that role of media be directed towards achieving the objectives of the law rather than violating the same. The objectives of law can be gleaned from any modern constitution delineating socio economic justice rights to education, protection of life, and its prerequisites etc. Besides power-sharing arrangement in the form of separation of governmental powers is provided accompanying accountability and independence of the judiciary (Constitution of India). Any role of media discountenancing such values of the constitution should be effectively accountable.

Results

Results postulate minimum content of media laws based on naturalism and constitutionalism. This will provide for mental growth and a more informed audience that is not drowned in a sea of falsity. Results have significance for improving the standards of media reporting in an environment of biased reporting as is being evidenced in today's era.

Conclusion

Media is being mis-utilized in today's era due to effective non-regulation. Media houses are now business concerns only interested in money making with ulterior interests. Media affects human lives enormously. The impact of media on human lives ranges from the social to the psychological realm. Society across the world is facing an enormous divide and the media has an important role to play in bridging the gulf. Given the same, a minimum code of media ethics must be developed, and its implementation ensured.

Recommendations

Against this backdrop, essential reforms are now recommended.

a. A minimum code of natural law ethics for media is imperative. Natural law and constitutionalism should form the source of media laws because these have been repeatedly held as inalienable rights as mentioned in the American Constitution and Universal Declaration of Human Rights.
b. This code of ethics should mandate that media should be impartial and free from bias. Finnis, one of the most notable of present century natural law jurists, callss for the pursuit of objective knowledge as the most fundamental value to humans beckons that Media should be free of any bias. Moreover, the harmful effects of prejudicial news as highlighted above warrant media laws that encourage healthy debate and do not present one-sided responses.

c. The media councils of respective countries should develop a code of conduct for news items and political discussions so that mandatory opportune time is awarded to conflicting views. This will protect the fundamental liberty of dignity which is protected as a natural right by all world constitutions.
d. While reporting individual stories, media houses ensure that effective response from all affected parties is obtained in writing on failing of which oral account may be reported of all affected parties. This should be done so as not to affect the dignity of individuals in any manner. Any failing in this regard should be amenable to the relevant press council which may inter-alia direct the media house to obtain a proper response from any involved party.
e. The media should be confined to operating only in the domain of constitutionalism by fostering and espousing only constitutional values and shunning others. Constitution is the ultimate aspiration of law in a country, therefore, media laws should be aspiring only to constitutional values.
f. The constitutional values as espoused should be based on natural rights and natural justice e.g., economic, social, and political justice. Natural law should be the driving force in media laws as it is the only dogma in the world having any moral sanctity.
g. Advancing public tranquility should be one of the main objectives of media by encouraging healthy debates devoid of emotionalism. The natural law value of objective knowledge is not conceivable unless it is approached through an impartial lens devoid of emotionalism.
h. Deliberate concealment of manifest truth and its' aftermath should be culpable by press councils. Such culpability is necessary as an advancement of truth is a universal shared value.
i. Media Councils regulating media should be free and independent of government control comprising persons of unimpeachable integrity. This will only ensure natural justice.
j. Media councils should be empowered with the power of slapping more fines for effectively monitoring the code of ethics about unbiased and dispassionate reporting. The toothless display as is being seen now by media councils to prevent unethical practices may alter as press councils would have meaningful powers.
k. All the actions of media councils should be judicially reviewable inter-alia gauging their efficacy about the code of ethics and independence of media. Constitutionalism beckons that cases relating to natural rights be taken cognizance by courts. Therefore, press councils may be mulled to bring within the domain of courts' constitutional jurisdiction.
l. Media council should have suo-motto powers for enforcing media ethics. The impunity with which media houses are operating demands such a step so that ethical standards are not derogated.
m. The media councils should work in increasing jurisdictions with an over-arching hierarchy. The natural right of due process is not attainable unless access to relevant forums is readily available. This warrants the establishment of press councils in local jurisdictions thereby readily

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granting press councils access to the content of local media houses and overseeing any breach of law.

n. Summary procedure with summary judgments for procuring effective judgments may be prescribed for media councils overseeing media houses. This will prevent the flouting of media standards and bring effective checks.
o. The reports of the media councils should be placed before the parliament for parliamentary oversight and discussion about the implementation of the code of ethics. Media, being the fourth pillar of the state and directly concerned with the natural rights of citizens should be accountable to parliament like the other organs of government in a parliamentary democracy. Such a report should also be available for public scrutiny.

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