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Media, Elections And Public Transparency And The Representation Of Peoples Act, 1951

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Abstract: *The media plays an essential role in democracies, and it is impossible to hold elections under a democratic system in the absence of the media. A free and fair election includes not only the right to vote and the knowledge of how to cast a vote, but also the knowledge about the participatory process where the votes are involved in public debate and have the appropriate and adequate information about the policies, parties, candidates, and the process of election itself in order to make informed choices. In other words, a free and fair election includes both the right to vote and the knowledge of how to cast a vote. Additionally, during democratic elections, the media plays the role of a watchdog, helping to maintain the process's openness. In point of fact, holding democratic elections in the absence of free media or under conditions that impede media freedom would be a contradiction in terms.*

Key Words: Media, election, watchdog, policies, essential role, democracies, knowledge, participatory process.

In 2005 "the yearly World Press Freedom Day international conference produced a declaration that stressed independent and pluralistic media are essential for ensuring transparency, accountability and participation as fundamental elements of good governance and human-rights based development. Furthermore, the declaration urges member states to "respect the function of the news media as an essential factor in good governance, vital to increasing both transparency and accountability in decision-making processes and to communicating the principles of good governance to society".¹

It is necessary for the media to uphold a high level of professionalism, impartiality, and accuracy in their reporting in order to successfully carry out the many responsibilities that have been assigned to them. The regulatory frameworks can be of assistance to the media in ensuring that high standards are maintained. In a democratic system, the fundamental freedoms, such as freedom of speech and expression, as well as freedom of participation, ought to be guaranteed by rules and regulations. Provisions, such as forcing the state-owned media, which are paid out of public money, to give fair coverage and equitable access to other parties, which can help the media to ensure suitable and proper behavior during the elections, have been put into place for the time being.

Historically, it has been accepted that the term "media" can apply to and includes both the written press as well as radio and broadcasters. But over the past few years, the definition has expanded to include new forms of media, such as online journalism and social media. Specifically, it now includes social media. Citizen journalism is gaining popularity all throughout the world, particularly in nations where mainstream media is either highly regulated or heavily restricted.

Role of Media in Elections- When it comes to the efficient operation of a democracy, the role that the media performs is absolutely crucial. On discussing various functions performed by media in relation to elections the main function is of the 'watchdog' role played by the media along with the functions of scrutiny and the discussion of the successes or the failure of candidates, Entities Responsible for Election Management, Governments, etc. The public can be informed via the media about how efficiently they have carried out their duty, and this can assist in holding those responsible for the function accountable. However, the media also perform a variety of additional functions that are essential to the public's ability to fully participate in electoral processes.

- * By providing voters with information on how to effectively exercise their democratic rights;
- * Through the reporting of the progression of election campaigns;
- * The political parties and the candidates are able to transmit their messages to the electorate thanks to the



platform that is provided by the media.

* In addition, the media gives voters and the general public a forum through which they can voice their thoughts, concerns, and needs to political parties, candidates, the Electoral Management Board, and governments, as well as participate in these discussions;

* By permitting the political parties and the candidates to debate the issues with one another;

* By publishing the results and the vote counting;

" By evaluating the process of election itself in order to determine whether or not the process of election is carried out fairly and effectively;

* By disseminating information that does not use language that could incite violence, with the goal of preventing election-related conflicts.

Though the media are not the sole source of information for the voters but in a world determined by the mass communication it is the media which determines the political agenda even in the countries which are less developed technologically.

(a) Media as Watchdog/Transparency- In society at large and today's politics, media plays a vital role in safeguarding the transparency in the democratic system. This is often called as the media's 'watchdog' role.²⁹ In democratic country transparency is required in task like access to information, accountability and legitimacy of individuals and for rightful participation and public debate.

Transparency which is required for the access to information means that a voter is provided with the essential, necessary and comprehensive information so as to make informed choices as well as able to hold institutions and officials accountable. This includes access to all sort of information about the officials and institutions. The persons who are appointed or elected to the Electoral Management Body are the public figures who should work in the interest of the public. The information regarding them must be freely available and easily accessible by the public. Media acts as a mechanism for the investigation and prevention of the allegations of malpractices or violation. For example, media presence at voting and counting centres is critical to preventing electoral fraud, given that full measures protecting freedom of speech are guaranteed, and that media are free to act independently and with impartiality.

The media does not work for the commission or the political parties, but the media can shine its own spotlight on the election process and expose corruption or other illegal activities. The commission and the parties know there will be public criticism of the commission and the parties if the abuse is not stopped.² So, media plays an important role during elections.

(b) Media as a Campaign Platform- Parties and candidates have a right to provide the voter about the information regarding political agendas, plans, policies, Parties attributes, etc. This providing of information is done by political parties and candidates through campaign via media as it is not possible for political parties and candidates to meet each and every person directly. This is good in other way as every electorate is provided with equal access to information for this endeavour. "An uneven playing field is less evident to outside observers than is electoral fraud or repression, but it can have a devastating impact on democratic competition."³

For campaigning, political parties and candidates use mass media in order to disseminate information through paid political advertising, televised debates, use of social media and other tools and mechanism. For this political parties expend vast human and financial resources on planning and executing the campaigns.

Levelling the campaign playing field is one of the main justifications for regulation of media during elections. Another key role of media in campaigning is balanced reporting, ensuring that candidates receive fair coverage.

Media is sometimes manipulated by the governing party especially if the media is state-owned to report in their favour. Manipulation can take place during the designing of the programmes, reports and news, discussion



programmes, and even non-news programmes, such as pure entertainment shows and movies. Propaganda may be disseminated under the guise of objective public information by the government. The danger of misuse of government power for campaigning purposes can be limited if laws and regulations are in place to regulate the role of the media in the elections campaign.

This is one reason why robust media monitoring is so important toward ensuring fair and free elections. Media professionalism and media literacy are also fundamental to this achievement.

(c) Media as a open forum for debate and deliberation- The campaigning of the political parties and the candidates are in the form of public debate, there are also the voices of the public which is to be given importance and to be heard within public forum. This is also enshrined in International Covenant on Civil and Political Rights that "all people have the right to express opposing ideas and opinions.⁴ Therefore this role of media as the platform for debate and discussion is very important. It provides a mechanism for citizens to be heard and hence influence campaign platforms and political agendas.

(d) Media as a Public Educator-

Media as a public educator plays an important role during elections. The various roles played by Media are:

- * The media can educate citizens of the country through various stories which adequately explains the situation of the country from every aspect i.e. political, economic and social so that citizens can take part in the development processes of the nation.
- * The media can easily explain the specific legal and administrative issues which can be seen to be fundamental and essential for the free and fair elections.
- * The media adequately encourage eligible persons to register as voters and how to cast their ballot during elections.
- * Media provides a platform for all candidates and to the party they belong to present their manifestos to the public.
- * The Media explain to the citizens the importance of their participation and involvement in all aspects of governance system such as voting.
- * The Journalists must focus on the issues by talking to ordinary people particular the people who lack a strong voice in the society.
- * The media must strive to put citizens' views to candidates and report their responses back to the citizens so that they know and understand their potential governors.
- * The media, in its agenda-setting role, can provide diverse view points and unbiased information, offer forum for debate involving citizens and the civil society, mediate in national development projects and contribute to sustainable flow of information.

During Elections Duties of Media- The mass media have the responsibility to conduct themselves in a manner that is commensurate with their role as an institution that contributes to the functioning of a democracy and whose status is subordinate to that of the legal system. As a result, it is burdened with the responsibility of carrying out its function in a specific manner. The scope of the study is restricted to that of reporting during elections; hence, the responsibilities that are addressed in the following paragraphs adhere to the same philosophy as that of this paper:-

Ethical Practice- For professional journalists, reporting on elections has the same weight of obligation as reporting on any other subject.⁵ They are expected to uphold the highest standards of professional ethics, which goes without saying. At the most fundamental level, they have a responsibility to avoid flagrant violations of journalistic ethics, such as the manipulation of facts, the excessive emphasis on particular aspects of a story, headlines that misrepresent the content of the story, and, of course, the outright fabrication of stories, quotes,



people, and events.

Candidates and Parties- The majority of political parties make the decision to center their focus on a certain leader or group of leaders because they operate on the assumption that voters who support the party's projected leader will also support the party's other candidates. Star campaigners is the term that's used to describe persons like this. Consequently, the majority of election campaigns consist of the party leaders giving speeches, rallying supporters, and holding press conferences.⁶ However, the role of the media does not just consist of restating everything that is said by political leaders. For instance, a news story that is based on a specific speech ought to include information about the location where the speech was made, the number of people who were present, the reactions of the people on the street, and what political opponents have to say about the main points that were made in the speech. Voters need to be aware of all of this information in order for them to be able to evaluate the speech and the speaker in a manner that is informed.

Candidates for political office certainly make an effort to communicate their own messages to voters through various forms of media. Therefore, it is necessary for journalists to not only obtain data but also maintain vigilance regarding any potential attempts to distort the facts. For instance, politicians will frequently employ phrases like "new," "dynamic," "fresh," "forward-looking," "visionary," "progressive," and "improved" in their campaigns since these words all connote some sort of positive connotation. Reporters shouldn't repeat these remarks without first independently verifying the assertion, unless they are clearly and properly attributed to the individual who originally said them. Politicians and the aides who work for them often make an effort to frame and interpret the news in a way that is favorable to the politician, their party, or their opinion on a particular event or subject. This is what people mean when they talk about spin. Again, there is a good chance that there will be an increase in spin during the elections. When faced with such circumstances, the very least that journalists can do to ensure vital accuracy, fairness, and balance in their reporting is to inquire about clarifications from the originator of the spin and obtain the counter-spin from the other main candidates. However, journalists should do their best to avoid spreading unfiltered spin whenever it's practicable to do so. It is indisputable that it is preferable for journalists to think for themselves, discover what voters think, and seek the opinions of experts in order to provide the public with a story that is as authentic, clear, and comprehensive as is feasible.

Public Transparency- Good governance is a pre-condition to achieving human development, which is the primary concern or mission, and the ultimate goal, for all programs and activities carried out by states. Transparency and accountability are the primary components of good governance, and good governance is a pre-condition to achieving human development. The principles of openness and accountability are inextricably linked and mutually supportive of one another. Accountability is impossible in the absence of transparency. There is no use in practicing transparency if there is not also accountability. In public and private institutions alike, the presence of these conditions helps to management that is effective, efficient, and equitable.

When referring to decision-making, "transparency" refers to the criteria, processes, and systems being made available to the general public in an open and accessible manner. The implementation of openness in the operations of the government and its many different agencies was made possible with the passing of the Right to Information Act in 2005. Every citizen now has a legislative right under this Act to access information from a public agency, which was not previously the case. It has been suggested that the structure of governance in India is so opaque that ordinary folks do not have much knowledge about how decisions are made and how public resources are employed. This argument was made during the enactment of the law. The RTI Act is, in fact, a mechanism for more transparency on the way in which the operations of public bodies are carried out. Self-disclosure of material that is already in the public domain is one of the most important aspects of this Act. It is taken as given that citizens are able to demand services and claim rights that are rightfully theirs from the proper authorities and officials if adequate



information is available to them.⁷

Elections are the primary means for citizens to hold their country's officials accountable for their actions in office, especially when they have behaved illegally, corruptly, or ineptly in carrying out the government's work. For elections and the people's will to be meaningful, basic rights must be protected and affirmed, as through the Bill of Rights in the United States⁸. James Madison,⁹ believed that the very basis for government's responsiveness was the assurance that citizens would have sufficient knowledge to direct it. If citizens are to govern their own affairs, either directly or through representative government, then they must be able to have access to the information needed in order to make informed choices about how best to determine their affairs. If citizens and their representatives are not well informed, they can neither act in their own self-interest, broadly speaking, nor can they have any serious choice in elections, much less offer themselves as candidates.

Electoral contestants and election observers have a critical role to play in ensuring the transparency of an election process. It is not possible for everyone to understand e-voting and counting systems. Thus, voters rely on others who have the capacity to understand these processes. It is therefore essential that stakeholders, including election observers and party or candidate agents, have access to the process. To carry out their role effectively, such monitors must be given sufficient access both in law and practice to make an informed assessment.

Since election observers and party or candidate agents may not have the expertise needed to understand certain aspects of electronic voting and counting technologies, organizations and parties may need to hire personnel specifically with an information and communications technology background. They may also decide they are unable to assess certain aspects of the process and, if so, should disclose in their reporting which parts of the process they have and have not been able to observe effectively and take this into account in their overall assessment of electoral integrity.

Media and the Representation of Peoples Act, 1951- The most important laws are the Representation of the People Act of 1950 and the Representation of the People Act of 1951. The former law regulates and governs the election system in India, and the latter law deals in detail with all aspects of the conduct of elections and post-election disputes. Both laws regulate and govern the electoral process in India.¹⁰ The following is a list of some of the clauses of the Representation of the Peoples Act, 1951 that relate to the role of the media in elections:

* Section 123(4) - "The publication by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election".¹¹

* Section 126-A - "Prohibition of public meetings during period of forty-eight hours ending with an hour fixed for conclusion of poll" -

(1) No person shall-

- (a) Convene, hold or attend, join or address any public meeting or procession in connection with an election; or
- ((b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or
- (c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or



affect the result of an election.¹²

* Section 127-A - "Restrictions on the printing of pamphlets, posters, etc.-(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof".¹³

3(b) "election pamphlet or poster" means "any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers".

These are only the few provisions under Representation of Peoples Act, 1951 which regulate the media during the election. These provisions govern or regulate only the traditional media and there are no provisions related to the social media. This Act was enacted in the year 1951 and now this Act became the very old law. Use of social media started since 2009, so it is a very new concept which plays the very important role during the election. It is quite clear that there are no provisions in the Representation of Peoples Act, 1951 which governs and regulate the role of the social media during the election. Therefore, there is necessity to amend the Representation of Peoples Act, 1951. Amendment is necessary to governs and regulate the role of social media during the election.

Arun Jaitley said that there is no need to ban the social media but there is need to regulate the role of social media. He said that there is need of regulations which will regulate the role and functions of the social media during the elections or otherwise. Finance Minister and Information and Broadcasting Minister Arun Jaitley when delivering the Sardar Patel lecture organized by the All India Radio in New Delhi said that "while the Right to Freedom of Expression has expanded in India through successive judicial verdicts and technological advances, its misuse continues to happen. Expanding on the same thought, the Union

Minister, however, said that the "age of bans" on the media is over, observing that it is "literally impossible" to implement them".¹⁴

Under the constitution of the India the freedom of speech and expression is the fundamental rights but these rights are not absolute and there are some reasonable restriction which were defined. India is the country where the peoples of multi-religious, multi-cultures and multi-languages reside. And situations can be become critical if someone use the social media against any of the religious for only their vote bank.

There is one other legislation that is Information Technology Act, 2000 which also governs or regulates the role and function of the social media. Section 66 A of the Information Technology Act, 2000 provides for:
Section - 66A15: "Punishment for sending offensive messages through communication service", etc.

Anyone who transmits the following items using a computer or other electronic means:

- (a) any information that is really offensive or has a nature that is potentially dangerous; or
- (b) any information that he is aware to be false, but is spreading persistently with the intent of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will by making use of such a computer resource or a communication device, he is guilty of a misdemeanor.
- (c) Any electronic mail or message sent with the intent to harass, inconvenience, or deceive the addressee or recipient about its origin is punishable by up to three years in prison and a fine.

This provision provides for the punishment to the person who sends the offensive message to the any other person through the use of social media. This section was strike down by the Supreme

Court on the ground that it is unconstitutional and it is violation of the Article 19(1)(a) of the Constitution of the India. The Supreme Court struck down the Section 66-A16 in the Landmark judgment in the case of Shreya Singhal v. Union of India¹⁷.

So researcher is of the opinion "that there is a need of the proper law which will regulate and govern the role



of the social media during the election. The researcher further agree that government cannot undermine the Right to freedom of speech and expression but there is need to strike a balance between the Right to freedom of speech and expression and reasonable restrictions on the use of social media in the interest of the nation".

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