

## Law Commission conducts consultation on media law

**LexOrbis** INTELLECTUAL  
PROPERTY  
ATTORNEYS

709/710 Tolstoy House, 15-17 Tolstoy Marg  
New Delhi - 110 001  
India  
Tel: +91 11 2371 6565  
Fax: +91 11 2371 6556  
Email: mail@lexorbis.com  
www.lexorbis.com

By Manisha Singh  
Nair and Pooja Dodd,  
LexOrbis



India is the world's largest democracy and has a rock-solid media industry which is often termed the fourth pillar of its constitution. The steady growth of its numerous robust electronic media companies, coupled with the boom of the internet, has revolutionized circulation of information and opinions. Taking due note of the legal challenges brought about by changing media dynamics, the Law Commission of India floated a consultation paper soliciting views of stakeholders. The initial deadline for submitting views was extended to 15 August.

Deliberations are being undertaken on various aspects of media such as social media and section 66A of the Information Technology Act, 2000, cross-media ownership, media and personal privacy, regulation of media, paid news, defamation, publications and contempt of court, opinion polls, regulation of government-owned media, trial by media and rights of the accused.

### Section 66A

Section 66A was enacted to prevent the circulation of information which is grossly offensive, menacing and false via the internet. The section provides for imprisonment extendable up to three years for a violation. The most perplexing aspect of this section is that the words "grossly offensive", "menacing" and "false" have not been defined under the act. This has led to bizarre interpretations of the section as a whole and it is often used as a tool to arbitrarily arrest innocent citizens expressing honest opinions on various social networking platforms.

Cases that highlight the manner in which the section is being misused include the arrest of two college students in Maharashtra and a businessman in Tamil Nadu for writing against certain influential individuals. It thus becomes important to define what constitutes

grossly offensive, menacing and false to restrict the scope of varied interpretation of these terms.

### Sting operations

Some of the vices the media are often accused of include the invasion of privacy, trial by media and paid news. The frenzy to bring out sensational stories and reach target audiences has led many channels to adopt the method of sting operations to break a news piece. Successful stings such as the one by the Tehelka news organization which exposed corruption in defence contracts created a high level of acceptability for such news pieces in society. The notoriety of these types of news stories was highlighted when the editors of Zee News were arrested in an extortion attempt on camera.

Section 5 of the Cable Television Networks (Regulation) Act, 1995, provides that a cable service can only transmit or retransmit programmes that are in conformity with the programme code prescribed under the Cable Television Rules. The code prohibits any programme which contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half-truths; criticizes, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country; casts aspersions on the president or the judiciary; or affects the integrity of India.

The modus operandi of sting operations is such that they induce the victim to undertake or perform an illegal act on camera. There are serious legal ambiguities as to whether the person conducting the sting should be tried as an abettor or an accomplice. The Press Council of India norms provide that the press should not tape-record conversations without a person's express consent or knowledge, except where it is necessary to protect a journalist in a

legal action or for an "other compelling reason". Whether a reason is compelling is for the journalist to decide. With journalists eager to put out stories that might constitute breaking news, an individual's right to privacy is often compromised as the bar for determining a compelling reason is often very low.

### Control of public opinion

Mergers and acquisitions guidelines might prove essential to prevent concentration of media ownership with a few powerful players. Advertising revenue is vital for media companies but it must be clearly demarcated from news content. Apart from paid news there are numerous instances where the media have played the role of judge, jury and prosecutor in high-profile cases, and such prejudicial reporting has resulted in denial of the right to a free trial.

An entity which has the power to control and influence public opinion must ensure that the information being disseminated is true. It's imperative to present a non-biased view on a particular issue without being opinionated. The Supreme Court of India has observed that the legal presumption of innocence of an accused should not be destroyed at the outset by a media trial, particularly when the investigation is pending.

There is a growing conflict between groups supporting unconditional freedom of speech without any restriction and the government, which favours regulation. While freedom of speech is vital to sustain a vibrant democracy, certain restrictions have to be imposed on this liberty, as is desirable as well as recognized by India's constitution.

*Manisha Singh Nair is the founding partner of LexOrbis and Pooja Dodd is a partner and heads the firm's trademarks team.*