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MEDIA POLICY AND LAW IN INDIA

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CONTENTS

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Editor's Note	i - ii
Media Law and Ethics in Communication Departments in Tamil Nadu and Pondicherry: Grappling with Pedagogy and Curriculum	1-16
<i>- M. Shuaib Mohamed Haneef -</i>	
Media Education in India; A Few Thoughts	17-23
<i>- Ashwita Ambast -</i>	
Good Gay, Bad Gay: Media Representation of the LGBT Community in India	24-40
<i>- Danish Sheikh -</i>	

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Editor's Note

The *LST Review* publishes in this Issue, three contributions reflecting on varying aspects of media policy and law in India, written by the authors on invitation by the *Review*. The Issue is meant to be read along with Volume 22 Issue 291 & 292 January & February 2012 as well as Issue 293 & 294 March & April 2012 which dealt with comparable aspects of media law and policy in Sri Lanka.

In the first contribution, Dr M. *Shuaib Mohamed Haneef* concisely examines the dilemmas faced by academics and university teachers in the teaching of media with particular attention being given to university institutions located in South India. From a comparative point of view and despite the impressive size and strength of the Indian education sector, it is interesting to note that media educators in India grapple with the same problems that confront their colleagues in the region.

Most importantly and in tandem with problems confronted by media teachers in Sri Lanka, it appears that a common factor is the fundamental disquiet increasingly felt by enlightened academics regarding the shift away from teaching ethics and law in university courses towards a frame of mind that focuses more on providing practical skills to students of media in order to equip them with an advantage in the cut throat world of practical journalism. Dr Haneef devotes specific attention to the dangers of such an approach as follows;

"I would partly presume that by design than by default, Media Laws have been shortchanged in the teaching curricula. This has become a victim of the flawed perspective of understanding that the market will rule by steamrolling laws or ethics. Therefore attempts to dispense with this course constitute a substantive policy decision taken by universities to strategically write off morality and ethics from the curriculum."

His warning in regard to this summary dispensing with a course that 'fine-tune, refine and shape a human being into a scrupulous, cultured, responsible and honest media professional', is very apt. This paper also contains a useful examination of the flaws in curricula design and connected reforms in Indian universities as well as outdated teaching methods. He calls upon media teachers to follow an interdisciplinary approach to teaching media law and illustrates this by describing practical examples that would, no doubt, be instructive both in India and elsewhere.

The second contribution by *Ashwita Ambast* reflects a similar point of view and outlines the successes as well as the challenges of teaching media policy and law in India. Typically media law is included in the curriculum of university institutions in two different ways. Firstly, media law forms an elective subject offered at most of the law schools in the country where media law is taught based on its relevance to the broader legal curriculum. Secondly, media law is taught as part of journalism/mass communication diplomas and degrees. The second approach to the study of media law focuses on the selective study of identified laws relevant to media and communication rather than a critical study of the media laws and ethics in broader context. Unfortunately, it appears that the subject content and scope of media law and ethics courses has not changed during the last four decades excepting, of course, the notable inclusion of teaching the social media and the internet. She concludes by urging Indian media educators to engage in greater association with educators of related disciplines and undertake a more comprehensive understanding of the opinions of practicing journalists as well as engage in more transparent discussions with the government.

This Issue's concluding paper by *Danish Sheikh* looks at media policy in the context of slanted Indian media reportage of Lesbian, Gay, Transgender and Bisexual (LGBT) rights and examines the public impact of the well-known judgment of the Delhi High Court (2009) on the decriminalising of homosexuality. The extent to which the media takes refuge in stereotypes, replacing responsible reporting with sensationally twisted stories is given particular attention. He makes the valid point that despite the Delhi judicial opinion which was of enormous strength to India's LGBT community, media negativity regarding LGBT rights continued.

These papers are published in this Issue given their current relevance and comparative value in respect of similar discussions in Sri Lanka on media policy and law reform as well as critical analysis of the role of the media in society.

Kishali Pinto-Jayawardena

MEDIA LAW AND ETHICS IN COMMUNICATION DEPARTMENTS IN TAMIL¹ NADU AND PONDICHERRY²: GRAPPLING WITH PEDAGOGY AND CURRICULUM

*M. Shuaib Mohamed Haneef**

1. Introduction

Media education faces ideological and pedagogical crises at macro and micro levels in universities and colleges in India. Incompatibilities between the curriculum and pedagogy on the one hand, and the thrust given to theory and practice on the other, have precipitated the crisis further. Further, the expanding universe of media education curriculum reflects a continual transformation which now includes journalism, advertising, research, radio, television and new media production and communication theories. In retrospect, it may be said that journalism education in India has been influenced by both British and American traditions. The two traditions have resulted in polemically contrasting orientations within media institutes. The British mode of teaching communication injects culture studies into the curriculum while the US approach has apparently demonstrated a heavy tilt towards media effects studies. Of late, the thrust on skill-based training appears to have originated from the western tradition. It is small wonder therefore that media departments in Indian universities reflect the dominance of western contents in the curriculum. Another reason one could assign to the primacy of medium and market in the Indian media education curriculum, at least in South India, is the number of PhDs and Post Doctorates engaged in by Indians in the US who have subsequently facilitated the inflow of US content to India. B.P. Sanjay, Vice-Chancellor of CUTN, (personal communication, 2010), concedes ‘While there is no dispute about the British foundation of early journalistic practices in Indian journalism during-and-post-colonialism, the vigor and the aggressiveness with which the US media houses put out enormous news in different commercial formats, has become market wise an ideal to emulate and import to India from the US.’

While this debate about western influence and de-westernising media studies is an incessant exercise, Media Laws and Ethics in media education and its pedagogy in the Indian educational system has attracted attention in the modern-day era of online journalism and ‘mediatised’ a globalised world. The truth is that the teaching of *Laws and Ethics* has been accorded lesser recognition and space that it used to enjoy in the early days of journalism education. Although academia is divided between skills and theory, media laws and ethics can be taught as a philosophical text comprising theory and still interweaving it with activity-based skill-oriented pedagogy. This paper seeks to introspect and engage in a dialogue with

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¹ Tamil Nadu is one of the largest states in India and lies in the southernmost part of the Indian peninsula

² Pondicherry is contiguous to Tamil Nadu and is one of the Union Territories of India. It is called ‘The French Riviera of the East.’ Pondicherry was earlier a French colony.

the pedagogy and curriculum of Media Laws and Ethics in media departments in Tamil Nadu and Pondicherry.

2. Media Laws and Ethics: Some Paradoxes

I would like to outline the paradox in which Media Laws and Ethics curriculum is trapped in. For one, it is trapped in the doctrinal enclosure which reflects our myopic understanding of the subject as irrelevant, outmoded and dysfunctional. This can be gauged from the pedagogic approaches of teachers in universities and colleges. Many of the teachers handling the course *Media Laws* have repulsion towards the subject owing to its unwieldy and complex contents. It is perceived that the course does not involve any practical know-how by the theory-agnostic teachers. The negation stems from a flawed understanding that the subject only requires a teacher to recite the various sections of IPC, CrPC, and other parts of the Constitution that are pertinent to media.

The fate of media courses is also split between two contesting interests of teachers – one school of thought favouring ‘theory’ and the other favouring ‘practical knowledge’. The best bet would be to fuse the two and introduce innovative approaches in teaching subjects such as media laws to make it interesting and at the same time help students to develop reflective skills. However, institutions are mostly filled with teachers who have a heavy orientation to practical knowledge building and they rationalise that theory cannot be actualised as it runs counter to the media market and its forces. I would say that the overkill of materialistic cultures that media soaks itself in, have diluted the legitimacy and salience of ethics. In the era of late modernity, ethics and morality have been bartered for marketing, money, luxury and slyness. It is difficult to maintain both stances of teaching marketing or the easy way to catapult to positions and the ethicality of life. All journalists are not objective reporters and media organisations are not ideologically principled apparatuses. Yet, a media faculty cannot submerge its social responsibility of helping students to imbibe ethics and values under the pretext of ‘all is not well’ with media. We will only end up in Leveson-like inquiries, committing crimes and doing a postmortem presumptuously.

3. Genesis of Media Law Syllabi in Media Departments – An Overview

The topography of communication departments in Tamil Nadu and Pondicherry reveals that the former has a high concentration of media schools. A total of eight state funded universities in Tamil Nadu (aided by Tamil Nadu province) and a National University in Pondicherry offer Journalism and Mass Communication, Electronic Media among various other nomenclatures as one of the courses mostly at the postgraduate level. In addition, there are Deemed Universities in Chennai and Coimbatore as well as several autonomous institutions offering Visual Communication, Mass Communication and other sub-domains in the field of Communication. This list does not include the aided colleges which are fewer in number compared to the number of private colleges in Tamil Nadu and Pondicherry.

The first Journalism department in Tamil Nadu was established by the University of Madras around 1978. Earlier the university had offered Diploma courses in Journalism long before India gained Independence. As a premier institute that pioneered journalism education in this part of the country, the episteme of media education primarily focused on print journalism. The syllabi of the University of Madras committed itself to print media *reporting* and *editing* offered as two separate courses. Laws relating to media were offered in the course titled *Constitution and Press Laws* in the first semester³ and the syllabus dealt with the birth of the Indian Constitution, the context in which it came into being, and other historical accounts of press freedom in India and other countries. However, today, the syllabus has been watered down in most of the institutions to address legal and ethical issues perfunctorily.

The second institution in Tamil Nadu to offer MA programme in Mass Communication was the PSG College of Arts and Science in Coimbatore. It offered a course on *Constitution and Press Laws* in which the Press Commission and PCI (Press Council of India) and issues pertaining to the Press were widely discussed. Along with the Constitution of India, the students then were also exposed to the world press – for instance Shimbun press of Japan, the UK and the US press histories, and the German press in a paper titled *Comparative Journalism* thereby looking into press systems in different countries. Besides, both institutions offered a paper titled *History of the Press*. The relevance of this paper today is questioned by some who engage in snide and disdainful remarks in regard to studying history. Other universities that emerged later did not completely dispense with Media Laws and Ethics although *Comparative Journalism* and *History of the Press* gradually became the casualties of curriculum advancement. Some institutions condensed and incorporated them into Media Laws and Ethics, but largely the course syllabi reduced Media Laws to one paper with limited foci on legal and ethical standards. This is appreciable as media education is growing expansive, necessitating the need for creating space for new domains such as Television, New Media, Animation to name a few.

Universities in Tamil Nadu that commenced offering media courses in 1990s changed the nomenclature of the course to *Constitution and Press Laws to Media Laws and Ethics*. Only a couple of institutions retain the phrase ‘Indian Constitution or Constitution and Polity’ in their nomenclature underscoring the emphasis on Constitution.

4. Media Law: Structure and Contents of the Syllabi

Examining the syllabi of Media Laws and Ethics from institutions in Tamil Nadu and Pondicherry yields interesting results. A closer look reveals a structural framework in which the unitised⁴ syllabi begin with an overview of the Indian Constitution, followed by Press Laws, freedom of expression and reasonable restrictions in the second unit, Regulations and Acts in the third unit, TV, Cable regulations, regulations governing advertisements and films in the fourth unit and ethical aspects in the last unit. This used to be the conventional course structure for a long time until the Internet emerged as a medium of

³ Postgraduate programmes offered are for two years with two semesters per year.

⁴ Each course is divided into five units

communication. Later, Cyber laws have come to occupy the fifth unit of the syllabus tucking away the ethics component into the fourth unit along with regulations of TV and other media.

Earlier syllabi gave importance to the historical account of the Press Laws dividing them into pre-mutiny and post-mutiny press as well as pre-Independence and post-independence press. It is unfortunate that the revised syllabi in most of the institutions do not include the history in such graphic detail. The teaching of the subject, therefore, has whittled down to reading out Acts but without understanding their genesis or evolution and the context in which they came into being. Part of the blame lies with communication teachers whose understanding of the country is comparatively poor pitted against their understanding of the entertainment industry. That is so because private institutions recruit students as teachers immediately after they pass out, and their disinterest in and towards the teaching of the subject of media laws manifests itself in their half-hearted teaching of the course.

Gradually, the elements of the Constitution have become wafer thin in the syllabus because, as one faculty member of a State University pointed out, the overloading of press laws does not offer space to include it in its entirety. Further, the highpoints of policies and regulations of TV and radio formulated earlier such as the Chandha Committee and the Verghese Committee have been completely ignored. Communication and Technology policies that are being charted today have unseen threads of connection to the earlier committees and their recommendations.

According to teachers, detailing Acts and providing a list of years are likely to deter students. While certain institutions retain the syllabus both at the undergraduate and postgraduate levels, most of them do not carry a specialised course in the under graduate programme. A faculty member who preferred to remain unidentified, states that Media Law is too 'heavy' a course to be taught to undergraduate students. He points to the teaching community attempting to dismiss the critical ability of undergraduate students to analyse and evaluate legal content as well as taking the responsibility to develop skills in these subjects. On the flip side, a deemed university in Chennai does not offer *Media Laws* at postgraduate level but teaches the same in undergraduate courses. The university in Coimbatore offers the course as a self-study paper and students are expected to go through case studies and submit a project.

It is of note that Human Rights do not form part of *Media Laws and Ethics* except in two institutions that offer separate courses on Human Rights as elective subjects. However, it is incumbent on teachers of media schools to train students on the nitty-gritty of reporting human rights violations given the high incidence of human rights violation reported in the country and elsewhere. The considered opinion of most of the teachers I interacted with for this paper is that offering more than one course relating to *Media Laws* would deprive teaching in other emerging domains in the field of media of their deserving space. Deferring to the reasoned argument, care should be exercised to include elements of human rights, women's rights and rights of the deprived as part of the course. The department at Madurai Kamaraj University offers Human Rights as an elective paper and this is open to students from other departments. . Similarly, a course on women and media is offered to all students.

A threadbare analysis of the syllabi reveals the contents of the syllabi in addressing issues from a majoritarian perspective. For instance, cyber laws that have been included in the syllabus elaborates on the IT Act and cyber crimes. In spite of the open access movement becoming popular and a necessity with students, the syllabi do not include contents on Digital Commons, or Cyber laws for the Disabled. Such a superficial reading of cyber laws is a reflection of the thawing of the critical thinking of faculty members and their failure to keep themselves up to date, quite apart from the measly research literature generated.

5. Sequencing of Contents in the Media Law Syllabi and Syllabus Design

Sequencing of courses needs to be carried out meticulously during the curriculum development so that it would help students acquire skills and critical faculty incrementally during the four-semester programme. The earlier syllabi framed in 1990s introduced Media Laws in the first semester with the justification that there was need for imbibing legal aspects of the press in the context of reporting for print media. However, intriguingly, most of the institutions have now dislocated the course from the first semester and have retained the course as a ritual practice by shoving it down to the last semester. There is no gainsaying the fact that Media Laws can be learnt any time during the course but tucking it away in the fourth semester does not help as the fourth semester is dedicated to dissertations and other media projects. Undoubtedly, the contact hours to engage students to help them grasp media laws are lesser or none as students would be busy indulging in their fieldwork. I would partly presume that by design than by default, Media Laws have been shortchanged in the teaching curricula. This has become a victim of the flawed perspective of understanding that the market will rule by steamrolling laws or ethics. Therefore attempts to dispense with this course constitute a substantive policy decision taken by universities to strategically write off morality and ethics from the curriculum.

5.1. Shocking Trends in Downplaying Media Law and Ethics

Indeed, many autonomous institutions and a few state-funded universities are contemplating the withdrawal of Media Laws and questioning its contribution to students' knowledge and their job opportunities. Faculty members in these institutions argue that an additional skill-based course could be offered in its place that would improve their job prospects. In Board of Studies meetings, convened to discuss curriculum agenda and its development, the first victim at the altar of scrapping subjects is *Media Laws and Ethics*. In other words, media courses in Indian universities institutions at least in the region which is the subject of this paper, are being slowly stripped of the ethos of liberal arts education and becoming anchored in skill-based training.

Certainly, it may be necessary to make room for new courses, but not at the cost of dispensing with one of the courses that fine tune, refine and shape a human being into a scrupulous, cultured, responsible and an honest media professional. Some of the faculty who intend to give the course a push have decided to compensate the withdrawal of the Media Laws course by earmarking one unit or less than that in courses that deal with TV, Advertising, Print Journalism and Film Studies to discuss laws and regulations concerning the respective medium.

5.2. Curriculum Design

Curriculum design either is a hastened process of knocking together contents pulled from books by an individual or a team of faculty members; or borrowed from other institutions in the neighbourhood or those institutions to which faculty are affiliated with. In both instances, cultural and regional contexts are ignored. The syllabus needs to be localised and contextualised in the local culture and ecology. Although it is perfectly proper to draw inspiration from other institutions in the world, a syllabus must include regional and national scenarios to understand the law of the land. Besides, curriculum design needs to address questions such as the goals and objectives of the course, their scope and pedagogic methods, learner outcomes and assessment strategies systematically. However it is unfortunate that curriculum design in our universities, unfortunately, reflects a hurried exercise leading to the development of a rapid prototype that comes to stay for a long time by force-fitting components in a disorganised fashion.

5.3. Teachers' Views on the Course

On contacting a cross section of teachers, a litany of varied opinions emerged on incorporating Media Laws in other subjects, withdrawing it from the syllabus, shaving it down to negligible details or trading it off for other courses. Two institutions suggested scrapping the paper and incorporating them in piecemeal in other course subjects. Some of them stated categorically that media schools face a stiff competition in academia and there is an urgent need to shore up the profile of these schools by floating innovative courses. In fact, increased exposure to media, economy and marketing has de-sensitised students who react with nonchalance towards social, cultural and political issues. It is not ethically incorrect to upgrade the syllabus of media programmes but a balanced approach must be arrived at in handling the conflict between market needs and social responsibility. A faculty member from the Government Arts College in Tiruchirapalli, Tamil Nadu, proposes to pull out the Media Laws paper from the syllabus and introduce a skill-based course. This results in the media programme being placed in a precarious conundrum and drives a sharp wedge between liberal arts education and skill-based courses. Most of the institutions strive to put a huge spin on digital media, television, advertising and marketing at the cost of expunging *Media Laws and Ethics*.

Another teacher from a renowned university states that the media department is rebooting the course of Media Laws by removing it from its mandatory status to an elective paper. She reasons that students in general, loath media and law courses and that it is futile teaching the subject to all of them. Changing it to an elective subject means that only the interested students are enrolled for the course. However, converting a mandatory course to an elective subject raises a few difficult questions: Does this indicate that Media Laws can be offered as an optional subject because few people follow ethics in the media industry?

A faculty member from an autonomous institution in Chennai finds herself in a quandary when students returning from their internship training in newspaper organisations argue that the workplace makes a travesty of Media Laws. They question the relevance of the subject and the teacher's intent to explain

ethics to them given that seemingly, ethics have no place in the media industry. Although the view cannot be generalised, there is little doubt that the contemporary media world is bad, biased and manufactures consent through foul means. That having been said, institutions cannot deviate from its stated goals of producing thinking and ethical citizens. In fact, academia sees ideologically positioned capitalist teachers supporting a market pitted against ‘socialist’ teachers who insist on ethics and social responsibility. This looming threat, of which many of the faculty are aware, relates to the slow and quiet demise of the course from the syllabus and the academic consciousness.

6. Instructional Fallacies and Challenges

Communication discipline comprises three major curricular philosophies namely the ‘liberal,’ ‘practical,’ and ‘liberal-professional’ (Niven, 1961). According to the traditional Liberal Arts education, the curriculum emphasises the theoretical, historical, philosophical, and ethical aspects of communication studies. The practical curriculum emphasises skill-based learning that involves writing, speaking and media production. The hybrid of the two, liberal-professional curricula combine subjects in the liberal and practical curricula. While a hybrid curriculum prepares students for the global era of communication, skewed exposure to one of these elements to the exclusion of the other will result in the emergence of either unethical media professionals or incompetent media professionals. Most universities and colleges are slowly tilting towards the practical component in ignoring liberal arts education. Fleury (2005) argues that a comprehensive exposure to varying areas of study would enhance the adaptability of graduates to the global communication era (as cited in Seol Kang, 2010).

Following attempts to bypass liberal arts education, the instructional strategies followed in universities and colleges in Tamil Nadu or Pondicherry suggest that most of the departments offer a bare minimum of knowledge on *Media Laws and Ethics* while a handful provide students with advanced levels of understanding the subject and its applications in a wider context. Depending on the faculty and their orientation, the pedagogy is either peripheral or in-depth.

The prevalence of systemic challenges commencing from designing curriculum, spelling out a well-defined orientation of the course, to instructional strategies and pedagogic methods is a dampener in the media studies programme. A university lecturer handling science and environmental communication teaches freedom of expression only as an element of the Constitution. Ironically, she has no absolute freedom to express her views on a people’s protest against the Koodankulam Nuclear power plant project due to a few professors of the same university having been nominated by the state government (Tamil Nadu) giving positive testimony to the running of the plant.

Further, the semester system requires that teachers devote 45 hours to each subject offered. According to some faculty members however, 45 hours is grossly insufficient to teach media laws and ethics. Teachers complain that they cannot possibly refer to Laws, Acts, Regulations and a few case studies during that period. I would see this however as an untenable excuse with many of them floundering in their pedagogical approaches towards teaching Media Laws due to their disinterest in the course and

subsequently their lack of understanding of lucid instructional strategies to be adopted. The pedagogy that lacks will and interest is tantamount to placing the programme at peril. If ethics is the soul of the course, a course sans ethics will be equivalent to running the programme without the soul.

6.1. Teaching Methods

Most of the teachers use case studies as a commonplace pedagogic method to handle Media Laws. However, case studies are shorn of historical events and there are attempts to situate Acts and legislation in contemporary scenarios from real life. Mostly case studies are quoted from American contexts such as the Watergate scandal and a few Indian based cases studies. The Koodankulam power plant, by virtue of a yet evolving issue could not constitute a case study by any standards. A teacher wondered why she should talk about a subject if she was not interested in it. Yet, often, the faculty claim that they are comfortable teaching advertising and laws relating to films. They fail to closely examine the law and its application in sensitive issues that are vital for society. From the telephonic interaction I had with some faculty, it was understood that media laws are instantly equated with laws about advertising and films because these faculty members had earlier worked in Advertising or the Public Relations industry. In the absence of sound political efficacy, many faculty members are hard pressed to interpret regulations to understand issues. These faculty members do not attempt to delineate the differences between freedom of expression, Official Secret Act and Right to Information. Only two of the faculty members whom I spoke to, provided deep insight into these provisions as they believe freedom of speech and the Official Secrets Act are two key components that every student should be aware of.

Students need to be tuned to engage themselves with politics, society and culture. Only one university in the state has slotted Current Affairs into their curricula timetable. Discussing contemporary issues is a prerequisite to learning laws and ethics. Further, the objective of teaching Media Laws would be to enhance moral, ethical and intellectual considerations of media laws and also to generate enthusiasm among students to critically engage with media texts and media laws by participating in debates and commentaries. It is unfounded to argue that journalism practices are different from the classroom instructions and discussions and hence justify scrapping the course on media laws and ethics.

6.2. Surface Learning versus Case Studies

What is meant by surface learning is the coverage of the topics – laws – from the perspective of the Constitution without either historicising it or locating them in contexts to explain their relevance. Very few old case studies are drawn on and this amounts to cramming students with dry and stale content. Adding perspectives to the content and supporting them with contemporary case studies – even old case studies are fine – would enhance the understanding of the law. Students are capable of engaging in critical discussions only if such a conducive environment is created. They need to be provoked, prodded and stimulated to think and reflect on issues. This requires a pedagogy that will involve case studies, discussions on broader issues of ethics.

6.3. External Resources

Guest lecturers such as lawyers are sometimes brought to the institution to speak on specific topics such as copyright. Institutions that invited lawyers and legal experts from television channels enlightened students on the nuances of content and regulations. There is no gainsaying the fact that Media Laws can be taught effectively by integrating with other disciplines. The borders of discipline need to be porous to allow interdisciplinary scholarship to evolve. Such interactions help students to clear the air they have been living in that laws are cumbersome and unwieldy. Not to put too fine a point on it, fieldwork is employed as a pedagogic tool and students are required to meet lawyers, or meet the victims, record and document human rights violations. Interestingly, a faculty from a private institution in Chennai assigns students to visit the High Court, meet lawyers, interact with them and discuss case studies and submit a report. The students have to submit a report and a viva-voce would be held to evaluate the report. Students select specific cases and analyse them thoroughly as part of their project or dissertation.

Discussions are also part of media law classes, but these are ‘muffled’ discussions on trivial issues. In universities, as opposed to private institutions, the student composition is a mixed group hailing from different socio-economic backgrounds. It was observed that rural students experience a cultural shock when they learn about the ethics of urban students towards sensitive issues such as clothing rights or moral standards. Furthermore rural students participated in discussions on the nuclear power plant in Koodankulam rather than on advertising or films in media law classes. Moreover, discussing advertising and films in an explicit manner is considered to be a taboo for rural and conservative students. On the other hand, students in Tiruchirapalli in Tamil Nadu do not follow news regularly and they possess very poor media literacy levels. Therefore, teachers in these regions chose to discuss movies and other visual media to teach laws.

In a renowned autonomous college in Chennai, the presence of students from different Asian countries such as Sri Lanka adds grist to learning laws as multiple perspectives flow in during discussion forums. In yet another setting, Manipur and Tibetan students take on media for their one-sided coverage of events in these states. However, one faculty member is of the view that bringing in lawyers as visiting faculty may not do much good as they are likely to engage in ‘legalistic’ discussions.

6.4. Lab Journal and Internships

Journalism and Media Laws together should endow students with the necessary skills to prepare a schedule for their lab journal, focusing on issues they would like to highlight, weigh the salience or newsworthiness of the issues selected, plan how they would want to package them. Unfortunately, lab journals brought out by students mostly feature food and health thereby avoiding serious issues of relevance. One of the institutions uses the lab journal as a mouthpiece of the administration to eulogise the deeds of the university. A few ideologically sound students produced a news bulletin highlighting a university’s apathy and inaction towards a section of the employees. This culminated in students drawing flak for placing the university in a tight situation. Their freedom of speech was curbed, the students felt

and claimed that the news bulletin did not report about the institution acrimoniously. Another group of students produced electronic news bulletins and despite having proficiency in handling technologies, they did not know how to package news. This can be attributed to the absence of a Journalism course for them and lack of substantial understanding of media laws and ethics.

The department of Communication in Madurai Kamaraj University in Tamil Nadu brings out a lab journal titled *Kayal* and it necessarily includes interview, book reviews, rural appraisals and new analysis. Similarly, the practice lab journal from the department of Communication in Manonmaniam Sundaranar University also focuses on rural issues. The rest of the journals from other institutions package a compendium of short snippets on food, places, shopping, tourism and other features. In addition, the lab work brings out only what is happening within the campus and only positive events. While teaching ethics, faculty are faced with the dilemma or caught between ethical standards and power from the administrative side. This requires us to handle students and such lab courses carefully, as students can film something in the campus and upload it onto *YouTube*.

The only saving grace came from a university that assigns different committees to video production exercises and one of the student committee among others is responsible for ethical and legal issues. Used as a criterion to evaluate the productions of students, the (student) ethical committee is required to defend and respond to external examiners on violations of ethics or regulations that may be found in the production during the *viva-voce* examination. Lab journals and bulletins produced by students are activity-based experiments where they learn to transfer their theoretical knowledge to production. The efforts of putting the onus on media laws become futile if students do not apply or learn to apply them in their activity-based projects.

6.5. Teaching Resources

6.5.1. Conventional Materials

A faculty member uses law books before reading from media law books as it is believed that legal provisions are explained better in the former. Many claim that they do not invest in resources such as books and journals on Media Laws and the budget allocation for purchasing books on Media Laws and Ethics is infinitesimal. The management of many of the private institutions rejects any proposals that may be made by faculty to purchase books relating to Media Laws. Most of the funds are directed to purchasing books on Television and Animation and skill-oriented materials. Some institutions have only one book on this subject.

6.5.2. The Internet as a Teaching Resource

It is hard to locate the using of new media tools for teaching Media Laws and Ethics except in one institution in Pondicherry. Faculty members of the media department in Pondicherry University are trained in Moodle LMS and the faculty member who teaches Media Laws provides many web resources

and hyperlinks to facilitate self-construction of knowledge in addition to classroom teaching. He directs students to visit www.onlinepetition.com, www.lawresourcesofindia.com, and several other non-governmental organisations (NGOs) such as www.change.org and a vernacular alternative media www.vinavu.com to name a few. He gives assignments through Moodle and asks students to participate in discussions in the virtual setting as much as in classrooms. But this is an isolated practice and there is need for guiding students to visit websites where they can gather alternative views on social and political issues.

6.6. Innovation in Pedagogy

Innovative teaching methods apart, innovative assessment strategies need to be adopted in scoring students in their summative evaluation. Most of the learning and assessment strategies set out by teachers to evaluate students promote surface learning compelling learners to swallow data and facts relating to Media Laws and Ethics. Teaching and evaluation regimes should propose strategies to enhance intensive learning that goes beyond grasping the law or ethical components to interpreting them for application in different contexts. Learning Media Law and Ethics should be practiced more through field work and experiential learning. Kolb and Kolb's (2001) theory of experiential learning draws on the premise that effective learning can be maximised when the learner interacts with the real world. While students may confront different experiences that are antithetical to theoretical precepts during their internship and lab courses, they need to reflect on the experiences they undergo and activities they observe. Students should not be allowed to be discouraged by the flaws that are seen in practice and conclude that ethics fails in the face of beguiling capitalism. As part of the fieldwork, students may be asked to create portfolios or e-portfolios documenting all their field-based activities.

7. Interdisciplinary Approaches to Teaching Media Law

7.1. Some General Reflections

Media Studies is a derivative of sociology, anthropology, social psychology and political science bundled together and it essentially warrants interdisciplinary inquiry. However, in recent times, media departments have constructed identities of their own, secluding themselves from other disciplines. The outcome of alienating allied disciplines of media has resulted in the increasing number of faculty who also emerge with the same perspective of negating interdisciplinary approaches in the curriculum. Earlier, interdisciplinary approaches were considered essential for a thorough understanding of a concept. One of the faculty members responded that the Board of Studies committee which convened to discuss the syllabus for Media Laws and Ethics for Jaffna University's Media Research Training Centre (Sri Lanka) included an expert from Philosophy, who insisted on using references of Karl Popper.

Two faculty members adopt different methods to teach laws and ethics. One of them imparts to students the sociological understanding of community and ethics based on majoritarian and minoritarian ethics. He rationalises his arguments using Marxism and further goes on to explain how ethics is socially

constructed by society and by different classes. The faculty member also trains students on Ambedkar's reading of the constitution along with readings from other perspectives. He feels that the syllabus does not address the entire gamut of all that take place in the media. Further, he downloads articles on objectivity, truth and news, and shares them with students so that they can read them and come prepared for the next class. He is the only exclusive teacher to initiate students into reading journals such as *Seminar* and *EPW* (Economic and Political Weekly) besides having them read *Groundviews*⁵. He also teaches Paul Ricoeur and hermeneutics. In addition, he explains ethics through Foucault's point of view. To explain Acts, he uses the case law method. Likewise, the other faculty also looks at ethics both from Foucault and Deleuzian points of view. He draws from the poet Thiruvalluvar, and from Kant and Confucius from China.

Apart from these instances, the general trend is that universities and educational institutions in Tamil Nadu and Pondicherry are not ready for the inter-disciplinary curricula in the communication department. Teaching Communication or Media Studies within the disciplinary contours does not help in widening the horizon of students' knowledge. Neiman (1997) asserted that the Communication in Discipline (CID) approach produces skill-based communication specialists and is likely to reduce the scope of communication study.

7.2. Importance of Teaching Ethics

Ethical and philosophical aspects of communication would develop students' view of the world as communication specialists. To understand communication holistically and comprehensively, studying the history of communication is essential (Rogers & Chaffee, 1983).

It is unfortunate that the reliability and validity of ethics is measured statistically and in numbers. Ethics is a prelude to the application of software in carrying out a study. Ethics can be objective or subjective, but on both counts it needs to ensure that the research is free from anomalies and violations of codes. Ethics cannot be injected in one-shot as the Hypodermic Needle Theory would have once predicted. It is a philosophy of life, and one cannot drown it in a morass of professionalism. It is on this premise that I would put forth the argument that curriculum design should aim at synergising both liberal arts and professional skills. Every new development of technology will in a course of time throw up legal tangles that in turn requires one to carry out research to get first hand information on how technologies pan out in different social and cultural contexts thereby later requiring academicians to contribute to policy decisions. Therefore laws, ethics and policies are inexorably intertwined with media studies.

Ethics became an integral component of Indian communication schools following the advent of radio and television. The explosion of satellite television channels brought along a plethora of problems, prospects and challenges. We still contemplate the formulation of a new body that addresses the problems of all media forms. Because, we elevate the PCI (Press Council of India) to a superior position, that seems to be

⁵ *Groundviews* is a Sri Lankan citizen journalism website that offers alternative perspectives on governance, human rights, peacebuilding and other issues.

the only cure-all ombudsman for all media forms. The chairman of PCI and former Supreme Court Judge Mr Markandeya Katju has also hinted at either expanding the PCI or including more tributaries within it to meet the demands of different media. As media expanded, technology became sophisticated and content options emerged in vibrant and resplendent forms. This has put the onus on ethical committees to deal with content in films, TV, Radio, Internet and so on.

7.3. Ethics in Media Law Syllabi

Ethics is included as a general verbiage in the syllabus with no indication of how it would be taught. Two syllabi included descriptions of ethics and philosophy underscoring the need for teaching ethics from philosophical perspective. One of the syllabi deals with Aristotle, Plato, Socrates and the pragmatic philosophy of Ethics. The other syllabus from an institution in Pondicherry deals with personal and group ethics, ethics in the philosophical sense, Economic imperatives and Marxist ethics. Having included them in the syllabus, no pedagogical measures have been spelt out clearly to impart knowledge on these topics. For one, media teachers, mostly, lack expertise in philosophy in the pure academic sense. This boils down to considering an interdisciplinary method of teaching ethics. Otherwise, ethics is taught as part of other subjects from the perspective of right and wrong especially in advertising and films. This method of teaching ethics in the normative sense does not appeal to students nor can it kindle students to critique works of art and news.

8. Conclusion – A Never Ending Crisis

Journalism is a cut-throat business and journalism and media schools are also in danger of becoming cut-throat business institutions imparting merely skills of surviving competition and not skills of prescience, candour and human rights and ethics. To dispel this danger, the liberal and neo-liberal perspectives should, if not prevail over, remain part of the teaching pedagogy in media laws and ethics as well as in media education at large. This can happen by changing the pedagogy from teaching law and ethics from a cookie-cutter perspective to provoking students to critically engage with media text and push them to answer questions: What is right and what is wrong? What is politically correct and incorrect? What is overdone and underdone?

Secondly, curriculum design and development should involve experts from media rather than confining the exercise to a few chosen and preferred members of Board of Studies. The curriculum designed should be shared with experts in other industries and academic disciplines. Opinions generated can be incorporated based on their merits, and modifications if any, can also be carried out.

Ideally speaking, a department needs to accommodate specialists from different realms affiliated to media and communication. A department that has a faculty with varied vocal ideas will be able to contribute to the curriculum better and the merits would be plenty; those departments with fewer specialisations tend to develop syllabus within a narrow framework of their own. The Board of Studies process seemingly is a

ritual and often times it is possible to plan a curriculum that suits a few faculty members and get this approved.

The syllabus or the curriculum needs to be revamped every two years. Mostly, course papers are developed by drawing on papers from other universities. It is unfortunate to note that institutions – autonomous and deemed universities – take the easy route of copying syllabus from other universities and sometimes UNESCO. They need to approach building a curriculum as a meticulous exercise, preferably analyzing the *episteme* each media department wants to construct.

Further, teaching media laws and ethics in the normative sense would not suffice. This invites a contest between the theory of laws and ethics and their application in the field and in life. The two obviously remain disconnected and can be resolved only by adopting innovative strategies for teaching them and evaluating students on the subjects.

Besides, ecology studies centred on ethics will continue to haunt us even if we are to move to the digital media. It is disheartening that there have been no doctoral theses specifically on Media Ethics or Policy issues in Tamil Nadu or Pondicherry in the last two decades. Up to the year 2010, to my knowledge, only one national seminar on Media Laws and Ethics was organised in Periyar University in Salem during that same year. Seminars conducted in other institutions fail to dedicate a session on ethics or to discuss it from a critical perspective. In all, there is a huge challenge that lies ahead of communication schools in terms of the importance they want to attach to placements and research. It is a tough game but one cannot rule out the excessive emphasis on market-oriented training becoming counterproductive. Equal importance needs to be given to ethics, research and theories so that students take easy strides in both theory and practice.

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MEDIA EDUCATION IN INDIA: A FEW THOUGHTS

Ashwita Ambast[♦]

1. Introduction

“Media Education” in democracies is essential as this plays an important role in refining media professionals as a conduit of information for society. In this brief reflection, current trends in media education in India are examined by surveying the teaching methodologies and curricula in universities and independent training colleges in India. An inquiry is then made into global standards that have been laid down by international organisations. This analysis will conclude that while there are several positive things that can be said about media law pedagogy in India, there is yet considerable scope for reform.

2. Nature of Education Offered

The growth of institutions and courses on media education in India in post-independence times has been traced in a recent commentary as owing to

“the professionalisation of communication and media; the emergence of new institutional support for teaching and research (with the expansion of universities, colleges, and funding agencies); and the growth in the specialisation of communication research in terms of the choices available regarding research themes and methods.”¹

Several university institutions in India offer courses in journalism, mass communication and related media studies at the undergraduate, graduate, doctoral and diploma levels. In addition, many training institutions which focus exclusively on media education have mushroomed in recent years. Many of these courses adopt a practitioner oriented approach.

Interestingly, a recently developed trend on the part of some specialised research centres based in universities is to incorporate an integrated approach looking at the relevant rights paradigm and the relationship between society and media. The Centre for Culture, Media and Governance based at Jamia Millia University (New Delhi) is a good example of this forward looking trend.

Generally however, a factor common to university and training school curricula is that there appears to be a lack of sufficient emphasis on the relationship between the law and media, or an adequate understanding

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¹ Das, B. & Parthasarathi, V (2011) ‘Media Research and Public Policy: Tiding Over the Rupture’ in R. Mansell & M. Rabou (Ed.) Handbook on Global Media and Communication Policy, Wiley-Blackwell (pp. 245-260).

of the role of the media in society. One such example is the three year undergraduate course at the IAAN School of Mass Communications that fails to include any module on the aforementioned areas.² Likewise, the MBA in Media and Entertainment Programme offered by the K.C. College of Management Studies emphasises communication skills and a theoretical overview of business management concepts, but does not contextualise the same in the constitutional and legal framework of India.³ The FLAME School of Communication in Pune offers a PGDM (Postgraduate diploma in Media) Broadcast Journalism and New Media, a two year full-time Post Graduate Diploma with a focus on encouraging independent thinking, innovation and communication skills.⁴

The Indian Institute of Journalism and Mass Media in Bangalore, that is founded by a not for profit trust, aims at promoting democratic values in India.⁵ The Institute provides the opportunity for students to experience the pressures that journalists often face ‘on the job’ as well as giving them the requisite professional training.⁶ Further, the International Media Institute of India was established by practitioners to improve the quality of journalism in India and assist in making the media answerable to the public good. The aim was to create an Institute that would focus on upholding the highest standards of journalism through advanced ethical training and professional skills.⁷

The Indian Institute for Mass Communication in New Delhi also provides postgraduate diploma courses and short diploma courses in Developmental Journalism. This Institute provides an in- service training programme for government officers and for media personnel working in the public sector.⁸

Meanwhile, the Asian College of Journalism (ACJ) is acknowledged as one of the foremost colleges for journalism in India. The thinking underlying the functioning of this college is that

“The independent mass media representing diverse views are vital to the functioning of democracy, to the pursuit of public welfare, and to the protection of the people’s entitlements.”

The ACJ takes the view that the media must be dominated by educated people who have professional skills, broad knowledge as well as the requisite social commitment.⁹ The College trains its students in

² <http://www.iaan.org/course1.html>.

³ <http://www.kccms.org/gmba/gmba.htm>.

⁴ <http://www.flame.edu.in/program/school-of-communication>.

⁵ <http://www.iijnm.org/over-about.html>.

⁶ <http://www.iijnm.org/over-curriculum.html>; <http://www.iijnm.org/pro-curriculum.html>.

⁷ <http://www.imii.co.in/index.html>.

⁸ <http://www.iimc.nic.in/training.html>.

⁹ <http://www.asianmedia.org/aboutus/overview.asp>.

regard to its fundamental premise – that is in regard to looking at the “how to” of journalism skills as well as the “why” or the philosophical and idealistic components of journalism.¹⁰

3. Reference to Relevant International Standards

Comprehensive standards on media education have been detailed by the United Nations Educational, Scientific and Cultural Organisation [UNESCO] in a variety of international instruments. The position of the UNESCO on the matter of media education is well summed up in the Grunwald Declaration on Media Education which was unanimously adopted by the representatives of 19 nations at UNESCO’s 1982 in the International Symposium on Media Education at Grunwald.¹¹ The Declaration recognises the omnipresence of the media in contemporary times and the role of education in shaping the power of the media.

On this premise, it recommends that governments across the world do the following:

- Initiate and support media education programmes at all levels of education, primary to university level.
- Develop training courses for teachers to enhance their knowledge of the field
- Encourage and stimulate research and development activities from diverse domains such as psychology, sociology and communication science
- Support the actions of the UNESCO in strengthening international cooperation in media education.

The UNESCO has gone a step further and laid down curricula for teachers to adopt while teaching media education.¹² This model curricula includes the functions of the media, the concepts of editorial independence, the role of the media in promoting fundamental freedoms, media ethics, the capacities of individuals in relation to media and information, international standards, infringement of other people’s rights, information sources and systems of storage, creation of information in various formats and the use of information in resolving economic, social and political problems.¹³ Through these programmes, the UNESCO also attempts to address larger concerns such as why is it that media education must be given a special emphasis.

A position paper endorsed by the UNESCO indicates that “(t)he media have increasingly penetrated all areas of social life: it is now impossible to understand the operations of the political process or of the

¹⁰ <http://www.asianmedia.org/programme/overview.asp>;

¹¹ http://www.unesco.org/education/pdf/MEDIA_E.PDF.

¹² <http://unesdoc.unesco.org/images/0019/001929/192971e.pdf>.

¹³ *Ibid* at 21.

economy, or to address questions about cultural and personal identity – or indeed about education – without taking account of the role of the media.¹⁴ It highlights that a working understanding of the media is essential to comprehending contemporary citizenship.¹⁵ The UNESCO has also drawn a strong link between the media and the process of sustainable development since it can mould the public debate on the subject matter and hence influence public opinion. In this light, the UNESCO has also developed a kit on “*Media as partners in education for sustainable development*” which recommends methods by which the media can play a role in informing society about sustainable development.¹⁶

In order to create a consolidated understanding of media education policies across the world, the UNESCO has also generated a publication called “*Mapping media education policies in the world: visions, programmes and challenges*.”¹⁷ In this work, the UNESCO aims to study the media education policies across the work from a national, regional and global context and create a repository of information that can be used by researchers and policymakers.

It is clear from a perusal of the primary principles forwarded by the UNESCO on the subject of media education that Indian standards do not match UNESCO standards. *Prima facie*, some changes that need to be made are:

- (i) Curricula must incorporate the multidimensional approach that UNESCO encourages. Course content can borrow from anthropology, history and the law to make the study of the media a richer and more holistic experience.
- (ii) There is little emphasis in most course content on the core reasons why the subject is of growing importance. The UNESCO explains this in relation to technological and economic developments, social developments and globalisation. Indian courses are mostly silent on this point.
- (iii) There is no minimum standard that is set which is to be followed by all institutions and as a result, students in different colleges have very different educational experiences. This is undesirable as very often, these learning experiences are not holistic.

¹⁴ http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CFQQFjAA&url=http%3A%2F%2Fportal.unesco.org%2Fci%2Fen%2F%2Ffiles%2F5681%2F10346129690Policy_paper_by_Pr_David_Buckingham.rtf%2FPolicy%252Bpaper%252Bby%252BPr%252BDavid%252BBuckingham.rtf&ei=eaMeUPyyCI7KrAeN7IB4&usg=AFQjCNHXR8LfzKIY8cdRKeehvE2JsFu1pg

¹⁵ *Ibid.*

¹⁶ <http://unesdoc.unesco.org/images/0015/001587/158787e.pdf>

¹⁷ <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/mapping-media-education-policies-in-the-world-visions-programmes-and-challenges/>

- (iv) While the UNESCO sees the media as a powerful resource which can be used for the positive development of society, such an approach is not adopted by educational institutions in India.

4. Industry Control of Media Education Institutions

Given its inevitably complex and contested nature as well as the sheer size of the Indian media industry, the impact of media on Indian society is liable to give rise to extremely diverse reactions. However, there are still several points on which most academics agree. For instance, it is well accepted that the face of the Indian media has changed drastically over the past few years due to the digitisation as well as the increasing control of the industry over the media. This has altered the nature of media analysis as news has become more populist and less aligned with the goals of social justice, inclusion and equity. Today, the media is less and less concerned with fulfilling its role of being a means of communication that cuts across sections of society and in the development of people as a whole. Such a problem could be overcome by providing greater emphasis on the nexus between human rights and the media.

Further, there is very little space in India for a review of the work in media education. Not only is the government reluctant to encourage such critiques and criticisms but even scholars and academics are disinclined to take a critical view of the curricula that they have set and the work that they are involved in. This could perhaps be because people in the field resent the fact that the idealism and fervour which existed in regard to reforming the Indian media in previous decades, have now faded away. This has been replaced by a need to convert news into entertainment to cater to the needs of a more 'corporatised' media.

The public in India also tends to take the media for granted and do not look closely into factors that can influence the manner in which news is relayed. Some colleges (such as ACJ) have tried to overcome this problem by encouraging students to take up citizen journalism and thus capitalise on the idealism that students initially demonstrate while others have taken to inviting guest lecturers from very different walks of life to give students of media studies, a more nuanced understanding of the industry. Moreover, the growth of the internet has created a sphere where opinions can be aired at minimal costs and without fear of government censorship or restraint. However, it is clear that a more concerted effort must be made by academics, media scholars and media practitioners in India to develop a discourse which is more conducive to criticism and which responds to constructive critique.

5. Worrying Gaps between Theory and Practice

The gap between training institutions and the universities in respect of media education remains quite wide in India. Media education which is provided in institutes and universities do not prepare students for bad practices in the field that they are compelled to confront when they start work. Training institutes place too much emphasis on vocational skills while the universities adopt too theoretical an approach. Journalism schools may also be unable to critique the state of media in India today because they are often

founded by or run by people who are closely involved in publishing houses and are powerful publishers or editors.

It must be noted that an important facet of building an inclusive society is providing people equal access to information and knowledge. Generally, in the Indian media studies, the curriculum does not contain this important focus. This lack of focus is most evident in the fact that there is no concrete education regarding the media in school curricula. UNESCO on the other hand, has identified the role of the media in enabling individuals to interpret and make informed decisions and in fostering societies that are more politically and socially aware.¹⁸ UNESCO aims to sensitise teachers to the importance of the media in society and thereby provide them with adequate pedagogical material to conduct classes. There is also an effort made to better equip libraries in order to provide a healthier environment for learning.

Contrasting the theory with current education practice in India, it must be said that the courses in media law in India do not examine the conjunction between human rights law and the media. Certain colleges do explore the impact of the law on the media but this is not the dominant trend. Many practitioners admit that their power to speak on certain issues is constrained by the government. This results in self-regulation being exercised amongst teachers, especially on matters that they consider to be sensitive.

The predicament of media education is often made worse by the bureaucratic rules and guidelines which govern the appointment of teachers in universities. Since there is a requirement that only persons with a Ph.D. may be appointed as professors, teachers with practical knowledge in the field are often overridden by persons who are less competent. In fact, this factor has resulted in some institutions making a conscious effort to stay independent of government control. It is noted that these gags are not always overt but can be subtle. The government has in the past created price barriers to accessing the ability to communicate in certain media. This happened in the case of the increase in the license fee in the community radio sector. In fact, authors have attributed some of the poor policy development to the historically low-profile Telecom Regulatory Authority of India whose functions are not clearly delineated.¹⁹

6. Concluding Remarks

In conclusion, it must be reiterated that there is much scope to improve the existing condition of media education. Persisting gaps remain between theory and practice and a comprehensive incorporation of media and law is not reflected in the curricula.

Practitioners are also increasingly aware of the control being exercised by the industry over the media and lack of any meaningful critical debate on this subject. In order to bring about significant change in the discourse concerning media education, it may be necessary for media educators to engage in greater

¹⁸ http://portal.unesco.org/ci/en/ev.php-URL_ID=15886&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁹ *Supra* note 1 at 252.

association with educators of related disciplines and undertake a more comprehensive understanding of the opinions of practicing journalists as well as engage in more transparent discussions with the government.

As Das and Parthasarathi recommends, the Telecom Regulatory Authority of India should commission a study of the development of media law and policy worldwide in order to understand the best practices across the globe.²⁰ This is just one of the initial steps that need to be undertaken to foster a richer tradition in Indian media education than what exists currently.

²⁰ *Supra* note 1 at 254.

GOOD GAY, BAD GAY: MEDIA REPRESENTATION OF THE LGBT COMMUNITY IN INDIA

Danish Sheikh [♦]

1. Introduction

"But all too often these days, it is some of the reporters who seem to be getting away with murder -- murdering the story. They are mangling reality, leaving it a bloodied, unrecognisable mess. In some cases, it has been so bad it threatens to become a parody of journalism"

- Craig Etcheson

Facts do not necessarily speak for themselves. As Elliot Slotnick notes, the media are more than passive conduits for information: they serve as filters and funnels for the universe of events that could appear before the public's eye.¹ Events are interpreted, placed into context, speculated about, and shaped by the media. The media often serves as the normative indicator - the process of creating news images showcasing what views and behaviour are acceptable and which are not.²

Title	Date	Publication	Link
NGO Charged with running gay club	July 8, 2001	TOI	http://globalgayz.com/country/India/view/IND/gay-india-news-and-reports-200-9#article3
Homosexuality okay if practiced in Private	Sep. 14, 2003	Sify News	http://sify.com/news/othernews/fullstory.php?id=13250892
Male Callers harass lesbian helpline	October 26, 2003	Mid Day Mumbai	http://ww1.mid-day.com/news/city/2003/october/67152.htm
Lesbian marriages, born of a legal	Feb 4, 2005	DesPardes	http://despardes.com/lifestyle/feb05/lesbian-marriages.htm

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¹ Elliot E. Slotnick, *Media Coverage of Supreme Court Decision Making: Problems and Prospects*, 75 *Judicature* 128 (1991).

² *Ibid.*

loophole, stir debate in India			
Third Sex finds a place on Indian Passport Forms	March 10, 2005	Telegraph	http://webcache.googleusercontent.com/search?q=cache:gLqrElQbWboJ:infochangeindia.org/human-rights/news/-third-sex-finds-a-place-on-indian-passport-forms.html+PASSPORT+APPLICATION+INDIA+gender&cd=4&hl=en&ct=clnk&gl=in&source=www.google.co.in
Lesbian Couple sparks debate in Uttar Pradesh State	April 19, 2005	Sify News	http://sify.com/news/offbeat/fullstory.php?id=13721145
The Indian City of Chennai is set to build toilets for trans people	July 2005	Pink News	http://www.pinknews.co.uk/news/articles/2005-11518.html
Homosexual Gangs	January 3, 2006	Pioneer	http://www.mail-archive.com/gay_bombay@yahoogroups.com/msg06939.html
N was used to Homosexual sex since 1986	January 4, 2006	Dainik Jagran	http://www.mail-archive.com/gay_bombay@yahoogroups.com/msg06939.html
Ain't No Cure for Love	June 6, 2006	India Together	www.indiatogether.org/2006/apr/hrt-nocure.htm
This Business of Desire	Sep. 9, 2007	The Hindu	http://www.hindu.com/mag/2007/09/09/stories/2007090950090400.htm
Police bust gay party	Feb 4, 2008	TOI	http://timesofindia.indiatimes.com/Mumbai/Police_bust_gay_party/articleshow/2753740.cms
India decriminalizes Gay Sex	Jul. 3, 2009	TOI	http://articles.timesofindia.indiatimes.com/2009-07-03/india/28152338_1_penile-non-vaginal-gays-rights-bisexuals-and-transgenders

An Exciting Day, A Historic Judgement	Jul. 3, 2009	The Hindu	http://www.thehindu.com/todays-paper/article219230.ece
Aligarh Muslim University professor suspended for being gay	Feb. 18, 2010	TOI	http://articles.timesofindia.indiatimes.com/2010-02-18/india/28118769_1_shrinivas-ramchandra-siras-rickshaw-puller-amu-campus
Class Monitors	March 8, 2010	Outlook	http://www.outlookindia.com/article.aspx?264463
Aligarh gay professor found dead, may have killed self	Apr. 8, 2010	TOI	http://articles.timesofindia.indiatimes.com/2010-04-08/india/28135573_1_amu-authorities-shrinivas-ramchandra-siras-p-k-abdul-aziz
AMU professor a victim of clash between 'tradition' and privacy	Feb. 25, 2010	The Hindu	http://www.thehindu.com/news/states/other-states/article113334.ece
AMU Prof promised money for sex: Rickshaw-puller	Apr. 19, 2010	TOI	http://articles.timesofindia.indiatimes.com/2010-04-19/india/28129296_1_rickshaw-puller-shrinivas-ramchandra-siras-amu-prof
Varsity paid for sting on gay prof	Feb. 19, 2010	India Today	http://indiatoday.intoday.in/site/story/Varsity+paid+for+sting+on+gay+prof/1/84740.html
TV channel outs gay men, women in Hyderabad	Feb. 24, 2011	NDTV	http://www.ndtv.com/article/cities/tv-channel-outs-gay-men-women-in-hyderabad-87378
News Broadcasting Standards Authority censures TV9 over privacy violations	Mar. 25, 2011	Privacy India	http://privacyindia.org/2011/03/25/news-broadcasting-standards-authority-censures-tv9-over-privacy-violations/
In a first, Gurgaon Court recognizes lesbian marriage	July 29, 2011	TOI	http://articles.timesofindia.indiatimes.com/2011-07-29/gurgaon/29828761_1_gurgaon-court-lesbian-marriage-legal-marriage

Gay Sex is highly immoral, ASG tells Supreme Court	February 23, 2012	The Hindu	http://www.thehindu.com/news/national/article2923451.ece
Fair way for youth to hold the rainbow flag up high	July 9, 2012	The Hindu	http://www.thehindu.com/news/states/karnataka/article3616918.ece

TABLE: Selected incidents reported from 2001-2011

In February of 2011, the news channel TV9 aired what it called an expose on the Hyderabad gay community titled “Gay Culture in Hyderabad”. The shockingly homophobic operation resulted in a major amount of outrage from the LGBT community and its straight supporters, leading to countrywide protests, and a catalysing of the community in Hyderabad in particular.

While this paper begins by quoting those rather scathing words from Etcheson, it is not intended to be a scathing indictment of media reportage of the LGBT community in India. At many points, it serves as a felicitation, as it very well should be. The media has often helped in "outing" the community in many important ways over the years, aiding in breaking the silence that surrounds its existence. The aim of this paper rather, is to place the TV9 matter in a particular context. The broadcast came about a while after the Delhi High Court had decriminalised homosexuality in India, at the point where there was increasingly positive media coverage of LGBT issues. There was a kind of environment that made the broadcast possible, but more importantly, there had emerged a strong counter-movement that ensured the channel would not be able to walk away with impunity. It is this change that the paper intends to trace, by weaving in the narrative of the LGBT movement in the country with changing representations of the community in the media and popular culture.

The paper will start by discussing the TV9 broadcast and its immediate aftermath. Following this, the paper will navigate through the story of the LGBT movement in India starting with the criminalisation of homosexuality in 1860 through to the decriminalisation by the Delhi High Court and the subsequent appeal before the Supreme Court of India. The next chapter will look at media representations of the LGBT community over the years. Finally, I will come back to the TV9 case in explaining how the developments around it were anomalous to what had occurred before, and how that in turn resulted in the channel being censored.

2. "Gay Culture in Hyderabad"

The video starts by worrying about how gay culture in Hyderabad is "increasing drastically". Following this, footage of a gay club is shown, without any attempt to blank out faces. The show then puts itself in the mode of investigative journalism, as TV9 sets itself the target of exposing the "truth" about gay

culture in the city.³

Next, viewers are informed about gay dating websites, with the anchor taking special care to inform viewers that it is software employees and students who mostly "fall prey" to this gay culture. Then, in an astonishingly blunt violation of privacy, pictures of men on one dating site are flashed on the screen, accompanied by conversations between the concerned man and a TV9 journalist soliciting sex.

“While some do it for new pleasures, some get spoilt by friends, others do it for the crave of money the remaining are vowed by the lust some of them have changed it into a business by capturing teenagers mind and get them into hell.”

The video recording of the telecast on YouTube was taken off the site following a sustained protest from users of the site. Notices for legal action were sent to TV9 offices, including a detailed petition from Adhikaar, a Delhi based NGO. Two questions were primarily asked on LGBT mailing lists across the country:⁴ first, regarding how safe establishing one's homosexual identity online, or attending gay parties would be anymore, and secondly, whether a protest should take place, and what the nature of the same should be.

Regarding the idea of privacy, while caution was advised, considering the risks of online technology, again it was pointed out that basic safeguards should be maintained that any internet user would carry out. As for concerns regarding sting operations at parties, again it was pointed out that while a 100% guarantee could not be given about such instances, it should also be considered that such parties and get-togethers had been happening for years without any such incidents till now. There was also an important point made regarding how these parties were as much responsible for creating a vibrant gay culture as anything else, and it was important for them to be taken out of the stigmatised light that something necessitating a sting operation would require.

More than anything though, the significance of this matter having occurred in Hyderabad of all the metros was pointed out: because it is Hyderabad of all these major cities that has lagged the most in developing a relatively open gay culture. True, there do exist some excellent groups that offer HIV/AIDS outreach to Men-who-have-sex-with-Men, along with initiatives like Prathibimb⁵ which aim towards creating safe social spaces for the queer population, these remain fledgling efforts, far from reaching the scale where events like Pride Marches and Film festivals that are organised in other cities could be conducted. The point here is that the expose was clearly titled “Gay Culture in Hyderabad”, meaning this was the only gay culture the media channel knew of - but if events like this had taken place they would not have been

³ Footage as viewed on YouTube before the video was eventually taken down.

⁴ Lgbt-india@yahoogroups.com. This is possibly the most prolific mailing list for LGBT persons in the country, and is constantly active with at least 4-5 mails being exchanged per day.

⁵ www.prathibimb.com; Prathibimb began as a newsletter for airing the views and stories of queer people in Hyderabad. In conjunction with the group Expressions4all, it is now also become a forum for the queer community of Hyderabad to meet and socialise in a safe space.

able to claim that.

I will pause the discussion on TV9 at this point and instead proceed to illustrate a legal and media representational context within which this particular incident occurred.

3. The Colonial Legacy of Criminalisation

What impact does law have on society? As Joseph Gusfield notes, there is at one level, the direct effect⁶: acts of officials, legislative enactments and court decisions often affect behaviour in an instrumental manner through a direct influence on the actions of people. On another level, we have symbolic aspects of law and government which do not depend on enforcement for their effect. A courtroom decision or a legislative act is a gesture which often glorifies the values of one group and demeans those of another. Law can be thus seen as symbolising the public affirmation of social ideals and norms as well as a means of direct social control.⁷

As will be clear, the legal framework surrounding the lesbian, gay, bisexual and transgender community imbibes aspects of both.

In 1860, with the institution of the Indian Penal Code by Lord Macaulay, Section 377 criminalised homosexuality, by putting forth that “carnal intercourse against the order of nature”⁸ was to be punishable by law. While this archaic law stands even today, it was read down significantly in a landmark Delhi High Court judgment in 2009⁹, which will be referred to later - though homosexuality was decriminalised in the year 1967 by England itself. As stated in an open letter by Vikram Seth and a host of others and endorsed by Amartya Sen, the law has been used to “systematically arrest, prosecute, terrorise and blackmail sexual minorities. It has spawned public intolerance and abuse, forcing tens of millions of gay and bisexual men and women to live in fear and secrecy at tragic cost to themselves and their families.”¹⁰

The reported judicial decisions under Section 377 are, by and large, prosecutions of non-consensual sex between men, on the one hand, and children, women and other adult men, on the other.¹¹ The judiciary, in dealing with cases of non-consensual sex, has often conflated the cases with the broader rubric of homosexuality as an offence in itself.

⁶ Joseph R. Gusfield, *Moral Passage: The Symbolic Process in Public Designations of Deviance*, 15 Social Problems p.175 (1967).

⁷ *Ibid.*

⁸ Section 377, Indian Penal Code.

⁹ (2009) 160 DLT 277.

¹⁰ <http://www.openletter377.com/>, 20-10-2007.

¹¹ Alok Gupta, *The History and Trends in the Application of the Anti-Sodomy Law in the Indian Courts*, The Lawyers Collective, 16(7): 9.

In *Emperor v. Mohamed Yousif*¹², which was a case of a young man who was forcibly sodomised by the accused, the court held that ‘sodomy is one of those offences for which there can be hardly any extenuating circumstances; and even if so it cannot justify an over lenient sentence of four months rigorous imprisonment’. In *Fazal Rab Choudary v. State of Bihar*,¹³ which was also a case involving a young boy, the court noted, ‘The offence is one under Section 377 IPC, which implies sexual perversity. No force appears to have been used. Neither the notions of permissive society nor the fact that in some countries homosexuality has ceased to be an offence has influenced our thinking.’

In *T.K. Gopal v. State Karnataka*,¹⁴ which was a case in which the accused was tried for rape under Section 376, the judge goes on to make remarks about homosexuality. The judge noted: “Sexual offences, however, constitute an altogether different kind of crime, which is the result of a perverse mind. The perversity may result in homosexuality or in the commission of rape. Those who commit rape are psychologically sadistic persons exhibiting this tendency in the rape forcibly committed by them.”

In *Mirro v. Emperor*,¹⁵ which was also a case involving a boy who was forcibly taken away for an unnatural offence, the court noted: ‘It seems clear to us, that he is not only a desperate character but is a man of depraved morality.’

In *Mihir v. State*,¹⁶ which was a case involving a minor girl, the court noted, ‘Unnatural carnal intercourse is abhorred by civilised society, which is reckoned as a crime and therefore is punishable with strict sentence. Unlike an offence of rape u/Sec 376, consent of the victim is immaterial.’

A further look into the judicial archive finds three appellate court decisions¹⁷ in which the protagonists are consenting young men. All three decisions speak of ordinary lives, which achieve notoriety because the protagonists were caught in the dragnet of power. At the same time, these ordinary—in fact, everyday—acts of living disrupt the presumed heteronormativity of the social and legal order.

Section 377 as it stands requires proof of penetration for conviction.¹⁸ Even though this means that only a specific homosexual act is criminalised, the stigma that it projects extends to the very identity of homosexuality itself. Thus, while supporters of the criminalisation of the act of sodomy may assert how the I.P.C only punishes the act, the status that is forced onto the homosexual community is that of presumptive criminals, simply based on their sexual orientation. Even though conviction rates under the section are very low, being an unenforced law it does its share of damage. As Christopher R. Leslie

¹² AIR 1933 Sind 87.

¹³ (1982) 3 SCC 9.

¹⁴ AIR 2000 SC 1669.

¹⁵ AIR 1947 Allahabad 97.

¹⁶ (1992) Criminal Law Journal 488.

¹⁷ *D.P. Minawalla v. Emperor* (AIR 1935 Sind 78); *Nowshirwan v. Emperor*, (AIR 1934 Sind 206); *Ratan Mia and another v. State of Assam*, (1988) Criminal Law Journal 980.

¹⁸ *Biren Lal v. State of Bihar* (1996) CCR 427 Pat.)

writes, “the primary impact is symbolic : nominally unenforced laws are used to classify groups and stigmatise common behaviour. By labeling gay men and lesbians as criminals, sodomy laws make gay individuals targets for abuse by both private individuals and public officers.”¹⁹ There being no space within the family to express a non-heterosexual alternative, and few mechanisms which can help parents to understand and cope with such disclosures, violence and hostility tend to be the majority of the responses to coming out in a society that is witness to homophobia.

In addition, the Hijra community can trace negative perceptions heaped on it back to the Criminal Tribes Act of 1871, which was subtitled "An Act for the Registration of Criminal Tribes and Eunuchs". Under this law, the local government was required to keep a register of the names and residences of all eunuchs who were "reasonably suspected of kidnapping or castrating children or committing offences under Section 377 of the Indian Penal Code". The law also decreed eunuchs as incapable of acting as a guardian, making a gift, drawing up a will or adopting a son. Thus, being a eunuch itself was a criminal enterprise with surveillance being the everyday reality. While this legislation stands repealed today in theory, it continues to exist as part of the living culture of Indian law.²⁰

There is also the Immoral Traffic Prevention Act (of 1956 (amended in 1986), whose stated objective is to criminalise brothel-keeping, trafficking, pimping and soliciting, in reality targets the visible figure of the sex worker and enables the police to arrest and intimidate the transgender sex-worker population. While this act is not specifically used to target only hijra and kothi sex workers, it does pose a large degree of problems to them, adding to the aforementioned legal provisions which already impose upon them a certain status. Often the police proceed against the sex workers without any evidence of solicitation (as is required under Section 8 of ITPA) and merely on the suspicion that they are prostitutes. This produces an underclass of permanently targeted people who at any time are liable to be assaulted in public, merely because they happen to be there, taken away to the police station, wrongfully confined and restrained there, subjected to humiliating treatment, their earnings taken away. Sometimes, false cases are lodged against them which serves the double purpose of “solving” an existing case and keeping the sex workers off the street.²¹

¹⁹ Leslie, C., *Creating Criminals : The Injuries Inflicted by Unenforced Sodomy Laws*, as taken from Sociology – II Reading Material, Compiled by Prof. Kalpana Kannabiran, June 2007 edition, NALSAR University of Law, Hyderabad.

²⁰ Arvind Narrain, *Queer – Despised Sexuality, Law and Social change*.

²¹ People’s Union for Civil Liberties, Karnataka, *Human Rights Violations against the Transgender Community in India : A Study of Kothi and Hijra Sex Workers in Bangalore* ; this is a situation similar to the police treatment of denotified tribes, as seen in Dilip D’Souza, *Accused of Being Accused*, <http://search.rediff.com/news/1999/jun/10dilip.htm>, “...the string of foolish mistakes the police made in presenting their case (spoke of) an entire attitude towards the Sabars These officers really did not think that anyone would take the death of a mere Kheria Sabar seriously”

4. Media Portrayals of the LGBT Community

Taking into account the introductory remarks made about media representation, along with the understanding of law's impact on society, it follows that media depictions will often mirror legal and moral proscriptions. The media invariably defines the environment for debate and frames its structures so as to influence public opinion. Media technology that makes public speech possible gives public discourse a life and a logic of its own, a life and logic separated from the intentions of the speaker of the subtleties of arguments they employ.²²

If we are to look at media reports prior to Naz, what comes through strongly is a strong streak of homophobia. Every story has a reality which may not be portrayed effectively and there may also not be objective reporting of facts.²³ The reality of many events is reported in such a manner that might amount to its complete distortion in an attempt to concur with the larger image that is being sought to be created of the LGBT subject. In presenting stories involving sexual minorities, it is often seen that the media resorts to crude stereotypes and generalisations displacing responsible reporting with sensationalism.

In July of 2001, a set of raids - first on a public park frequented by the MSM²⁴ community, and next on the offices of 2 NGOs working on safe sex issues - led to the arrest of ten people. The operation was conducted on the basis of an FIR filed with a Lucknow police station wherein it was alleged that a certain Suresh had sodomised the complainant. Notable in the incident was the climate of homophobia stoked by the media which indulged in sensationalising headlines. Take for instance these two from the The Times of India: "Gay Club Supplied Boys to Politicians" and "Gay Culture Started In UP In 1998 Itself". The first expounds the stereotype of the gay community as one primarily involved in sex work, while the second allows the reader to imagine the idea of homosexuality as acquired through external influences, a product of the "other" culture. Yet another set of arrests took place in the city, this time in 2006, with the police in Lucknow arresting four men under Section 377 for allegedly having sex in a public park. News reports revealed pictures of all the four men with their names and home addresses, blatantly violating their dignity and privacy.²⁵

In July, 2002, the Bangalore police arrested four male sex workers on charges of robbery and theft. A flurry of newspaper reports following this incident linked up the criminal offences charged to the sexual orientation of the accused, with headlines ranging from "Four gays involved in dacoities held" in the Deccan Herald to "Robbery: Homosexuals arrested" in The New Indian Express.

²² See James Davidson Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1991), 34.

²³ Craig Etcheson, *I Saw it on CNN, so it Must be True.... Wrong !*, <http://www.sarai.net/publications/readers/04-crisis-media/21craig.pdf>, Etcheson discusses the importance of responsible journalism, and the harmful effects that may occur in the light of misleading stories.

²⁴ Men who have sex with Men.

²⁵ Alok Gupta, *Section 377 and the Dignity of Indian Homosexuals*, <http://www.iglhrc.org/binarydata/ATTACHMENT/file/000/000/15-1.pdf>, last accessed 9-8-2011.

In another incident in December 2002, Chandini, a Hijra from Bangalore, died of severe burns in her home. The Hijra community alleged that her husband, who had a long-standing relationship with her, had murdered her for money, and demanded that an impartial probe be held. The police refused and stuck to their version that it was a case of suicide. Major English and Kannada newspapers firstly only published the account from the side of the police, initially ignoring the other angle to the story altogether. Police News, a popular local weekly, portrayed the incident as an exciting romantic tryst between two strangers, in which the unsuspecting man discovered the true sexual identity of the wily hijra. The majority of the article focuses on the frustrations of the husband, deflecting attention from the very real tragedy at hand.²⁶ Even a progressive and anti-establishment publication, in its story, described hijras as a race apart, freaks of the underworld, half-man half-woman, almost devilish in their customs and practices. This kind of gender stereotyping was seen in many local English newspapers as well.²⁷

Numerous other instances of such heavily biased reporting abound. An article in the Deccan Herald²⁸, when dealing with the spread of HIV, is simply content with attributing the spread to poor knowledge of HIV amongst the concerned groups, failing to link the spread of disease amongst men who have sexual intercourse with men to the way their marginalisation is the reason for the lack of awareness. Another in the Hindu, bemoans the non-judgemental attitude being bestowed upon men who have sex with men by activists, and that it is socially, medically and ethically unacceptable to treat this class of persons as normal.²⁹ “This is a medical problem and should be treated as such”, says another article in Middy.³⁰

Turning our gaze towards popular culture in the form of cinema: if we are to then take a look at the output the Indian film industry has put out over the past decade or so, the results are interesting. The earlier wave of cinema displayed the non – acceptance of homosexuality by some quarters taken in tandem with the crude stereotyping that is played to squeeze out a few laughs. On Indian television, perhaps the only depiction of homosexuality was that of a comically effeminate gay fashion designer in the soap *Jassi Jaisi Koi Nahin*, a remake of the Colombian telenovela *Yo Soy Betty La Fea*. The character’s exaggerated effeminacy was played for laughs, and the overall portrayal was extremely negative. The year 2004 saw the release of director Karan Razdan’s lesbian-themed movie *Girlfriend* to violent protests with its explicit depiction of sexuality onscreen. Female homosexuality was misrepresented in a major way in the movie, with its roots being traced to the lesbian character’s sexually abused past. As stated by a member of the women’s organisation Forum Against Oppression of Women, “it exploits a delicate issue that is

²⁶ People’s union for civil liberties, karnataka, human rights violations against the transgender community in india : a study of kothi and hijra sex workers in bangalore.

²⁷ Siddharth Narrain, *Being a Eunuch*, <http://www.countercurrents.org/gen-narrain141003.htm>.

²⁸ <http://www.deccanherald.com/deccanherald/nov242006/national22464020061123.asp>.

²⁹ “The same attitude of putting the MSM groups at ease with a non-judgmental approach will however endanger the next generation since the stigma attached to MSM behaviour gets removed in this process. If decriminalisation is also implemented there is a real danger of the percentage of population with such undesirable, unhealthy, unnatural and abnormal behaviour increasing without control” <http://www.hindu.com/op/2006/10/29/stories/2006102900461400.htm>.

³⁰ <http://epapers2.mid-day.com/middy/scripts/epaper/epapermain.aspx?>

hardly given proper coverage in the country, and converts it into a gross caricature, weaving a number of negative myths associated with lesbian women, and only serves to antagonise society even further.”³¹

We thus find that to a large extent, till about halfway through the first decade of the new millennium, media representations of the LGBT community tended to be on the stereotypical side. Before long though, things began to change. The next chapter attempts to understand how.

5. The Road to Naz: A Foot in the Closet Door

In December of 2001, Naz Foundation, a Delhi based NGO working on HIV/AIDS filed a petition challenging the constitutionality of Section 377 in the Delhi High Court. Following an intervention against the matter by Joint Action Council, Kannur, along with a Home Ministry affidavit supporting the retention of Section 377, the petition was dismissed by the High Court in 2004. Note here that the Government in its petition maintained that objectively speaking, there was is no tolerance to the concerned practices in Indian society, going on to observe that while the Government cannot police morality, in a civil society criminal law has to express and reflect public morality and concerns about harm to society at large : "In any Parliamentary secular democracy, the legal conception of crime depends on political as well as moral considerations... Public tolerance of different activities changes and legal categories get influenced by those changes.”³²

Two years later, it was back before the Court, having been remanded by the Supreme Court. As the movement around the petition grew, a coalition of NGOs called Voices Against 377 filed an intervention supporting the petitioner. The other two new parties to the matter were the National Aids Control Organisation which filed an affidavit stating that the enforcement of 377 was a hindrance to HIV prevention efforts, and an intervention by B.P. Singhal, stating that homosexuality was against Indian culture and the law had to be retained.

This was a period marked by tentative steps out of the closet and movements towards a more positive showcase of the community. A number of instances of progressive reporting by the media may be cited here. In 2004, Deccan Herald published a story detailing the various different organisations in Bangalore working on issues of alternate sexuality.³³ The Hindu has featured a number of articles which look into the right of the community to live with pride and dignity.³⁴ A move by the Tamil Nadu government to add a third gender to ration cards which made it the first Indian State to officially recognise its Hijra

³¹ Jayshree Bajoria, “‘Girlfriend’ causes India storm”, BBC NEWS, 14 June 2004, <http://news.bbc.co.uk/2/hi/entertainment/3805905.stm>, 02-02-2008, last visited 10 March 2011.

³² *Naz Foundation v. Government of Delhi and Ors.* <http://sify.com/news/othernews/fullstory.php?id=13250892>, last visited: 12-09-2008.

³³ www.deccanherald.com/Archives/jan102004/metro2.asp - 21k -.

³⁴ <http://www.hindu.com/mag/2007/09/09/stories/2007090950090400.htm..>

citizens was met with generally positive coverage.³⁵ A series on Alternate Sexuality was aired on CNN-IBN Live, which offered viewers an unbiased and informative look into the lives of the transgender community.³⁶

Again, if we look at cinematic examples from this period, we see a clear shift in looking at the subject of homosexuality with a compassionate eye, and giving it a much more humane treatment. A prominent example is *My Brother Nikhil*, directed by debutante Onir, released in 2005, depicting the story of a gay man's struggle with his family and his country after contracting the HIV virus. As reported by the New York Times, while it wasn't commercially a runaway blockbuster, its impact lay in having served up a story about love and loss, which are sentimental staples of contemporary Indian cinema, with a gay man at its centre, and having done so without kicking up the slightest fuss from India's cultural conservatives.³⁷ A large amount of support was garnered for the movie with a plethora of actors from the Indian film industry along with athletes promoting the movie in television spots. Then, in 2008, Tarun Mansukhani's gay-themed *Dostana* became a major blockbuster, and brought discussions of homosexuality a lot further into the mainstream - which brings us to the time of the final hearing of Naz.

6. Out and Proud

The arguments in the Delhi High Court chambers were followed with great interest by the LGBT community - and indeed by many human rights activists. Transcripts of the proceedings were widely circulated,³⁸ and in November of 2008 the arguments came to a close, the case reserved for judgment. The next few months involved a terse waiting period for the community at large. At the same time, gay prides were becoming more popular in India, with the summer of 2009 finding major pride gatherings in Delhi, Chennai, Bangalore, and Kolkata. Then, as if to celebrate the spirit of pride itself, the Delhi High Court gave its judgment just a week after the pride marches. In what has been considered a landmark decision, the Court ruled that Section 377 of the Indian Penal Code as it currently stood was violative of the constitutional rights of LGBT persons as guaranteed under Article 14, 15 and 21.³⁹

The media reportage around the judgment was, quite simply, tremendous. Siddharth Narrain notes how the explosion of stories and images that followed the decision was nothing short of an outing of the issue in the media.⁴⁰ Narrain notes:

³⁵ http://www.tehelka.com/story_main38.asp?filename=hub190408The_Rationing.asp, <http://www.hindu.com/2006/07/27/stories/2006072720080300.htm>.

³⁶ <http://www.ibnlive.com/features/alternatesexuality/>.

³⁷ Somini Sengupta, "Gay-Themed Film Tests Sensibilities in India", <http://www.nytimes.com/2005/04/06/movies/06bomb.html>, last visited 30 January, 2011.

³⁸ They can be found at: <http://www.lawyerscollective.org/hiv-aids/anti-sodomy>.

³⁹ (2009) 160 DLT 277.

⁴⁰ Siddharth Narrain, How the Media helped out LGBT issues, <http://thehoot.org/web/home/story.php?storyid=4049&pg=1&mod=1§ionId=21>.

"The first images relayed through television were of LGBT activists and supporters sobbing and hugging each other. After this, it was just an explosion of images and words. Phone calls to activists, photographs, live discussions, phone-ins, reactions from religious leaders, reactions from prominent people from all walks of life. The media had signalled a shift in the terms of the debate, and played no small role in bringing about this shift. The reasons for this could vary -- from TRP ratings, to sensationalism -- but what this downpour of coverage had done was wash away the doors of the closet that had been creaking open very slowly until now."

Not only did the various national newspapers carry the story prominently on their front pages⁴¹, the regional media gave it a lot of play as well.⁴² There was a sudden profusion of debate and discussion on different aspects of the issue, beyond decriminalisation - the issue of same sex marriage, of adoption, and varied response from the religious and ethical angle.

The fact of affirmation through acts of law and government expresses the public worth of one set of norms, of one sub-culture *vis-a-vis* those of others. It demonstrates which cultures have legitimacy and public domination and which do not. Accordingly it enhances the social status of groups carrying the affirmed culture and degrades groups carrying that which is considered as deviant.⁴³ And so it was that LGBT visibility grew in leaps and bounds in the months that followed. The Bollywood production *Dunno Y ... Na Jaane Kyun?* featured two shirtless men embracing in its promotional posters, while Indian television finally got its first major gay storyline. *Maryada — Lekin Kab Tak?* began as a story of four women in a family in Haryana. The narrative gambit turns out that the son is married, but also in love with another man. We also got Onir's *I Am*, whose gay storylines touched on the subjects of sexual abuse and blackmail. Sonali Gulati's documentary of the same name featured interviews with parents of LGBT persons from across socio-economic backgrounds.

There was also a profusion of notable queer literature – we had Parvati Sharma's *The Dead Camel* and other stories of Love, Rahul Mehta's *Quarantine*, R. Raja Rao's *Hostel Room 131*, Mahesh Natarajan's *Pink Sheep*, and A. Revathi's *The Truth About Me* which gave a voice to the struggles of the Hijra community in India.

7. The TV9 Anomaly

While the judgment was obviously a massive shot in the arm for gay rights activists across the country, it could not by itself serve as a panacea for all the wrongs suffered by the community. A few months following the judgment came the instance of Professor Siras, the Allahabad Muslim University teacher

⁴¹ See http://articles.timesofindia.indiatimes.com/2009-07-03/india/28152338_1_penile-non-vaginal-gays-rights-bisexuals-and-transgenders, <http://www.thehindu.com/todays-paper/article219230.ece>.

⁴² *supra* n. 40.

⁴³ Joseph R. Gusfield, *Moral Passage: The Symbolic Process in Public Designations of Deviance*, 15 *Social Problems* 175 (1967).

who was videotaped in a compromising position with another man by students of the university, and later committed suicide.

Media and popular culture reportage did not become completely positive post the judgment, even apart from TV9. Even at the time of Naz, the Tamil media other than progressive magazines like Kalachuvadu chose to be largely silent on the issue. Among these the reporting in Dinakaran has been particularly bad with reporters choosing to focus on how the marchers dressed and used words irrelevant to the pride event.⁴⁴

The TV9 incident was different to the extent it did not merely involve offensive usage of words to portray the community - the outrage experienced was largely directed towards the shocking privacy violation that had taken place through insensitively outing a few gay men on prime time television. Homophobia as public spectacle, if you will. Important here was the fact that it happened *post* decriminalisation of homosexuality. Any kind of legal intervention before the Naz decision would've probably been thrown out of court - what was, most judges might say, so offensive about exposing a potential criminal as such? And yet, because it came in the context of the LGBT community having been affirmed equal moral citizenship by a constitutional court, a legal route could in fact be pursued in addition to the civil agitation one.

As highlighted by the petition drafted by Adhikaar, a Delhi-based NGO, this act of TV9 was violative of Code 6 of the News Broadcasters Association Code which deals with matters of privacy, and states⁴⁵ :

“As a rule channels must not intrude on private lives, or personal affairs of individuals, unless there is a clearly established larger and identifiable public interest for such a broadcast. The underlying principle that news channels abide by is that the intrusion of the private spaces, records, transcripts, telephone conversations and any other material will not be for salacious interest, but only when warranted in the public interest.”

By way of entrapping a set of gay men through calling them and asking them pointed personal questions about their sexual lives, TV9 was further in violation of Code 9 (Self-Regulation Section) of the News Broadcasters Association which deals with sting operations and which states.⁴⁶

“As a guiding principle, sting and undercover operations should be a last resort of news channels in an attempt to give the viewer comprehensive coverage of any news story. News channels will not allow sex and sleaze as a means to carry out sting operations, the use of narcotics and psychotropic substances or any act of violence, intimidation, or discrimination as a justifiable means in the recording of any sting operation.”

⁴⁴ <http://qmediawatch.wordpress.com/>.

⁴⁵ Code of Ethics and Broadcasting Standards of the News Broadcasters Association.

⁴⁶ Code 9, Code of Ethics and Broadcasting Standards of the News Broadcasters Association.

Further, TV9 violated a number of Fundamental Principles of the News Broadcasters Association Guidelines⁴⁷ by way of purposefully selecting and presenting news with the intention of promoting homophobia⁴⁸, failing to adhere to an appropriate degree of public service and journalistic integrity⁴⁹, and willfully spreading untruths about homosexuality.⁵⁰

The first protest against the channel took place on Friday outside TV9's Mumbai office, with a crowd of around 70 gathering with placards and flowers outside the office. Simultaneously, protests were planned in Delhi and Bangalore, dates definitively decided.⁵¹ That left the question of Hyderabad.

The problem with Hyderabad was the lack of any real cohesive LGBT group that could play the role of a facilitator in the process. It was left to a scattered group of different players that was required to come together quickly, if any action could be taken. The major groups here, then, were NALSAR University of Law's student-run Gender and Sexuality Forum, coupled with the queer group Prathibimb. Along with these were the NGO's in the city, primarily Microsoft's Heroes Group, and the Suraksha trust, along with a set of students from Hyderabad Central University. After a series of stalled meetings where there was difficulty in consensus regarding date and size of the protest, it was decided that Saturday, the 25th of February, the very day after the Mumbai protest, would be the one at Hyderabad. The disparate groups came together to form a mass of 80 people protesting outside the office, with the gradual realisation dawning: this was the first ever gathering of the LGBT community and its straight supporters in the city.

A month later, The News Broadcasting Standards Authority, New Delhi censured TV9 to pay a fine of Rs.1,00,000 and broadcast an apology in prime time both in English and in Telugu. NBSA has determined that TV9 has violated the following codes of ethics and broadcasting standards.⁵² Justice J.S. Verma called the story a sensationalised depiction of Gay culture in Hyderabad and the story needlessly violated the privacy of individuals, with possible alternate sexual orientation. He also pointed out that **alternate sexual orientation is no longer considered as a taboo or a criminal act**. The channel was directed to run an apology for three consecutive days beginning the Monday next, in prime time with the following text:

“TV9 apologises for the story “Gay Culture Rampant In Hyderabad” telecast on this channel on 22 February, 2011 from 15:11 hrs. to 15:17 hrs. particularly since the story invaded the privacy of certain persons and was in violation of the Code of Ethics &

⁴⁷ Fundamental Principles of the News Broadcasters Association Guidelines.

⁴⁸ Fundamental Principle 4.

⁴⁹ Fundamental Principle 2.

⁵⁰ Fundamental Principle 1.

⁵¹ *LGBT Community holds multi-city protests against TV channel that outed gay men*, <http://www.fridae.asia/newsfeatures/2011/02/28/10677.lgbt-community-holds-multi-city-protests-against-tv-channel-that-outed-gay-men>.

⁵² <http://gaysifamily.com/2011/03/24/tv9-pays-the-price/>, last accessed 14-04-2011.

Broadcasting Standards of the News Broadcasters Association. Any hurt or harm caused to any person thereby is sincerely regretted.”

8. Conclusion

The laws that were passed bestowing a status of criminality on the LGBT community were passed in silence, without debate or discussion.⁵³ Within the silence that has since ensued, there has been limited debate, with the negative image of the community that is propagated by the media taken to be a viewpoint reflective of the community as a whole.

However, there has been an increasing trend observed by the media to shift towards a more tolerant and balanced view. The importance of media responsibility lies in the fact that the public tolerance referred to by the aforementioned Government affidavit can only be altered through a notional change, which is again where the media takes centre stage. In the way that it acts as a powerful tool for changing people’s perceptions, it can be used for providing an unbiased, informative viewpoint on the lives of the transgender community, in order to displace the common fears and prejudices maintained by people. This notional change is essential, because without it, any progressive change in law will ring hollow if it doesn’t have the backing of the public consciousness.

At the time of writing this paper, the LGBT community stands at a crucial stage of flux. The Naz Foundation judgment was challenged by a number of parties before the Supreme Court. The hearings lasted for a 6 week period earlier in the year. Crucial here was the government reversal from its position before the Delhi High Court: before the Supreme Court, the Attorney General submitted the Government's support for the judgment, stating that the criminalisation of homosexuality had been imposed on Indian society by the British rulers and that it was not a reflection of existing Indian values and traditions.⁵⁴

Arguments having been concluded, the case has been reserved for judgment. Regardless of its outcome, with an increasing profusion of LGBT visibility in the media, it will be important to monitor the extent of responsible reporting on the community. In 2008, a group of journalists in Mumbai came together, aiming for a more balanced treatment of gay, lesbian and other queer issues in the Indian media and

⁵³ For instance, Macaulay, in his introductory report to the draft bill stated “[...we] are unwilling to insert, either in the text or in the notes, anything which could give rise to public discussion on this revolting subject; as we are decidedly of the opinion that the injury which would be done to the morals of the community by such discussion would far more than compensate for any benefits which might be derived from legislative measures framed with the greatest precision.”

Report of the Indian Law Commission on the Penal Code, October 14, 1837, pp. 3990-91, as taken from Alok Gupta, *Section 377 and the Dignity of Indian Homosexuals*, Economic and Political Weekly, November 18, 2006.

⁵⁴ *Anti-gay law blame on Raj*, The Telegraph, http://www.telegraphindia.com/1120323/jsp/frontpage/story_15284831.jsp#.UAjyFLRSsfT.

entertainment industries.⁵⁵ The Queer Media Collective as it was called kicked off its activities with an awards ceremony honoring sensitive reporting on LGBT issues. However, not long after it was formed, the group unfortunately lapsed into defunctness. A need for such a group is particularly strong today.

Indeed, such an initiative does not have to be limited to community members. The BBC published a report on its portrayal of lesbian, gay and bisexual people in 2010,⁵⁶ in response to two decades of criticism of its frequent "low level homophobia."⁵⁷ The research and consultation findings revealed that the BBC had made progress with its portrayal of LGB people but could do more to better reflect the diversity of LGB audiences. Its recommendations included having the BBC Working Group on the Portrayal and Inclusion of Lesbian, Gay and Bisexual Audiences monitoring pan- BBC implementation of the report findings.

⁵⁵ See <http://queermediacollective.wordpress.com/>.

⁵⁶ Portrayal of Lesbian, Gay and Bisexual People on the BBC: Executive Summaries and Recommendations, September 2010, available at http://downloads.bbc.co.uk/guidelines/editorialguidelines/research/diversity_summaries_lgb.pdf.

⁵⁷ Owen Gibson, BBC accused of failure in portrayal of gay lifestyles, <http://www.guardian.co.uk/uk/2006/mar/01/gayrights.media>.