

TYRANNY OVER THE MIND: PAID NEWS AS ELECTORAL CRIME

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What amounts to interference with the exercise of an electoral right is ‘tyranny over the mind.

- *Supreme Court*
(in *Shiv Kripal Singh versus V.V. Giri, AIR, 1970, SC 2097*)

1. Introduction: Commerce in News

This paper examines the unethical practice of ‘paid news’ that is spreading its tentacles all over media, as an electoral crime or corrupt practice affecting the roots of democracy¹.

Newspapers sell the space for commercial speech. It is the business of the newspaper industry, without which it cannot survive. Every copy of newspaper is also for sale, without which also print media cannot get circulated. There is nothing wrong in this because it is the legitimate business of the media. When any media organization is committed to promote a particular group, or party or individual that is called as a ‘sold out’ medium. If a reporter is not paid but asked to use his id card as reporter of that medium to earn his wages, it is the example of organized ‘paid news’. From this poisonous seed of unethical practice today’s banyan tree of ‘paid news in elections’ has grown².

In recent years, corruption in the Indian media has gone way beyond the corruption of individual journalists and specific media organizations -- from “planting” information and views in lieu of favours received in cash or kind, to more institutionalized and organized forms of corruption wherein newspapers and television channels receive funds for publishing or broadcasting information in favour of particular individuals, corporate entities, representatives of political parties and candidates contesting elections, that is sought to be disguised as “news”. Corruption for not publishing a particular information is also rampant but

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1 Based on the paper presented at International Workshop on “Key Challenges for Journalism in India” on August 8, 2012 at New Delhi, Organized by International Federation of Journalists.

2 See for analysis by P. Sainath, <http://www.thehindu.com/opinion/columns/sainath/article2523649.ece>

difficult to trace. That is totally uncontrollable and confined to personal or institutional ethics.

The news and views are like different groups of blood that runs in the veins and arteries of society which supplies oxygen of truth to the body polity and its general public making the citizen conscious and representative democracy vibrant with which the rule of law survives and people's decision prevails.

Now that blood is getting polluted, instead of truth of oxygen the infected blood full of diseases like untruth, bias, unfair comments and unreasonable exaggerations etc is being pumped. There is a strong need for blood transfusion and to generate new blood after multiple dialyses to cleanse these infections. The need to supply healthy information is a perpetual requirement. But during the crucial hour of decision making, i.e., an election where every citizen has to exercise their right of expression needs extra doses of oxygen so that a proper government of people's choice is constituted for five years. If the cash decides the quality of news one can imagine what kind of a government the people would get. Paid news during an election is capable of ruining the state for five years. Like voter the journalist who sold news has to purchase 'service', and every kind of 'governance' including justice, perhaps. With purchase of votes and sale of news, the democracy will be off the people, far the people and buy the people', instead 'of the people, for the people and by the people'".

a) AP Elections

In 2004 AP elections, the ugly head of 'paid-news' was noticed in one district and by 2009 elections spread its tentacles all over the state and beyond. The District Collector and Returning Officer of Khammam district had reports that some major political party contestants paid huge amounts of money in a package deal for cooked up favourable information to create a false atmosphere influencing electorate. Neither the purchasers nor the selling journalists documented the dirty deal and their expenditure or income statements did not reflect cash for news. Based on the rate for 'column centimeter' of particular media the 'cost' of paid news was assessed and the Returning Officer issued notices to candidates and the media. Before he took action, he was shifted because both opposition and ruling party, besides media, did not want it. It was

hushed up. By the next Assembly Elections in 2009, the news spread, and the individual and isolated phenomenon in a few constituencies became well organized, wide spread, deep rooted with systematic collection as per unwritten(!) tariff. Paid news was institutionalized and journalists sold space to achieve fixed targets. It resurrected with full vigor in every general elections and happening in more focused and concentrated manner in every by-election.

b) Cultural “Paid News”

There are several kinds of unethical ‘paid news’ practices prevalent in cultural activities. As the auditorium was most of the days empty without any activity, the group of enthusiastic entrepreneurs creatively generated a business method, wherein a small time artiste or publicity maniac will be chosen as ‘bakra’ who is ready to pay for his ‘felicitation’. He will bear the cost of memento, shawl, bouquet, and clapping audience, speaking personalities, guests and chief guest besides a presiding personality. They have also lured cultural reporters of all newspapers (now of tv channels also) who would receive gifts or gift cheques for giving a favourable report next day with a facility of publishing a photo at a higher cost. Reporters used to bribe subeditors to secure the publicity. A noted personality who later became an MP and Union Minister is also known for this kind of activity for self-promotion. He used the huge profits he made in big dams and civil constructions, and developed sufficient clout in cinema, culture and religious fields besides wielding high influence in ruling party politics. State level newspapers did not seriously acted on this small time corruption of stringers and part time reporters. It is mainly because these small reporters get paid as per column centimeter rate, (may be original class of ‘paid news’, which means for example Rs 100 per full length of column in a broadsheet newspaper).

c) Examples of Exaggerated Misinformation

Here are two examples of newspaper headlines, one which suggested that a candidate had “divine blessings” while the other claimed on behalf of a candidate that “though others distributed money, votes will be polled in favour of candidate Mr. A.”. While the first headline seeks to influence votes using a divine reference, the second alleges that candidates distributed money. These two statements are potential poll

crimes under both Indian penal Code and Representative of People's Act, 1951.

2. Paid News, as Crime

During 1995 N.T.Ramarao was dethroned with 'paid-news'. Major dailies published a false report that 'NTR is preparing dissolves house'. And that has a dramatic effect of induced dozens of legislators to shift loyalty overnight to Chandrababu Naidu. After taking oath as Chief Minister, Naidu 'paid' a visit to residential houses of those journalists who sold their 'news'.

Recently in Parkal Assembly Constituency in Warangal District where the by-election was held, 'votes for cash' was known to every one. No doubt that the vigilant officers seized huge currency bundles but much before election notification candidates sure to be fielded have completed distribution of cash in selected households³. A huge network was designed as per the voters' list. 'Take notes and give votes if not get ready to lose limbs' was the threat administered. The media was also paid for not reporting any thing about it. Long hand of law can reach if there is fraudulent or false publication 'suppression' for cash gets not noticed. No law on the earth can punish 'paid silence', or 'paid suppression' or 'paid deletion'.

This is not just an unethical practice but a new form of crime on par with economic, white collared and organized crimes of rich and powerful. It has characteristics of perjury, misrepresentation, deceit and cheating, which are well defined crimes under IPC and RP Act.

a) Election Crime: Tyranny over the mind

The "undue influence" which could potentially curb free exercise of electoral rights is an election crime under IPC⁴ and RP Act⁵. While the Act explains "undue influence" in general terms and supplemented the explanation with an example that threatening a candidate or elector with injury, or consequence of divine displeasure if not favoured, would constitute the undue influence. Using similar expressions, Section 171C

3 See <http://www.deccanchronicle.com/channels/cities/hyderabad/results-raise-telangana-hopes-127>

4 Section 171C of Indian Penal Code, 1860

5 Section 123 of Representation of People Act, 1951

of the IPC says it will tantamount to interference or attempt to interfere with the free exercise of an electoral right, which is punishable with imprisonment up to one year and fine or both under Section 171F of IPC. This could cover the media's interference through "paid news". Healthy campaign is 'due' influence which is valid. Voters can be influenced with statements of the good deeds of the candidates and their achievements, but these should not be "undue" and tantamount to "abuse of influence"⁶. The Supreme Court said⁷ that what amounts to interference with the exercise of an electoral right is 'tyranny over the mind'.

Even attempt to interfere with free exercise is an electoral offence. By examining content of "paid news", the possibility of direct or indirect interference or attempt to interfere on behalf of a candidate with the free exercise of electoral right would be discovered. Anyone trying to falsely influence the minds of the voters will vitiate the election. More than money, muscle or any other inducement, the falsity will effectively influence the voter. Such a vote cannot be valid to authorize candidate to represent constituency. The media has to understand that it should not fuel this falsity which undermines democracy and by doing so they are committing crimes.

b) Corrupt Practice & Electoral Offence

Publication of a false statement is both corrupt practice and electoral offence⁸. There is a need to investigate campaign or advertising camouflaged as news during elections and prosecute offenders, either poll agents or media personnel, for violating the provisions of Section 123(4) of the Representation of the People Act, 1951.

Section 123(4) defines a corrupt practice as:

the publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the

6 *Bachan Singh v Prithvi Singh*, AIR, 1975, SC 926

7 *Shiv Kripal Singh v V.V. Giri*, AIR, 1970, SC 2097

8 Section 123 of Representation of People Act, 1951 explains various corrupt practices

candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of the candidate's election.

'Any person' in this definition includes the media person who publishes or broadcasts statements for money which is based on the consent of a candidate or his agent. Adverse remarks about the personal character or the conduct of a rival candidate or propagating false information about other candidates would squarely fall within the ambit of a corrupt practice.

c) Known falsity determines criminality

If a statement published or broadcast is proved to be false, the concerned newspaper publisher or owner of a television channel could be prosecuted under IPC. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with (imposition of a) fine⁹. This interpretation of the word 'falsity' decides the criminality of the publication or broadcast.

d) Crime of not identifying printer of false information

If newspapers become akin to pamphlets of politicians during election campaigns, they should be treated as such. Every pamphlet has to print the names and addresses of the printer and publisher and that every publisher shall send one copy of such publication to the Chief Electoral officer in the capital or to the District Magistrate and that any person who contravenes this provision shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to Rs 2,000 or both¹⁰.

The concerned newspapers might have not violated above Section 127A (1) as they generally publish the name of the printer and publisher every day but by not sending a copy to the Chief Electoral Officer or District Magistrate clearly marking which part of their

9 Section 171G of the Indian Penal Code

10 Section 127A of the Representation of the People Act, 1951

newspaper is in the nature of a pamphlet or advertisement, the newspaper might have committed a crime under Section 127A(2)(b) of the Act. Thus it is no more just an aspect of ethics or code but violation of law.

e) Suppression of expenditure

In case the expenditure on “paid news” together with other expenditures incurred by a candidate exceeds the prescribed limits laid down in the Conduct of Election Rules, Section 77 of the Representation of the People Act would have been violated. Every District Magistrate in his capacity as Returning officer or District Election Officer has the power to issue a notice to each newspaper and candidate to furnish details relating to the “sale” or “purchase” of news columns and also submit copies of the publication to verify whether the reports therein are false or not or cause undue influence that could materially affect the outcome of the election¹¹.

f) Income from paid news: Tax laws breached

The Income Tax authorities have enough power to demand details of such financial transactions and impose a tax if necessary on the concerned media companies. If “paid news” items are found to have materially affected the prospects of a candidate or adversely affected the prospects of his or her rival candidate, it could become a ground for the Election Commission of India declaring the election of the winner as void¹². If it is proved that a candidate is guilty of having indulged in a corrupt practice, then he can be disqualified from contesting elections as per election law¹³. Along with him, those who committed this corrupt practice would also forfeit their right to vote¹⁴. The Election Commission is empowered to enforce these provisions of the law.

The concerned newspapers and television channels typically receive money for “paid news” in cash and do not disclose such earnings in their company balance sheets or official statements of accounts. Thus, by not accounting for the money received from candidates, the concerned media company or its representatives must be violating the

11 Section 77 of the Representation of the People Act, 1951

12 See Section 100 of the Representation of the People Act, 1951

13 Section 8A of the Representation of the People Act, 1951

14 Section 11A of the Representation of the People Act, 1951

provisions of the Companies Act, 1956 as well as the Income Tax Act, 1961, among other laws.

g) Breaching Advertising Code

If what has been published is presumed to be an advertisement, then too the newspaper may be held liable for breach of the advertising code of conduct. The Cable Television Networks Rules, 1994, prescribe a number of guidelines for advertisements broadcast by television channels. Rule 7 says that advertising carried shall be so designed as to conform to the laws of the country and should not offend the morality, decency and religious susceptibilities of the subscriber. No advertisement shall be permitted which:

- derides any race, caste, colour, creed and nationality;
- is against any provision of the Constitution of India;
- tends to incite people to crime,
- cause disorder or violence or breach of law or
- glorifies violence or obscenity in any way; etc.

The rules also specify that no advertisement shall be permitted the objects whereof are wholly or mainly of a religious or political nature and that advertisements must not be directed towards any religious or political end¹⁵.

3. Paid news and its impact on election

True and correct consequence of ‘false and incorrect’ expenditure statement is disqualification. It’s an open secret that every expenditure statement of either elected or defeated candidate is false and its acceptance without any verification is a farce.

a) MLA loses her seat

But for the first time, the untruth of a candidate is unraveled and an elected candidate Ms. Umlesh Yadav, a sitting MLA from Bisauli in UP is disqualified under section 10 A of the Representation of People’s

15 Code of conduct under the Cable Television Networks Rules, 1994

Act 1951¹⁶ for a period of three years for failing to provide a ‘true and correct account’ of her election expenses¹⁷.

The scope of the above section 10A came to be considered by the Supreme Court. The Supreme Court held that an incorrect or untrue account of election expenses could not be said to have been lodged in the manner required by law and that the Election Commission could go into the question of the correctness or falsity of account of election expenses lodged by a candidate under the said section 10A¹⁸.

Following the above dictum of the Supreme Court, the Election Commission passed an order on 2nd April, 2011 in an another case of similar nature of ‘paid news’ against Ashok Chavan, a member of the Maharashtra Legislative Assembly, pending before it, that it can go into the correctness or falsity of the account of election expenses filed by Chavan. The writ petition¹⁹ filed by Chavan has been dismissed by the Delhi High Court holding that:

14. In view of our aforesaid analysis, we are of the considered opinion that the decision in L.R. Shivaramgowda is a precedent in the field and the Commission has correctly appreciated and understood the law laid down therein and, therefore, we concur with the view expressed by it.

15. Consequently, the writ petition, being devoid of merit, stands dismissed²⁰.

Thus EC can go into questions of Paid news phenomenon as a matter of legal issue. Another issue raised in this case was whether expenditure authorized by others or incurred by her friends also is accounted within the limit as per Section 77 of Representation of People’s Act, 1951?

16 RP ACT,10A. Disqualification for failure to lodge account of election expenses.—If the Election Commission is satisfied that a person—(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and (b) has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

17 <http://www.rediff.com/news/report/election-commission-disqualifies-up-mla-for-paid-news/20111020.htm>

18 *LR Shivaramagowda v. TM Chandrasekhar* (AIR 1999 SC 252)

19 No. W.P.(C) 2511 of 2011 dated 30th September, 2011

20 *LR Shivaramagowda v. TM Chandrasekhar* (AIR 1999 SC 252)

Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our constitution would remain merely a distant dream eluding our grasp²¹.

What should be included in the 'expenditure' is further explained by the Supreme Court in another significant case in 1996.

That the expenditure, (including that for which the candidate is seeking protection under Explanation I to Section 77 of the RP Act) in connection with the election of a candidate - to the knowledge of the candidate or his election agent -shall be presumed to have been authorized by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law and to show that part of the expenditure or whole of its was in fact incurred by the political party to which he belongs or by any other association or body of persons or by an individual (other than the candidate or his election agent). Only when the candidate discharges the burden and rebuts the presumption he would be entitled to the benefit of Explanation 1 to Section 77 of the RP Act²².

Section 77 underwent some changes in 1974, 1975 and 2003. By the amendments made in 1974 and 1975, the expenditure incurred by the political party sponsoring the candidate or any other person was exempted from the purview of the expenditure incurred or authorized by

21 Supreme Court observed in *KanwarLal Gupta v Amar Nath Chawla* (AIR 1975 SC 308):

22 *Common Cause v. Union of India and Others* (AIR 1996 SC 3081).

the candidate. After several interpretations, finally the section 77 is amended in 2003²³.

From the perusal of the said section 77, as it stands now, it will be observed that what is now exempted from the purview of the expenditure incurred or authorized by the candidate or his/her election agent is only the expenditure incurred on the travel of leaders of the political party for general party propaganda and all other expenditure by the party in connection with, or relatable to, the election of any particular candidate is deemed to be incurred or authorized by him/her and should form part of account of his/her election expenses under section 77 of the Act. After examining these aspects of expenditure and paid news problem in UmleshYadav case, the Election Commission held:

Having regard to the above position of the present law, even if it be assumed that Smt. Umlesh Yadav had not herself incurred the expenditure on the publication of the paid news in Dainik Jagran on 17.04.2007, it shall be deemed to have been authorized by her

23 Section 77.Account of election expenses and maximum thereof.—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.—For the purposes of clause (a) of *Explanation 1*, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and (ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

as it was incurred by her party, i.e., Rashtriya Parivartan Dal. Pertinent to point out here that the newspaper (Dainik Jagran) in their statement before the Press Council of India stated that the material for publication of the “paid news” under reference was got written by the candidate and not by their correspondent. In view of the above, the expenditure of Rs.21,250/- paid by her party to the Dainik Jagran for the abovementioned publication of paid news with a view to furthering her prospects in the election ought to have been included by her in her account of election expenditure. As the said expenditure has admittedly not been shown in her account of election expenditure filed on 08.06.2007 under section 78 of the said Act, the said account of election expenditure is obviously not the correct or true account as required to be maintained by her under section 77(1) of the Act.²⁴

Umlesh Yadav’s case is strengthened by the investigation and report of the Press Council of India, which has rightly observed in its adjudication order that ‘the format of the impugned material was such that it would appear as a news report to the layman and word ADVT printed at the lowest end rather appeared to accompany a small boxed Appeal by the candidate. There was beyond doubt a possibility of confusing the voters when the elections were just a day away and all campaigning has stopped.’ Such an attempt by the candidate to mislead the electorate runs grossly counter to, and in the face of, the Supreme Court’s solemn declaration in *People’s Union for Civil Liberties v Union of India and others*²⁵ that the electorate should be made aware of the candidate’s antecedents, assets, liabilities and educational qualifications so that they can make an informed choice about their representative while exercising their franchise²⁶.

Either Press Council of India or Election Commission of India, has gone into the question whether it was an advertisement in the guise of news item, resulting in expenditure which was suppressed. But, what about the content of the ‘paid news’? If that is false and misleading, that would constitute another poll offence which if proved would result in disqualification.

24 Para 20 of the Order of the Election Commission of India in UmleshYadav case.

25 AIR 2003 SC 2363

26 Para 26 of Disqualification order by Election Commission in

If this test is applied almost all elected representatives should lose their seats and be disqualified to contest immediately. India will breathe a fresh breeze of political air with all the new faces in Lok Sabha and all Vidhan Sabhas, alas, just a dream. The enormity of false and incorrect statements in this country's elections is obvious, imaginable and also impossible to act upon. The Umlesh Yadav case, is the first but should not be the rarest.

b) Media's Share in Crime

The media which is supposed to report truthful electioneering, has an unsavory link in this murky deal of taking money and spreading falsity. This legislator failed to include in her official poll accounts, spending on paid news, which was dressed up as news in two Hindi dailies Dainik Jaagran and Amar Ujala during her 2007 election. The MLA became a news item 'for purchasing favorable news items', without reflecting it in the statement of expenditure. On a complaint by losing candidate, the Press Council of India did a professional job of inquiry and found two newspapers guilty of ethical violations. Their adjudication report was sent to ECI for an appropriate action. That resulted in a disqualification penalty. The pathetic part of the entire story is that it may not be the end of the story. Even as the 'disqualification' imposed at the fag end of her five year term, this in all probability extended by litigation. If litigated, she would have wonderful time, can contest if she could secure a stay on disqualification and even get elected again. It has to be noted that she was not disqualified for unethical practice of purchasing favorable news but for not reflecting it in the expenditure only. It is still a historic adjudication by ECI because very rarely the falsity of statement became a ground for disqualification. To get elected and after getting elected our representatives violate the law with all impunity and disregard for the 'law' which they promise to comply with.

When ECI is probing the truth or otherwise of 2009 poll expenses of the Maharashtra's former Chief Minister Ashok Chavan; this *netha* questioned the jurisdiction, the court at the preliminary level granted the stay against ECI's process but ultimately former CM's petition was

dismissed²⁷. Good news indeed, indicating action against bad trend of undue influence by money and falsity.

c) Will any MLA survive?

It is not just this disqualified lady legislator Ms Umlesh Yadav or Mr. Chavan who fell in disgrace for Adarsh Housing scam and another former Jharkhand CM Madhukoda who also has record of losing power for graft charges, and similarly almost every legislator's election reflects false and incorrect expenditure. If the all the elected persons could be disqualified on this count alone, the grounds of abuse of money power, electoral malpractices and offences might find no victims at all. This will give rise to question, are we truly democratic?

Where there is legislation, the ECI is bound by it. In the absence of law, the ECI has general powers under Article 324 with regard to conduct of elections under which it can pronounce action. This point is established in Supreme Court in *A.C. Jose v. Sivas Pillai and Others* (AIR 1984 SC 921), where in it was stated:

25. To sum up therefore, the legal and constitutional position as follows:

- (a) when there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,
- (b) where there is an Act and express Rules made there under, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence direction and control as provided by Art. 324.

The agony of common man is reflected in ECI's indictment in its 23 page order, that "by suppressing expenditure on 'paid news' and

27 P. Sainath writes in the Hindu, The former Maharashtra Chief Minister had challenged the power of the Election Commission of India (ECI) to go into the truth or falsity of his 2009 poll expenses. Those proceedings in the ECI had gained infamy as the 'paid news' case. A case which embarrassed major newspapers that had run scores of hagiographic full pages of 'news' on Mr. Chavan during his poll campaign. Pages without a single advertisement on them (*The Hindu, November 30, 2009*). <http://www.thehindu.com/opinion/lead/article2523649.ece>

filing an incorrect or false account, the candidate involved is guilty of not merely circumventing the law relating to election expenses but also of resorting to false propaganda by projecting a wrong picture and defrauding the electorate.”

4. Paid News,2012Electoral Malpractice

a) ECI Monitoring Cells

During elections in May 2011 and March 2012 the Election Commission of India took extraordinary step of forming district level monitoring bodies to closely track media coverage of the campaign process, to detect cases of paid news, which was viewed by ECI as electoral malpractice. In elections to five state assemblies in 2012, a total of 626 suspected cases of ‘paid news’ were detected by the Media Certification and Monitoring Committee MCMC functioning under ECI. Punjab state, where close to 14 million votes were cast and a total of 117 seats contested, reported no fewer than 523 of these suspect cases. In State of Uttarakhand, where just over 4 million votes elected a total of 70 legislators reported 61 cases. The largest state of the nation, Uttar Pradesh, where over 75 million votes were cast in 403 constituencies, recorded remaining 42 cases. On the basis of these figures, the ECI issued notices to 201 candidates in Punjab, all 61 suspect cases in Uttarakhand and 38 individuals in Uttar Pradesh. A large number of the candidates have conceded that they did indeed buy space and time in the media to pitch favourable stories about themselves. They have agreed indeed, to the inclusion of the funds spent within their campaign accounts²⁸.

While Umlesh Yadav case is an example of not giving true account of electoral expenditure, the real issue is what if the candidates include the expenditure. Will ‘paid news’ malpractice be excused if candidates confessed about it? The falsity in the content of paid news has to be probed into and those who used it should be prosecuted for that corrupt electoral practice. We do not have any precedents so far.

28 New Frontiers, New Struggles, Press Freedom in South Asia, 2011-12, Tenth Annual Indian Federation of Journalists Press Freedom Report for South Asia, Edited by Sukumar Muralidharan, New Delhi, p17. see <http://asiapacific.ifj.org>

b) PCI Report

When the paid news syndrome has seriously eroded credibility of media, there was an upsurge of demand to checkmate those who sell falsity through framing a new legislation. The media is a lot to regret for receiving drubbing from Press Council of India and Election Commission of India, but there are no traces anywhere. The powerful lobby of newspaper owners in the Press Council of India's governing body has flexed its muscle and vetoed out the investigative report filed by the two member committee on paid news. They tried to bury the report given by Paranjoy Guha Thakurtha and K. Srinivas Reddy, members of PCI²⁹. But recently the Central Information Commission has ordered the disclosure of full report under right to information³⁰. Even if authorities do not act on complaint at least they should share the information with the people. If not they will be committing same crime, i.e., misleading the people.

5. Criminology of Paid News

a) The first-past-the-post system

The first-past-the-post system of measuring votes for electing a member of legislative house is the real culprit of 'paid news'. This system works only in bi-party democracies like US and UK. In this system a winning candidate need not get 50 per cent plus one vote to get elected³¹. It is enough if he gets a single vote more than nearest rival. With just twenty per cent of valid votes polled, a candidate might get elected to represent all people including voters, voted or not. For that small margin, a candidate is doing everything. Earlier it was rigging, now minds are rigged with falsity through newspapers. If his misleading information could influence and change one mind in his favour momentarily it is enough. He can recover all the expenditure and amass huge wealth to fight next election. Pouring in unaccounted money call it black or criminal, is the real source of paid news. Thus the roots of this poisonous phenomenon can be traced to the manipulative election processes.

29 Paid News Sub Committee Report, www.scribd.com/doc/78431216/Paid-News-Sub-Committee-Report

30 http://dnasyndication.com/dna/top_news/dna_english_news_and_features/CIC_cracks_whip_on_paid_news_phenomenon/DNMUM222972

31 It is considered as simple majority for passing annual budget or any bill in legislature.

b) Fair wages & Fair Pages

If wages are fair one can expect fair pages. In the absence of wages, the pages will be sold in retail and wholesale. It is an open secret in Andhra Media that most of the newspapers give just an accreditation card or id card to their stringers and they are asked make their own money or get advertisements and take commission. Thus they were directly allowed to get paid for news. In corporate press conferences gift cheques and dinners with drinks became routine components. All these together developed into a full fledged and well organized selling of news. (Perhaps it is appropriate to call it as 'paid views'.) Now, with paid news becoming a well laid down policy of almost every newspaper, especially, vernacular newspaper, (which does not mean all English newspapers are exempted), the retail reporters feel totally lost as their managements are gaining in wholesale sale of news.

Very fact that several 'unpaid' or 'under-paid' journalists are working for a newspaper or TV channel, itself is the ample evidence of paid news as encouraged by managements. Non-payment of salary after getting work done for a month is an offence under Payment of Wages Act and it could be a sufficient 'industrial dispute' under Industrial Disputes Act which can be agitated in labour tribunals if at all the Assistant Commissioners of Labour are interested or entrusted with this responsibility. None dares to enter into such a conflict with media for fear of adverse publicity. Even the Working Journalists Act empowers the labour officials to impose penalties and secure payments to unpaid or underpaid journalists. Neither working journalists unions nor the labour department bothers about it. In the result the practice of encouraging reporters to sell their columns in their small towns and villages became an established system.

6. What needs to be done?

Firstly it is for the newspapers and their organizations to do what they can to eliminate the sources of this paid news. Managements should realize that ensuring the fair wages is sure way of securing the fair pages in newspaper if individual journalists are involved in paid news. Unions of working journalist should achieve the implementation of prescribed wages as per Working Journalists Act. The Wage Board's recommendations are now under challenge by the owners of

Newspapers, questioning the constitutional validity of Working Journalists Act and the constitution of Wage Board for newspapers only leaving out other media³². If managements also are involved in ‘paid news’, the companies should be prosecuted for fraud and undue influence in an organized manner.

The “paid news” phenomenon represents a “fatal combination” of three “Ms”, namely, the media, money and mafia that can subvert free and fair elections. Earlier, politicians used to hire musclemen with huge amounts of money and train them in booth rigging. Now...candidates are training media pens instead of mafia guns to ‘rig’ the minds of people with constant opinion bombarding.

It is not just a breach of media ethics or impropriety and not just the concern of the Press Council of India. It is a crime against democracy, punishable under law...the syndrome is just not the concern of the Press Council of India but a real challenge to the Election Commission of India, whose sole aim is to conduct free and fair polls.

The Representation of People’s Act 1951 is a well drafted piece of legislation which can produce genuine representatives if genuinely implemented. Big ‘if’ indeed! Any untruthful influence could be an offense and ground for challenging the election.

Under Section 123 of Representation of People Act 1951, bribery, undue influence, appeal on the ground of religion, caste, etc, publication of false statement relating to a candidate, free conveyance of voters, incurring of election expenditure in excess of the prescribed limit and seeking assistance of government servants are all considered corrupt practices. In 1989, booth capturing was added as another ‘corrupt practice’ in the law. In the present context, the media sold space and time to perpetrate undue influence and by the publication of false statements relating to winning chances of a candidate. In the process, the candidates spent huge amounts of money for coverage ‘packages’ which is a corrupt practice. These aspects have to be considered, investigated and prevented by the machinery of the Election Commission of India, as and when such things are happening. The Commission should not leave it to be decided at the time of hearing of election petitions, which means that the state

32 <http://thehoot.org/web/Media-houses-stall-Wage-Board-recommendations/5424-1-1-4-true.html>

would allow perpetration of corrupt practices and then wait for ‘proof’ of the same before election tribunals.

When the Press Council of India asked Maharashtra Chief Minister Shri Ashok Chavan to answer allegations relating to ‘paid news’ items that were published about him, he reportedly stated that the ‘appropriate forum’ to respond to is a court of law where election petitions are heard. This implies that unless the allegations are meticulously proved, it is almost impossible to handle ‘paid news’ offenders, who might by that time, reap the benefits of getting into positions of ‘power’...In Andhra Pradesh, the election tribunal (or the High Court) admitted an election petition by a candidate who contested and lost the election alleging that massive media opinion rigging was cause of his defeat.

During elections, the Election Commission of India is immune from judicial, legislative and executive interference and has to ensure that candidates do not spend more than the limits prescribed, spread false information or exert undue influence. Even after elections are over, the Election Commission can continue to direct officers through the governments concerned to prosecute offenders in courts of law. In association with ECI the PCI should constitute a special task force in each district during the elections to receive complaints, make preliminary studies and report to returning officers to initiate action against specific candidates, publications or television channels, if necessary. Initiation of proceedings for prosecution against media personnel and media companies could prove to be more effective than the Press Council of India issuing strictures and admonishments against errant media personnel and giving these wide publicity.

Enhance punishments

1. Existing legal provisions are adequate to punish offenders. Still the provisions of the IPC could be amended to enhance the quantum of punishment and fine for electoral offences. After a complaint is received and a press clipping provided alleging publication of “paid news”, it should be presumed that the company or individual against whom such an allegation has been made is guilty and the burden should shift to the accused to prove his or her innocence. If the content of the “paid news” item is

excessively tendentious or exaggerated, the presumption of liability should go up.

Secure Right of People to Know

2. As rightly noted by PCI the press provides a service that is akin to a public utility – it exercises its right to inform because the public has a right to know. The press thus functions as a repository of public trust and has the obligation to provide truthful and correct information to the best of its ability when such information is being presented as news content. Such news content is distinct from opinions that are conveyed through articles and editorials in which writers express their views. It should be truth and should not be false and misleading.
3. There is an urgent need to protect this precious right of the public to accurate information before the voters exercise their franchise in favour of a particular candidate in the electoral fray.

Ombudsman

4. Appointing ombudsmen in media organizations and better self-regulation are options to check the “paid news” phenomenon. However, self-regulation can offer partial solutions to the problem since there would always be offenders who would refuse to abide by voluntary codes of conduct and ethical norms that are not legally mandated. The owners of media companies need to realize that in the long term, such malpractices not just erode credibility of the media but undermine the democracy in the country as well.

Declare Paid news as electoral corrupt practice

5. An amendment to Section 123 of the Representation of the People Act, 1951, to declare the exchange of money for “paid news” as a corrupt practice or an “electoral malpractice” might serve some purpose. It can be effectively argued that the existing laws of the land (including the provisions of the Indian Penal Code, the Criminal Procedure Code, the Representation of the People Act, the Income Tax Act) have the potential to check such

malpractices provided the concerned authorities, including the Election Commission of India, are not just proactive but also act in an expeditious manner to apprehend those indulging in practices that are tantamount to a corrupt practice (including an electoral malpractice) or committing a fraud. As one legislator was disqualified, similar action should be taken against erring news seller also.

Enforce guidelines

6. The guidelines of the Press Council of India that news should be clearly demarcated from advertisements by printing disclaimers, should be strictly enforced by all publications. As far as news is concerned, it must always carry a credit line and should be set in a typeface that would distinguish it from advertisements.

Ensure fair wages to Working Journalists

7. Journalists Trade Unions should work for enforcement of labour laws including Working Journalists Act for securing wages fixed by Wage Board, to ensure fair wages so that the need for money making them to sell news will be eliminated.

Disclose interests and shares

8. It should be mandatory for all candidates/political parties to fully disclose their equity stakes and/or financial interests in newspapers/television channels on which news about their candidates/parties as well as interviews with candidates and/or representatives of the political parties are published or broadcast. If a candidate is being interviewed or given positive publicity on a particular newspaper/television channel, the association (financial or otherwise) of the candidate with the newspaper/television channel if any must be disclosed to the reader/viewer.

Special Cell during elections to check paid news

9. The Election Commission of India should set up a special cell to receive complaints about “paid news” in the run-up to elections

and initiate a process through which expeditious action could be taken on the basis of such complaints. In order to place a check on frivolous complaints being made a time limit of, say, one month from the date of publication or broadcast of the report should be imposed. The Election Commission of India should nominate independent journalists and/or public figures as observers in consultation with the Press Council of India who would accompany the election observers deputed by the Election Commission of India to various states and districts. Just as the deputed election observers are expected to report and keep a check on any malpractices in election campaign and the conduct of elections, these nominated journalists could report on instances of activities of practice of paid news to the Press Council of India and the Election Commission of India.

Active role of PCI

10. The Press Council of India should constitute a body of media professionals with wide representation at the national/state/district levels to investigate (either suo motu or on receipt of complaints of) instances of “paid news” and the recommendations of such a body – after going through an appellate mechanism -- should be binding on the Election Commission of India and other government authorities. The Press Council of India should be open to entertaining complaints about “paid news” from journalists while assuring them of secrecy if they act as whistle-blowers.

Stop Misusing stringers

11. Media organizations should refrain from the practice of engaging stringers and correspondents who double up as agents collecting advertisements for their organizations and receiving a commission on the revenue that accrues from advertisements instead of receiving stipends or retainers, if not, regular salaries.

Improve working conditions of working journalists

12. If working conditions and conditions of job security for journalists are improved and the autonomy of the editorial staff

upheld in media companies, this would to an extent curb the phenomenon of “paid news”.

Give Penalty Powers to PCI

Despite its quasi-judicial status, the Press Council of India has limited powers. The Council has the power to admonish, reprimand and pass strictures but cannot penalize the errant or those found guilty of malpractices. Besides, the Council’s mandate does not extend beyond the print medium. In the absence of an alternative body, the Press Council of India’s mandate should be widened to receive complaints and grievances against and about the working of television channels, radio stations and internet websites. The Press Council should be given legal powers to not merely admonish or pass strictures but also impose penalties against errant individuals and organizations.

Make PCI’s directives Binding

13. A proposal to amend Section 15(4) of the Press Council Act, 1978, to make the directions of the Council binding on government authorities, has been pending for a long time and should be amended to provide the Council more “teeth”.

Proactive role for ECI

14. The Election Commission of India should actively identify instances of “paid news” and if a prima facie case is established, the Commission should initiate action on its own against the errant and, if necessary, seek the assistance of those government-authorities responsible for enforcing the provisions of the Indian Penal Code and other laws.

Declaration by publisher

15. The editor or editor-in-chief of a publication should print a declaration in his or her newspaper stating that the news that is published has not been paid for by any political party or individual. Such disclaimers should be issued when the model code of conduct for elections comes into force and may morally bind the staffers of a media company to adhere to professional

ethical standards while discouraging the management from pushing a particular political agenda. However, self-regulation only offers partial solutions to the problem since there would always be offenders who would refuse to abide by voluntary codes of conduct and ethical norms that are not legally mandated. The owners of media companies need to realize that in the long term, such malpractices undermine not just democracy in the country but the credibility of the media as well.

Halting Campaign in Print Media before Polling

16. Civil society's oversight can also deal with the problem, but only to an extent. New rules and guidelines can be introduced and extant ones modified or amended. For instance, there should be a debate among all concerned stakeholders as to whether a directive of the Supreme Court of India that enjoins television channels to stop broadcasting campaign-related information on candidates and political parties 48 hours before polling takes place can and should be extended to the print medium since such a restriction does not apply to this section of the media at present, because of paid news.

Prevent this print fraud

17. It can be effectively argued that the existing laws of the land (including the provisions of the Indian Penal Code and the Representation of the People Act) have the potential to check the malpractice of "paid news" provided the concerned authorities, including the Election Commission of India, are not just proactive but also act in an expeditious manner to apprehend those indulging in practices that are tantamount to committing a fraud on the public.

Campaign against paid news

18. Conferences, workshops, seminars and awareness-generating campaigns should be organized involving, among others, the Ministry of Information & Broadcasting, the Press Council of India, the Election Commission of India, representatives of editors, journalists associations and unions and political parties to

deliberate on the issue and arrive at workable solutions to curb corruption in the media in general and the “paid news” phenomenon in particular.

All these initiatives, if sincerely implemented, may not entirely stop such malpractices in the Indian media but could reduce their incidence to a considerable extent. Law is there, systems are also in place. The question is where are we (the citizens, public representatives and journalists), and what are we doing?