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COPYRIGHT PROTECTION IN INDIA AND ACCESS TO SPECIFIC MEDIA CONTENT

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Abstract

The paper considers the Media Legislation of India in its historical and modern aspects; analyzes the main normative legal acts regulating media activity; shows the attempts of the Indian government to liberalize the media; demonstrates the role and place of female journalists in the country, the problem of their safety and social security. The paper particularly highlights the specific problem of access to media content for adult audience within the Indian media legal framework. The uniqueness of the Media Legislation in India is that it is based on the legislation accepted during the British expansion. Audiovisual mass media fall within the Indian Telegraph Act when there was neither radio, nor television. The laws concerning the intellectual property in India are constantly revised. According to the World Press Freedom Index, India takes the 136th place among 180 countries, which confirms unfavorable situation regarding the independence of media, quality of the legislation and security of journalists. Today many Indian editions still have certain prejudices against women. Legally, the study of the problem of access to media content for adult audience presents a particular interest. There were serious public battles in India concerning the Internet access to materials with sexual content. On the one hand, through relevant legislative regulators the government of India imposed restrictions on the access to adult content, and on the other hand, the Supreme Court of the country has not conclusively decided whether this ban violates the civil rights.

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1. Introduction

Despite past British colonial rule, India managed to create the dynamic democratic society. The main advantage of this Asian country is its huge intellectual potential. Human resources, knowledge and skills are the main strategic sources of current and future development of the country.

Such intellectual potential is also caused by the breakthrough, which India made in the field of information technologies, being not only the regional but also the global leader thus having come ever closer to the information-oriented society.

The literacy rate is steadily growing and according to the Statistical Year Book India 2016, it accounts for 80.9% men and 64.6% women. Over 60 years the market of printed media grew by more than 400%.

The scientific study covered selection, systematization and analysis of various historiographic and source materials thus forming the scientific basis of the problem and drawing objective conclusions within the complex study; a variety of historic facts forming the cornerstone of modern media in the country is also analyzed.

It is anticipated that the paper will contribute to the development of regional geographic, economic, politological and sociological science, as well as will serve a benefit in training qualified specialists in the specified scientific areas, in particular in the theory and history of journalism of foreign countries.

2. Problem Statement

India is one of the most dynamically developing states on the planet, and its influence on major regional political and economic processes is indisputable. The paper addresses the issues, which are not considered on a routine basis in modern academic literature – a broad range of processes impacting the media and forming the public opinion of the country. An in-depth and comprehensive study of genesis and development of some aspects of the Indian media system will make the reader get the fullest idea of social constants in the Indian society, and, perhaps and will forecast quite social and political transformations of the country in the foreseeable historical future.

3. Research Questions

The paper makes an attempt to understand the nature of some aspects within the media system under particular national conditions. The western standards cannot be applied to assess the Indian media for specific reasons (historical, religious, cultural, economic, political), thus posing a quite relevant objective – to prove the importance of national conditions when considering some segments of the Indian media space.

4. Purpose of the Study

The purpose of the study is to consider the legal framework of the Indian media, its historical and modern aspects through the analysis of normative legal acts regulating media operations; to highlight safety and social security of female journalists; to study the problem of access to media content for adult audience.

5. Research Methods

The study is based on system and complex approaches. It utilizes the method of interpretation and the discourse analysis, the diachronous method, methods of analysis, generalization and synthesis, unity of logical and private aspects. Such empirical methods as political discourse and content analysis are used to study media materials.

6. Findings

The Supreme Law of India – the Constitution – came into force on 26 January 1950 and is still valid with numerous amendments. In terms of its volume the Constitution of India is the biggest in the world – it contains 395 articles, 12 annexes and about 100 amendments. The right to freedom of the media is not directly specified in the Constitution, however it is treated as part of the right to freedom of speech and self-expression, which is guaranteed by Article 19 (1) of the Supreme Law (Maklakov, 2003). Censorship is allowed by the Official Secrets Act of India often used by authorities to prevent criticism of the country leaders. Throughout almost all years of the Constitution the censorship bodies mainly focus on materials related to the so-called information on national security, first of all on the situation in Jammu and Kashmir and the Indo-Pakistani conflict in general.

Media legislation in India

It is based on the legislation accepted during the British expansion. For example, the regulation of printed periodical press is governed by the Press and Registration of Books Act of 1867, as well as the subsequent laws of 1951, 1956 and 1961 covering the issues of advertising, pricing, etc. (Tkacheva, 2009).

In 1966 the Parliament of India established the Press Council of India, which was entrusted to inspect the compliance with the rights to freedom of the media. The Press Council of India was refounded in 1978 with the same assigned obligations. The Council is authorized to assess the actions of various authorities, including the government of the country, concerning the interference into the freedom of the media. Besides, the Council had to define ethical standards and their modification for newspapers and the news agencies of India.

Strange as it may seem but the audiovisual media of India fall under the Indian Telegraph Act of 1885 when there was neither radio, nor television. However, in amendments of 1961 the obsolete concept of the “telegraph” was replaced with the modern concept of “TV and radio broadcasting”.

Today the Cable Television Networks (Regulation) Act of 1995 as revised in 2002 is in fact the only law in India meeting modern requirements of the media industry.

In 1990 the Law on Public Broadcasting Agency of India *Prasar Bharati* (Bharati, 2006) was adopted. This Act was triggered by social discontent, mainly the political elite, with the dependence of audiovisual media on the government making it impossible to develop the political competition in the country.

The Prasar Bharati was only opened in 1997 as an autonomous agency under the Ministry of Information and Broadcasting of India (I&B). The agency was in charge of the main national broadcasting companies: All India Radio – AIR (Akashvani) and Doordarshan (DD) – public television) (Bharati, 2006).

The need for modern media legislation in India was caused by democratization of socio-political life of the country, its coherent integration into international economic processes, convergence of modern mass media and communication and some other factors.

In 2002 the Government of India approved the RTI Law, which has been designed over ten years. The Law guarantees the right to access to official including government information to the citizens of the country. This Law was adopted by the Lok Sabha, a lower house of the Indian parliament in 2005 (Mendel, 2008).

Governmental guarantees of autonomy of television and broadcasting and the regulating principles of private and foreign companies in the sphere of electronic media, including restrictions on the right to property on television channels by the owners of newspapers, were specified in the major laws on broadcasting (1997) and convergence (2000). However, the Law on Broadcasting came to nothing, it was not approved by the Lok Sabha and was later transformed into the law on convergence that included many provisions of the Law on Broadcasting. The Law on the Communications and Multimedia Commission of Malaysia (1998) and the Law on Telecommunications of the USA were based of this law (1996). The Law on Convergence suggests creating new independent and politically capable super department – the Communications Commission of India (CCI) entrusted to regulate three media spheres at once: telecommunications, IT and TV and radio broadcasting (Tkacheva, 2009).

In spite of the fact that the Law is not yet adopted by the Parliament, some of its basic principles are already being implemented in practice. In 2003 the electronic media were controlled by the Telecommunications Regulatory Authority of India (TRAI), which is not formally subordinated to the government. Since 2004 the TRAI also controls the tariff policy and technological infrastructure of TV and radio broadcasting.

At the same time the Prasar Bharati continues to control national TV and broadcasting companies. The Prasar Bharati is a natural monopolist of terrestrial telecasting, while the TRAI actively supports the penetration of private business and, hence, the formation of competitive environment within terrestrial broadcasting. It seems clear that such power balance creates tensions in the Indian broadcasting market and potentially leads to serious structural changes in the broadcasting industry.

In 2006 the new Broadcasting Services Regulation Bill, which was studied by the government and suggested for approval by the Parliament, was prepared. According to this Bill, the Broadcast Regulatory Authority of India (BRAI) was supposed to be the main regulator in the broadcasting sector instead of TRAI. However, this did not happen. In July, 2015 a new TRAI chairman R.S. Sharma was appointed, who expressed the need for digitization of the entire media content of India in the nearest future (IBF, 2009).

Another important fact in the sphere of legal regulation of the Indian media is that the government of India almost opened its media market for foreign investments: since 1990s it provided access to TV broadcasting and the Internet, and since 2002 – to the market of periodicals. However, some restrictions still remained in place: the foreign share in news printed media shall not exceed 26%, other periodicals – 74%. According to the Department of Industrial Policy and Development of the Ministry of Industry and Trade of India, the direct foreign investments (DFI) into the information sector of India (broadcasting and printing media) during the period from April, 2000 to June, 2015 made over 4 billion US dollars.

Regulation of copyright as an intellectual property asset

The Indian media market is developing dynamically thus quickly adapting to the changing global trends. The Indian industry of media and entertainment is almost at the peak of its growth, which is confirmed by the growing consumer demand and increase of income from advertising. The recent liberalization of the legislation in the field of mass media proved itself rather essential.

In turn, protection and encouragement of intellectual creativity is an obvious indicator of social, economic and cultural development of any country, therefore the regulation of copyright as an intellectual property asset presents a real research interest under specific national conditions.

India is the country with a huge economic potential, which today is one of the leading world powers that overcame the decades of economic isolation and backwardness. Active integration of India into the global economy and the introduced reforms resulted in high GDP growth – 68% per year (DMW, 2013) of the media industry thus leading to the fact that the governmental measures on the protection of copyright in India were one of the most prominent not only in Asia, but in the entire world.

The intellectual property laws in India are being constantly revised caused by the rigid protection of copyright and the fact that it may worsen the development of the Indian society. For this reason, the copyright laws are adopted in India with necessary exceptions and restrictions to ensure balance between the interests of their founders and consumers of a product (Government of India, 2008).

However, as the WTO member who signed the General Agreement on Tariffs and Trade (GATT) of 1947, the predecessor of the WTO on Trade-Related Aspects (TRIPS), India is obliged to establish the minimum norms and standards in the following areas of intellectual property:

- copyright and other associated rights,
- trademarks,
- origin of goods,
- patents,
- industrial design.

India is among the member states of the main conventions in the field of copyright protection – the Berne Convention for the Protection of Literary and Artistic Works since 1928 and the Universal Copyright Convention since 1952.

The first copyright law in India appeared in 1914. It was made by the example of the British Copyright Act of 1911 and resembled a charter including 15 sections. When India became independent in 1947 the Law of 1914 remained in effect until the adoption of the Indian Copyright Act of 1957, which basic provisions and articles were completely borrowed from the Copyright Act 1956 of Great Britain.

Occasionally the Indian Copyright Act is amended and revised (1994, 1999, 2010) to bring it in line with the WIPO provisions implying the protection of copyright owners through corrective actions imposed on offenders as fines from 50 thousand to 200 thousand rupees (from 815 to 3,260 dollars) and (or) up to two years' imprisonment (Chapter 9, Article 65 of the Copyright Act 1957 of India). The Law also stipulates the duration of copyright to the piece of work (product) throughout the entire life of the author and additional sixty years from the date of his death (Tamali, 2011). Concerning co-authorship, the calculation of the specified period begins with the death of the last author. The copyright to works of a state enterprise

(enterprises) and international organizations also accounts for sixty years from the beginning of the calendar year following a year when the work was published for the first time.

It seems relevant to consider some provisions of the Indian Copyright Act with their national specific features.

The Indian Copyright Act grants the owners of works with some exclusive rights allowing them receiving monetary payments from the implementation of rights via reproduction, public display, translation, publication, transfer of rights, etc. If any of these actions is performed by a person not being the owner, without a license granted by the owner or competent authorities in compliance with the law, this is considered the infringement of the copyright to work.

The Indian Copyright Act protects the original of the literary work against illegal use. Unlike patents, the copyright protects the mode of expression, but not the ideas. There is no copyright to ideas in India.

To receive the copyright protection a piece of work shall be the original. "The work of joint authorship" means the work created as a result of collaboration of two or more authors making equal contribution.

In the territory of the entire India the copyright is applicable to the originals of literary works.

The original owner of the copyright to work is its author. If the work belongs to the state, then the state will be the original copyright owner. In case the work belongs to the state enterprise, then such enterprise is the original copyright owner. In case the literary work is created by the author during his work for the owner of a newspaper, a journal or other periodical under the labor contract or under agreement for the publication in a newspaper, a journal or other periodical, then, unless otherwise provided by the power of attorney, the above owner will be the original owner of the copyright to work.

The copyright owner to already existing work or the potential copyright owner to future work has the right to transfer the copyright in whole or in part. Such transfer is made in writing only and signed by the owner or his authorized representative.

In case the legal successor does not exercise rights transferred to him within one year from the date of assignment of rights, the contract on the transfer of rights to work is considered invalid after the end of the specified period unless otherwise is stipulated by the transfer contract. If the right period is not specified, then the period of 5 years from the date of signing the contract on the transfer of rights shall be thus considered.

If the territorial limit of the validity period of the contract on the transfer of rights is not specified, then the entire territory of India will be considered as such.

The author of the work may waive all or one of the rights included into the copyright to work having informed the registrar of the Copyright Office of India in the established form. This office was established to render services on the registration of all forms of works. It is possible to register both published and unpublished works.

All rights to the original work are also applied to its translated versions. It is noteworthy that noone has the right to translate the work under the copyright for subsequent reproduction without the corresponding permission of the copyright owner.

The right to reproduction usually means that noone has the right to copy the work or more than its fourth part in one or more copies without the permission of the copyright owner. The most widespread type of reproduction is publication.

The copyright begins from the moment of work creation and does not imply complex legal procedures. The records in the register of copyrights serve the presumptive evidence in the court of general jurisdiction. The copyright to works published prior to the introduction of the Indian Copyright Act can also be registered provided the owner needs to exercise his copyright. If the work was registered before it was published, and was subsequently released, then the applicant can make amendments to the register of copyrights in the established form at a flat rate.

Needless to say that neither owner of the copyright to any work is able to check all cases of use of his works by others, therefore India has many registered collective management organizations for copyright protection to ensure efficient monitoring of the use of works of an author across the country and recover the author's royalties. The author of the work has the right to join several associations of that kind having acquired the corresponding license.

The Government of India founded the Copyright Enforcement Advisory Council (CEAC) for periodic analysis of compliance with the copyright act and consultations of the government concerning its improvement measures. The governments of all Indian states and allied territories created law-enforcement offices to control the compliance with the Indian Copyright Act and assigned people in charge of solution of all issues resulting from the Indian Copyright Act. It shall be noted that India does not have any special court to solve the legal issues of copyright. Such cases are considered in regular courts.

The notorious infringement of the copyright is a criminal offense. Any police officer in India at the rank of at least the junior lieutenant has the right to seize all copies of the work without a warrant, and the court has the right to order to transfer all copies to the copyright owner.

Thus, it can be said that the high growth of the Indian economy and a strong legislative base implicate the strive towards practical protection of the intellectual property of India as one of the paramount innovation sources.

Indian Press Freedom Index

According to the World Press Freedom Index (RSF, 2017), India takes the 136th place among 180 countries, which confirms unfavorable situation regarding the independence of media, quality of the legislation and security of journalists in this Asian country. The union of journalists of India reports that since the beginning of the 1990s about 47 journalists died in India. For example, in 1997 – 7 and in 2015 – 9 journalists were killed. Media workers are subject to a lot of pressure, especially for political reasons.

Over the past few years the journalists criticizing Hindu nationalist movements and their leaders come under attacks in social networks, they are threatened with bodily harm, especially female journalists are threatened with rape (BBC, 2017).

A journalist Gauri Lankesh was shot on 5 September 2017. The woman was an editor of the Indian tabloid often criticizing Hindu extremists. In November 2016, Lankesh was accused of a defamation of an article published in 2008, where she called the member of the parliament from the Bharatiya Janata Party (the party in power) Pralhad Joshi a corrupt official. In December 2016, the journalist gave an interview to on-line media and said that “as a citizen of India, I stand against fascist and municipal policy of the

Bharatiya Janata Party". She accused the party in power of the Hinduism ethical corruptions and declared herself an opponent of a cast, which she characterized as "dishonest, unfair and discriminating by gender".

According to the international Committee to Protect Journalists, since 2013 India witnessed three similar contract murders of open secularists and rationalists, which investigations failed to reach any progress at all. The death of Lankesh became the fourth crime.

The Committee regularly publishes the ranking of countries based on the so-called Impunity Index reflecting the percentage of contract murders of journalists remaining unsolved. In its last publication India took the 13th place.

In turn, the British TV channel BBC also reports that the journalists openly criticizing Hindu nationalists are regularly threatened with rape and beating, and the ministers of the ruling party call them "presstitutes", a mix of words "press" and "prostitute".

Today many Indian editions still have some prejudices against women, they reluctantly hire them even despite their honors degrees. The problems of caste-ridden stratification of society still remain urgent. Though in 1950 the Constitution of India recognized the equality of castes and their legal full rights, you will not see the representatives of the lowest Sudra and Dalits (untouchable) in top TV news (Rajpurohit, 2014).

The Press Council of India also highlights various violations of professional ethics by Indian journalists.

Access to media content for adult audience

In terms of legal treatment, the study of the problem of access to media content for adult audience in such ambiguous country as India is quite interesting. Today the homeland of the Kama Sutra holds serious public battles on the possibility of watching materials with sexual content on the Internet. According to Indian laws, pornography is not forbidden. However, its distribution is regarded as crime and is punishable. On the one hand, through relevant legislative regulators the government of India imposed restrictions on the access to adult content, and on the other hand, the Supreme Court of the country has not conclusively decided whether this ban violates the civil rights.

At present, the adult content is actively distributed through social networks via such options as "like", "follow the link", "share" with "friends". The sexual content surely gets into the society. It is presented in the same format as the main social media. Besides, the objectives of such "networks" are not limited purely to watching. Anyone can put "like", share and comment the photos of "friends", which someone once posted or referred to. For example, one website weekly holds a "competition" where the participants are offered to place photos of sexual intimacy and choose the winner. Many networks use design, user's interface and even the names of other popular social networks.

For example, the website for adults Pinsex was called by analogy with Pinterest. Similar to Pinterest it allows its users "to attach" pornographic pictures or put "bookmarks" on photos or videos.

The website Pornostagram called by analogy with a well-known social network Instagram demonstrates intimate images loaded by users after they add filters similar to the Instagram filters.

It is not difficult to find the analogy of the website F***book. Launched in 2014, it positions itself as a hybrid of a social network and a dating site. Christian Thorn, the CEO of Pinsex, says that the social

space remained free from online pornography. The culture of content consumption and degree of involvement of its users changed a lot with the advent of social media.

“The destruction of taboos on adult content “with dirty topics” has always been a primary task for our platforms”, – Thorn says. Such format makes the adult media content not only visually “attractive”” (Kagel, 2017, para. 6).

According to Christian Thorn, his enterprise showed the highest growth in the Indian market in May, 2014. “Only in India we registered 1,000,000 visits, about 90% of which made from mobile phones” (Arora, 2015, para. 3).

The book *A Billion Wicked Thoughts* by Ogi Ogas and Sai Gaddam issued in 2011 analyzes 400 million Internet inquiries made from July, 2009 to July, 2010, 13% of which are requests for erotic content (Ogas & Gaddam, 2012).

The Indian law does not prohibit watching pornography. However, according to Article 67 of the Information Technology Act, its distribution is regarded as crime and is punishable, implies up to three years’ imprisonment for publication and transfer of obscene content. There are even more strict bans on child pornography. The laws the social porn sites refer to “offensive” content and copyright.

The access to adult content is actively provided through mobile technologies. The Android operating system and the IOS Apps platform have strict rules concerning content, but other operating systems and platforms do not have such, especially in their Asian versions. Despite strict restrictions on the access to frivolous websites the users today find a variety of other ways out.

The concerned clients of the leading Indian Internet service providers were left without an access to adult websites after the Government of India ordered to forbid 857 *URL addresses* containing sexually explicit materials.

In attempt to solve the mystery of disappearance of adult content the users tried to connect to Twitter, Facebook and Reddit, but suddenly faced a well-known warning of 404s error.

The blocking was in fact made by the Department of Telecommunications (DOT) according to Article 69A of the Information Technology Act 2000. The law concerned the activity of the majority of the leading Indian Internet service providers, including Vodafone, MTNL, ACT, Hathway and BSNL.

Until the information on the actual blocking procedure was not revealed, the ban was confirmed by the Hindustan Times referring to the Department of Telecommunications:

Some websites were considered regarding the distribution of antisocial activity, such as, for example, hyperlinks from these websites, some of them were pornographic therefore we had to send warnings to Internet service providers that these websites will be blocked. The measures were taken according to Article 79 of the Information Technology Act. (HindustanTimes, 2015, para. 9)

The newspaper also quoted the IT Secretary of India Ram Sewak Sharma who said that DOT acted “according to court order” referring to the Supreme Court proceeding concerning adult sites.

However, there were also statements that the Supreme Court did not issue such orders since they contradict the rights to civil liberty. But the fact remains that the fans of adult content in India face empty pages in their attempt to access websites similar to Pornhub or Redtube.

In their attempt to enter Reddit the users saw the following message: “The website is blocked by the order of the Ministry of Telecommunications of the Government of India”.

Following the requests of the Vodafone users the Hindustan Times confirmed that the famous websites with frivolous content were not available across all India. *“When I checked last night, everything was as it should be, but this morning all famous adult websites seem to be blocked”*, the client of Vodafone from Calcutta says, adding that there was no access either through the Alliance Broadband Service (HindustanTimes, 2015).

One lawyer opposing the law on IT, Karun Nundi reported to the Legally India portal (the largest in the country) that any blocking according to Article 69A shall be made by identifying its reasons, which may be subsequently challenged in the Supreme Court. But those monitoring the fight for the civil rights in India can easily analyze the consequences of this ban: pornography becomes attached to certain social problems, namely to the increase of rapes, based on the assumption that the consumption of pornography provokes violent sexual crimes committed against women.

The position of the Supreme Court of India is remarkable: “The right to resolve this issue [blocking of content] belongs to the government. Are we able to issue intermediate instructions to block all adult websites? We shall not forget that any sane person will ask a question looking through adult websites being in his house alone – what crime he committed. Are we able to challenge the right of everyone to freedom of action in the house without breaking any laws?”.

At the same time the idea of the pornography ban is actively supported by the Indian online community sharply criticizing its development thus questioning its expediency and benefit for the society at large.

Ambiguity of the reply of the supreme legal body was reflected in ideas concerning the role of the government in the final introduction of the law on pornography ban. The question still remains open. Public opinion and position of socially active citizens of India who are feeling more confident in the solution of socially important issues in the country will not play the last role.

7. Conclusion

The need for modern media legislation in India was caused by democratization of socio-political life of the country, its coherent integration into international economic processes, convergence of modern mass media and communications and some other factors.

The intellectual property laws in India are being constantly revised caused by the rigid protection of copyright and the fact that it may worsen the development of the Indian society. For this reason, the copyright laws are adopted in India with necessary exceptions and restrictions to ensure balance between the interests of their founders and consumers of a product.

The high growth of the Indian economy and a strong legislative base implicate the strive towards practical protection of the intellectual property of India as one of the paramount innovation sources.

According to the World Press Freedom Index (RSF, 2017), India takes the 136th place among 180 countries, which confirms unfavorable situation regarding the independence of media, quality of the legislation and security of journalists in this Asian country.

Today many Indian editions still have some prejudices against women, they reluctantly hire them even despite their honors degrees. The Press Council of India also highlights various violations of professional ethics by Indian journalists.

The issue of the role of the government in the final introduction of the law on the ban of access to adult content still remains open. Public opinion and position of socially active citizens of India who are feeling more confident in the solution of socially important issues in the country will not play the last role.

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