

PRESS COUNCIL

Sub-Committee Report

“Paid News”:

How corruption in the Indian media undermines democracy

Preface

The fifteenth general elections to the Lok Sabha took place in April-May 2009 and in order to ensure free and fair coverage by the media, the Press Council of India issued guidelines applicable to both government authorities and the press. After the elections, a disturbing trend was highlighted by sections of the media, that is, payment of money by candidates to representatives of media companies for favourable coverage or the phenomenon popularly known as “paid news”.

The deception or fraud that such “paid news” entails takes place at three levels. The reader of the publication or the viewer of the television programme is deceived into believing that what is essentially an advertisement is in fact, independently produced news content. By not officially declaring the expenditure incurred on planting “paid news” items, the candidate standing for election violates the Conduct of Election Rules, 1961, which are meant to be enforced by the Election Commission of India under the Representation of the People Act, 1951. Finally, by not accounting for the money received from candidates, the concerned media company or its representatives are violating the provisions of the Companies Act, 1956 as well as the Income Tax Act, 1961, among other laws.

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The phenomenon of “paid news” goes beyond the corruption of individual journalists and media companies. It has become pervasive, structured and highly organized and in the process, is undermining democracy in India. Large sections of society, including political personalities, those working in the media and others, have already expressed their unhappiness and concern about the pernicious influence of such malpractices.

During his inaugural address at a seminar on “General Elections 2009 and Media Reporting” on May 13, 2009, that was organized by the Andhra Pradesh Union of Working Journalists at Hyderabad, Andhra Pradesh, three days before the results of the fifteenth general elections were declared, Hon’ble Chairman of the Press Council of India Justice G.N. Ray expressed grave concern about the covert emergence of the “paid news” syndrome and this issue was discussed threadbare during the seminar.

Subsequently, representations against such malpractices were received from several veteran journalists (such as the late Shri Prabhash Joshi, Shri Ajit Bhattacharjea, Shri B.G. Verghese and Shri Kuldip Nayar). They alleged that sections of the media had received illegal payments for providing favourable coverage to candidates who had stood for the Lok Sabha elections.

On June 6, 2009, the Press Council of India expressed serious concern over the phenomenon of “paid news” that doubly jeopardized the functioning of an independent media in the country and the working of Indian democracy by influencing free and fair elections. The Council noted that 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.

There is an urgent need to protect the right of the public to accurate information before voters exercise their franchise in favour of a particular candidate in the electoral fray. An opinion that was expressed in the Council is that one reason for the proliferation of the “paid news” phenomenon could be that on account of the limits on election campaign related expenditure that have been imposed by the Election Commission of India, candidates have chosen this alternative to publicize themselves, in the process posing a danger to the conduct of free and fair elections. It was suggested that the powers that are vested in returning officers appointed by the Election Commission before the elections take place are adequate for such officers to issue notices to the press to explain the basis of particular “news” reports and ascertain whether financial transactions had actually taken place between candidates and representatives of media companies.

The Press Council of India felt that in pursuance of the mandate given to the Council by Parliament, it was incumbent upon this statutory authority to examine the issue in all its dimensions through detailed research and consultations. Such an exercise was deemed necessary to maintain the faith of the public in the media and also make appropriate recommendations to check such malpractices from recurring on a wide scale before the forthcoming rounds of elections at both the Union and state levels.

On June 10, 2009, the Delhi Union of Journalists communicated with the Press Council telegraphically and expressed its concern at reports of money power having played havoc with the media coverage of the elections that had taken place. Shri S.K. Pande, President, Delhi Union of Journalists described the “paid news” phenomenon as unethical, unfair and an infringement of the right of journalists to report freely. He further informed the Council that selected journalists had been targetted by the managements of media companies for not acquiescing with such malpractices.

It may not be out of place in this context to state that the attention of the Press Council of India had been drawn as early as April 2003 by one its members (the late Shri N. Thiagrajan) about the publication of advertising material in the garb of news reports for a fee. At that time, the Council had urged the media to introspect whether such practices enhanced the credibility of news reportage and advised that journalistic propriety demanded that advertisements should be clearly distinguishable from editorial content.

The Press Council of India, through its Chairman and its members, participated in or initiated a number of discussions and debates on this issue between May 2009 and March 2010.

On July 3, 2009, exercising the powers conferred on the Council under Sections 8(1) and 15 of the Press Council of India Act, 1978, a Sub-Committee of the Council comprising two members, namely, Shri Kalimekolan Sreenivas Reddy and Shri Paranjay Guha Thakurta was constituted. The two members, together with the Press Council of India Chairman Justice G.N. Ray, the Council’s Secretary, Smt Vibha Bhargava and other members, met a wide cross-section of stake-holders in New Delhi, Mumbai and Hyderabad and also perused through many letters and representations that were sent to the Council. These have been listed in Annexures “A” “B” “C” and “D” at the end of the report. Annexure “E” carries the guidelines that were issued by the Press Council for the media and government authorities during elections. The report of the Sub-Committee follows.

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Introduction and Summary:

Corruption in the mass media in India and elsewhere is as old as the media itself. If there is corruption in society, it would be unrealistic to expect the media to be free of corruption. India is the world's largest democracy. A vibrant and diverse mass media is an important pillar of democracy in the country. The independence of the media facilitates adherence to democratic norms. Article 19 of the Constitution of India confers the right to freedom of speech and expression to all citizens of the country and to the media as well.

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".

News is meant to be objective, fair and neutral – this is what sets apart such information and opinion from advertisements that are paid for by corporate entities, governments, organizations or individuals. What happens when the distinction between news and advertisements start blurring, when advertisements double up as news that have been paid for, or when "news" is published in favour of a particular politician by selling editorial spaces? In such situations, the reader or the viewer can hardly distinguish between news reports and advertisements/advertorials.

This report tracks the blurring boundaries between news and advertisements/advertorials and highlights the efforts made by individuals and representatives of organizations who have painstakingly chronicled the selling of editorial space for money during elections.

Over the last few years and since 2009 in particular, the phenomenon of "paid news" has acquired a new and even more pernicious dimension by entering the sphere of political "news" or "reporting" on candidates contesting elections. Numerous favourable or complimentary "news" reports and feature articles on representatives of political parties, including candidates who have been contesting elections, have appeared in newspapers across the country in the run-up to the Lok Sabha as well as state legislative assembly elections and similar kinds of information have been aired on television channels without disclosing the fact that monetary transactions have taken place between the concerned candidate or political party to which he or she belongs and the owners or representatives of particular media organizations.

The deception or fraud that such "paid news" entails takes place at three distinct levels. The reader or the viewer is deceived into believing that what is essentially an advertisement is in fact, independently produced news content. Then, candidates contesting elections to not disclose the true expenditure incurred on campaigning thereby violating the Conduct of Election Rules, 1961, which have been framed by, and are

meant to be enforced by, the Election Commission of India under the Representation of the People Act, 1951. The concerned newspapers and television channels typically receive funds 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 are violating the provisions of the Companies Act, 1956 as well as the Income Tax Act, 1961, among other laws.

The entire operation is clandestine. This malpractice has become widespread and now cuts across newspapers and television channels, small and large, in different languages and located in various parts of the country. What is worse, these illegal operations have become “organized” and involve advertising agencies and public relations firms, besides journalists, managers and owners of media companies. Marketing executives use the services of journalists – willingly or otherwise – to gain access to political personalities. So-called “rate cards” or “packages” are distributed that often include “rates” for publication of “news” items that not merely praise particular candidates but also criticize their political opponents. Candidates who do not go along with such “extortionist” practices on the part of media organizations are denied coverage.

Sections of the media in India have willy-nilly become participants and players in such practices that contribute to the growing use of money power in politics which undermines democratic processes and norms – while hypocritically pretending to occupy a high moral ground. This has not merely undermined democracy in India but also tarnished the country’s reputation as foreign newspapers have started writing about, and commenting adversely on, such malpractices.

In addition, owners of media organizations have financial relationships, including shareholdings, with advertisers, resulting in only favourable information about such advertisers getting disseminated and unfavourable information against them getting blacked out. Such trends have been discernible in sections of the Indian media for some years now. The regulator of the country’s capital markets, the Securities and Exchange Board of India (SEBI), has written to the Press Council of India on the issue of “private treaties” between media companies and other corporate entities and suggested disclosure of financial holdings and mandatory enforcement of guidelines to ensure that the interests of investors are adequately safeguarded – these suggestions have been endorsed by the Press Council of India which, in 1996, drew up a set of guidelines that are particularly applicable to financial journalists.

Certain publications (such as *Mint*) have drawn up their own codes of ethics that are worthy of emulation as a measure of self-regulation. But self-regulation is not adequate for checking rampant malpractices and corruption that have assumed epidemic proportions in many sections of the print medium as well as the television medium.

In the area of political “paid news”, given the illegal and clandestine nature of such malpractices, it is not easy to find clinching evidence that pins responsibility for such corrupt practices on particular persons and organizations. There is, however, a huge

volume of circumstantial evidence that points towards the growing use of the media for publishing “paid news” which is a form of electoral malpractice. Identical articles with photographs and headlines have appeared in competing publications carrying bylines of different authors around the same time. On the same page of specific newspapers, articles have been printed praising competing candidates claiming that both are likely to win the same elections. Nowhere is there any indication that the publication of such “news” reports has entailed financial transactions or has been sponsored by certain individuals or political parties.

When confronted with circumstantial evidence that substantiate allegations of “paid news”, the standard reaction of individuals and representatives of media organizations accused of corrupt practices is to pretend that nothing untoward has happened since the evidence is circumstantial in nature. The typical response of representatives of political parties as well as media organizations who have been named and against whom specific allegations of corruption have been levelled, is to flatly deny these allegations. In private, however, these very same people acknowledge that the cancer of “paid news” has spread deep into the country’s body politic and needs to be removed.

Such malpractices have destroyed the credibility of the media itself and are, therefore, detrimental to its own long-term interests. It needs to be noted in this context that so long as journalists (in particular, those who work in non-urban areas) are paid poverty wages or are expected to earn their livelihood by doubling up as advertising agents working on commissions, such malpractices would continue to be rampant.

It can be argued that the proliferation of the “paid news” phenomenon can be related directly to the diminution of the role and the status of editors in media organizations and the erosion of the freedom enjoyed by journalists under the Working Journalists Act. As more and more senior journalists chose to work with their employers under fixed term contracts, they opted out of the protection that was accorded to them under the provisions of the Act. Until the 1970s and the 1980s, many editors would not brook any “interference” from the management of the company they would be employed by – the number of such editors started dwindling as more and more senior journalists started acceding to every whim of their managers and employers instead of their editors. With managers playing a more influential role in the selection and presentation of news, it was not surprising that the importance of the news started getting determined by the revenues that would be generated for the media company.

Renowned journalist, the late Shri Prabhaskar Joshi spoke extensively in public about “paid news”. The Rural Affairs Editor of *The Hindu* Shri P. Sainath has written a series of articles on the phenomenon, many of which have highlighted the manner in which the electoral campaign of the Chief Minister of Maharashtra Shri Ashok Chavan was conducted through newspapers in September-October 2009. When contacted, Shri Chavan denied that neither he nor any of his associates had paid money for media coverage and said that he had nothing to do with the manner in which “news” about him was carried by publications and television channels before the state assembly elections.

The Andhra Pradesh Union of Working Journalists conducted a detailed sample survey to highlight the manner in which newspapers had published “paid news” items before the Lok Sabha elections and the state assembly elections that were conducted simultaneously in April-May 2009. Particular candidates who stood for elections in Andhra Pradesh named publications whose representatives had asked them for money to publish favourable news items about themselves. Once again, representatives of these media organizations flatly denied the allegations. One candidate (Shri Parcha Kodanda Ram Rao of the Loksatta Party in Andhra Pradesh) formally represented to the Election Commission that he had paid a particular newspaper (*Eenadu*) to publish favourable “news” about himself and had included the payment in his official expenditure statement.

A number of senior journalists have formally complained about the phenomenon of “paid news” to the Press Council of India and the Election Commission of India, as has the Editors Guild of India. Various unions of journalists, including the Delhi Union of Journalists, have condemned such malpractices in the media. The National Alliance of People’s Movements, Lucknow, Uttar Pradesh, also prepared a report highlighting instances of “paid news” appearing in newspapers before the 2009 general elections.

The phenomenon of “paid news” has attracted the critical attention of many individuals and sections of Indian society. For instance, the Vice President of India and Chairman of the Rajya Sabha, Shri Abdul Hamid Ansari, Union Ministers such as Information & Broadcasting Minister Smt Ambika Soni and Human Resources Development Minister Shri Kapil Sibal, spokesperson of the Indian National Congress Shri Manish Tewari, senior leader of the Bharatiya Janata Party (BJP) and Member of Parliament (MP) Shri L.K. Advani, the Leader of the Opposition in the Lok Sabha and BJP MP Smt Sushma Swaraj, the leader of the Opposition in the Rajya Sabha and BJP MP from the Rajya Sabha Shri Arun Jaitley, the General Secretary of the Communist Party of India (Marxist) Shri Prakash Karat, the Chief Minister of Andhra Pradesh Shri K. Rosaiah, noted actor Shri Amitabh Bachchan, among many others, have all expressed their concern about the “paid news” phenomenon in the country. A number of seminars and conferences on the issue have taken place.

A detailed discussion on the subject took place in the Rajya Sabha during which Information & Broadcasting Minister Smt Soni stated that the government was actively considering the option of providing more powers to the Press Council of India to check this phenomenon which is undermining the credibility of the media and democratic processes. She said the media acts as a repository of public trust for conveying factual information to the people. However, when paid information is presented as independent news content, it misleads the public and hampers the ability of people to form correct opinions.

In the final analysis, the question arises as to what can be done to check such corrupt practices in the media that compromise democratic processes. Can anything be done at all in this regard? The answers are not easy nor are they simple or clear-cut. 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. 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”.

Appointing ombudsmen in media organizations and better self-regulation are options to check the “paid news” phenomenon. 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. Civil society 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 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.

A number of politicians cutting across party lines have suggested 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”. 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.

An empowered Press Council of India should appoint observers who would assist the Election Commission of India to check the “paid news” phenomenon during election campaigns. These are among the conclusions and observations that have been laid down in greater detail at the end of the report. All these steps may not entirely stop such malpractices in the Indian media but could reduce their incidence to an extent.

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“Paid News”

How corruption in the Indian media undermines democracy

The Background:

News reports that are printed in publications or broadcast on television channels are meant to provide information that is not only of interest to the public at large but information that is supposed to be truthful or factually correct and at the same time, balanced, objective, fair and neutral. This is what clearly sets apart such information described as news from either opinions expressed in editorial articles or, more importantly, advertisements or commercials that are paid for by corporate entities, governments, organizations or individuals. When the distinction between news and advertisements start blurring, when advertisements double up as news that have been paid for, or when “news” is published or broadcast in favour of a particular politician or a political party by selling editorial space, the reader or the viewer is misled or duped into believing that an advertisement or sponsored feature is a “news” story that is truthful, fair and objective.

This report on “paid news” prepared by a Sub-Committee of two members of the Press Council of India tracks the blurring boundaries between news and advertisements or “advertorials” and highlights the efforts made by certain individuals and representatives of organizations who have painstakingly chronicled the selling of editorial space for money, especially during the April-May 2009 general elections in the country and also during the September-October 2009 elections to the state assemblies of Maharashtra and Haryana.

This report also documents the denials that have been issued by representatives of media organizations and political personalities against whom specific allegations of corruption and malpractice have been levelled and against whom a considerable volume of circumstantial evidence has been acquired, collated, documented and presented before the Press Council of India. Moreover, this report summarizes the depositions that were made by over 50 individuals and representatives of various organizations (including media organizations, journalists’ unions and political parties) before the members of the Press Council in New Delhi, Mumbai and Hyderabad and through written letters and representations and also through electronic mail.

The media industry in India and elsewhere has become increasingly difficult to regulate due to several reasons: technological developments, the globalisation of media conglomerates and the trend of certain suppliers and creators of news (public relations practitioners, advertisers and interest groups) getting closely involved with the working of media organisations. The dynamics of the media industry aside, the sheer extent of influence exercised by the media over the public at large is reason enough for subjecting the ethical practices and business activities of media organisations to critical scrutiny.

The concepts of democracy and of the market are both built on the principle of individual choice, but there is a danger that those who have accumulated wealth in the market will

use it to exert influence over decisions that should be governed by democratic principles. Media institutions face particular dilemmas because these organisations represent a key element of an effective democracy while being, for the most part, commercial entities seeking success in the market by maximising profits. The commercial activities and market interests of media institutions might distort the role they play in the formation of public opinion and consequently in upholding principles and norms of democracy. Favourable coverage for those in positions of power and authority by the media, for commercial reasons, might influence the decisions made by these people.

A widespread problem is the attempt to influence public debate through the purchase of advertising space and the purchase of favourable editorial comment. Although some owners and editors of media companies try to erect a firewall – or a “Chinese Wall” – between journalists or content creators/producers, on the one hand, and buyers and sellers of advertising space, on the other, in some newspapers, magazines and television channels, this wall has too many convenient access doors. Most journalists are employees, increasingly, of large companies or organisations whose primary aim is to maximise profits and returns to shareholders. Insofar as journalists’ duties are in part defined by their role in corporate organisations, most of the ethical dilemmas they face begin with the inherent conflict between the individual’s role as a journalist providing independent information to the public and his or her employer’s quest for profit.

Corruption in the mass media in India and in other countries of the world is as old as the media itself. If there is corruption in society, it would be unrealistic to expect the media to be free of corruption. India is the world’s largest democracy. A vibrant and diverse mass media is an important pillar of democracy in this country. The independence of the media facilitates adherence to democratic norms. Article 19 of the Constitution of India confers the right to freedom of speech and expression to all citizens of the country and to the media as well. In recent years, corruption in the Indian media has gone way beyond the corruption of individual journalists and 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 publishers of newspapers and owners of television channels receive funds for publishing or broadcasting information in favour of particular individuals or corporate entities that is disguised as “news”.

What follows is first, an outline, and then, detailed accounts of such corrupt practices in sections of the media in India.

How editorial space was compromised by political “paid news”

As already observed, news is meant to be objective, fair and neutral -- this is what sets apart such information and opinion from advertisements that are paid for. When “news” is published in favour of a particular politician or a political party by selling editorial space, the phenomenon of “paid news” becomes even more pernicious. Innumerable complimentary “news” reports and feature articles on representatives of political parties, including candidates who have been contesting elections, have appeared in newspapers and broadcast on television channels across the country in the run-up to the 2009 Lok

Sabha elections as well as the state legislative assembly elections. No disclosure was made that before such “news” was printed or broadcast, that money had been exchanged between the concerned candidate or political party to which he or she belongs and the owners or representatives of media organizations.

Such malpractices enabled candidates contesting elections to not disclose their true expenditures on campaigning which, if made public, would have in certain cases violated the Conduct of Election Rules, 1961, which have been framed by, and are meant to be enforced by, the Election Commission of India under the Representation of the People Act, 1951. The concerned newspapers and television channels received money for “paid news” in cash and not in the form of cheques and did not disclose such earnings in their official company balance sheets. This malpractice has become widespread and cuts across newspapers and television channels, small and large, in different languages and located in various parts of the country, and this is evident from the many examples provided subsequently in this report.

What is worse, these illegal operations have become “organized” and involve advertising agencies and public relations firms, besides journalists, managers and owners of media companies. Marketing executives use the services of journalists – willingly or otherwise – to gain access to political personalities. So-called “rate cards” or “packages” are distributed that often include “rates” for publication of “news” items that not merely praise particular candidates but also criticize their political opponents. Candidates who do not go along with such “extortionist” practices on the part of media organizations are denied coverage. Sections of the media in India have consciously chosen to become partners, participants and players in malpractices that contribute to the growing use of money power in politics that, in turn, undermine democratic processes and norms. At the same time, representatives of media organizations against whom allegations are levelled publicly condemn the practice of “paid news”. Some such individuals behave in a hypocritical manner and pretend to occupy a high moral ground.

Given the illegal and clandestine nature of such malpractices, it is not easy to find clinching evidence that pins responsibility for such malpractices on particular persons and organizations. There is, however, a huge volume of circumstantial evidence that points towards the growing use of the media for publishing “paid news” which is a form of an electoral malpractice. Identical articles with photographs and headlines have appeared in competing publications carrying bylines of different authors around the same time. On the same page of specific newspapers, articles have been printed praising competing candidates claiming both are likely to win the elections.

That “paid news” is a phenomenon that is deleterious to the credibility and independence of the media itself needs to be emphasized. Edelman, an independent public relations firm, in its 2010 Trust Barometer Survey (conducted in 22 countries worldwide, including India and six other countries in the Asia-Pacific region) stated that the Indian media has been losing its credibility and trust among the people. The study, which sampled 1,575 people in the 25-64 age group and 200 opinion leaders in India, noticed a sharp drop in trust over the past two years in television news in India. However,

newspapers are ranked higher than other media in terms of credible news with people trusting newspapers more than any other medium: 38 per cent of the Indians polled trusted radio and television, while 40 per cent trusted news in newspapers. Over the past two years, trust in television news dropped sharply from 61 per cent to 36 per cent, that of business magazines has gone down from 72 per cent to 47 per cent, and that of newspapers has gone down from 61 per cent to 40 per cent. Trust in the media in India as a whole declined by 7 per cent (from 65 per cent in 2009 to 58 per cent in 2010). On the other hand, China has seen the trust in media go up from 59 per cent in 2009 to 63 per cent in 2010. However, in terms of overall trusted institutions in India, media has performed better than the government as an institution. Sixty-seven per cent of Indians trust business as an institution, followed by the Indian media in the second position, with 58 per cent Indians trusting it. Non-government organizations (NGOs) and the government are placed in third and fourth positions, respectively.

In another survey conducted by the *Readers' Digest* in March 2010, called the Trust Survey, 750 Indians were asked to rank the short-listed individuals belonging to different professions. Journalists were ranked 30 out of the 40 professionals listed and were placed next only to barbers and bus drivers.

Given the kind of blatantly dishonest practices being followed in sections of the mass media in India in recent times, the levels of credibility and trust in newspapers and television channels are bound to drop further, all of which would be harmful to building a vibrant and responsive democracy in the country. The publication or broadcast of “paid news” have not merely undermined democracy in India but also tarnished the country’s reputation as foreign newspapers have already started writing about, and commenting adversely on, such malpractices. In recent months, articles about such malpractices have appeared in at least three newspapers, the *Wall Street Journal* (published from the United States), the *Guardian* (United Kingdom) and the *Independent* (Bangladesh), none of which edify either the media in India nor contribute to projecting a positive image of the world’s largest democracy.

The ‘Medianet’ and ‘Private Treaties’ phenomena

In pursuing its quest for profits, it can be argued that certain media organizations have sacrificed good journalistic practices and ethical norms. Individual transgressions -- reporters and correspondents being offered cash and other incentives, namely paid-for junkets at home or abroad in return for favourable reports on a company or an individual -- were, until recently, considered more of an aberration than a norm. News that was published in such a manner was suspect because of the fawning manner in which events/persons were described while the reports gave an impression of being objective and fair. The byline of the journalist was stated upfront. Over the years such individual transgressions became institutionalised.

In the 1980s, after Sameer Jain became the executive head of Bennett, Coleman Company Limited (BCCL), publishers of the *Times of India (TOI)* group of publications,

the rules of the Indian media game began to change. Besides initiating cut-throat cover-price competition, marketing was used creatively to make BCCL one of the most profitable media conglomerates in the country – it currently earns more profit than the rest of the publishing industries in the country put together though as a corporate group, the STAR group has in recent years recorded a higher annual turnover in particular years.

The media phenomenon that has caused considerable outrage of late has been BCCL's 2003 decision to start a "paid content" service called Medianet, which, for a price, openly offers to send journalists to cover product launches or personality-related events. When competing newspapers pointed out the blatant violation of journalistic ethics implicit in such a practice, BCCL's bosses argued that such "advertorials" were not appearing in newspapers like the *TOI* itself, but only in the city-specific colour supplements that highlight society trivia rather than hard news. There was another, more blatant justification of this practice not just by BCCL but other media companies that emulated such a practice after BCCL started it. If public relations (PR) firms are already "bribing" journalists to ensure that coverage of their clients is carried, what was wrong then with eliminating the intermediary – in this instance, the PR agency – it was argued.

Besides Medianet, BCCL devised another "innovative" marketing and PR strategy. In 2005, ten companies, including Videocon India and Kinetic Motors, allotted unknown amounts of equity shares to BCCL as part of a deal to enable these firms to receive advertising space in BCCL-owned media ventures. The success of the scheme turned BCCL into one of the largest private equity investors in India. At the end of 2007, the media company boasted of investments in 140 companies in aviation, media, retail and entertainment, among other sectors, valued at an estimated Rs 1,500 crore. According to an interview given by a senior BCCL representative (S. Sivakumar) to a website (medianama.com) in July 2008, the company had between 175 and 200 private treaty clients with an average deal size of between Rs 15 crore and Rs 20 crore implying an aggregate investment that could vary between Rs 2,600 crore and Rs 4,000 crore.

It is a separate matter that the fall in stock-market indices in 2008 robbed some of the sheen off the "private treaties" scheme for the BCCL management. While the value of BCCL's holdings in partner companies came down, the media company had to meet its commitments to provide advertising space at old "inflated" valuations which also had to be shown as assessable taxable income for BCCL on which corporation tax is levied.

Even as the private treaties scheme was apparently aimed at undermining competition to the *TOI*, a number of the newspaper's competitors as well as television channels started similar schemes. The "private treaties" scheme pioneered in the Indian media by BCCL involves giving advertising space to private corporate entities/advertisers in exchange for equity investment – the company officially denies that it also provides favourable editorial coverage to its "private treaty" clients and/or blacks out adverse comment against its clients.

While BCCL representatives denied receiving money for providing favourable editorial space, the integrity of news was compromised. In advertisements published in the

Economic Times and the *TOI* celebrating the success of the group's private treaties, on December 4, 2009, the Mumbai edition of the newspapers published a half-page colour advertisement titled "How to perform the Great Indian Rope Trick" and cited the case of Pantaloon. What was being referred to was how Pantaloon's strategic partnership with the *TOI* group had paid off. The advertisement read: "...with the added advantage of being a media house, Times Private Treaties, went beyond the usual role of an investor by not straining the partner's cash flows. It was because of the unparalleled advertising muscle of India's leading media conglomerate. As Pantaloon furiously expanded, Times Private Treaties (TPT) ensured that (it) was never short on demand. The TPT has a better phrase for it -- business sense."

In many media organizations, news is sought to be distinguished from material that is paid for, called advertisements or "advertorials", by using different or distinctive fonts, font sizes, boundaries and/or disclaimers such as "sponsored feature" or even the letters "adv" printed in a miniscule font size in a corner of the advertisement – which may or may not escape the attention of the reader. However, in certain instances, even a fig-leaf of a disclaimer was done away with. For instance, a year-long series of articles on the skin-care product, Olay, in *Delhi Times*, the city supplement of the *Times of India*, would appear to have fallen into the category of "paid news" even if this was denied by the newspaper. Whereas BCCL representatives have often argued that the companies private treaties scheme is open to public scrutiny since the companies in which BCCL has picked up stakes is in the public domain and listed on its official website, the influence such companies wield on editorial content is a matter of contention and debate.

An advertising campaign by razor blade manufacturing company, Gillette, called "war against lazy stubble", broadcast on the CNN-IBN television news channel, showcased features, interviews of celebrities, as well as panel discussions on the topic of whether a man should shave or not with a foregone conclusion: "Indian women prefer clean shaven men". It was claimed that the Gillette-CNN-IBN "exclusive partnership" was a mutually beneficial alliance. There are many other such examples of "advertorials".

Suggestions by Securities and Exchange Board of India to Press Council of India:

On July 15, 2009, Shri S. Ramann, Officer on Special Duty, Integrated Surveillance Department of the Securities and Exchange Board of India (SEBI) wrote to the Chairman, Press Council of India, Justice G.N. Ray observing that many media companies were entering into agreements called "private treaties" with companies whose equity shares are listed on stock exchanges or companies that were coming out with a public offer of their shares. The media companies were picking up stakes in such companies and in return, were providing coverage through advertisements, news reports and editorials. The SEBI, which has been set up under the Securities and Exchange Board of India Act, 1992, and is mandated to protect the interests of investors, felt that such promotional and brand building strategies in exchange for shares, "may give rise to conflict of interest and may, therefore, result in dilution of the independence of (the) press vis-à-vis the nature and content of the news/editorials relating to such companies".

The SEBI pointed out that “private treaties” may “lead to commercialization of news reports since the same would be based on the subscription and advertising agreement entered into between the media group and the company”. Furthermore, “biased and imbalanced reporting may lead to inaccurate perceptions of the companies which are the beneficiaries of such private treaties”. Hence, the SEBI “felt that such brand building strategies of media groups, without appropriate and adequate disclosures, may not be in the interest of investors and financial markets as the same would impede in them taking a fair and well-informed decision. The SEBI suggested the following:

1. Disclosures regarding the stake held by the media company may be made mandatory in the news report/article/editorial in newspapers/television channels relating to the company in which the media group holds such a stake.
2. Disclosure on percentage of stake held by media groups in various companies under such “private treaties” on the website of media groups may be made mandatory.
3. Any such disclosures relating to such agreements such as any nominee of the media group on the board of directors of the company, any management control or other details which may be required to be disclosed and which may be a potential conflict of interest for the media group, may also be made mandatory.

The SEBI communication to the Press Council of India pointed out that a “free and unbiased press is crucial for the development of the securities market, particularly with respect to aiding small investors to take a well informed decision” and urged the Council to address this issue at the earliest.

In this context, the Council referred to the existing guidelines for financial journalists that had been framed in 1996, which include the following:

1. Financial journalists should not accept gifts, loans, trips, discounts, preferential shares or other considerations which compromise or are likely to compromise his position.
2. It should be mentioned prominently in a report about a company that the report has been based on information provided by the company or its financial sponsors.
3. When trips are sponsored for visiting establishments of a company and hospitality extended, the author of the report who has availed of such facilities must invariably state these in his report.
4. A reporter who exposes a scam or brings out a report for promotion of a good project should be encouraged and awarded.
5. A journalist who has a financial interest in a company (including holding of shares) should not report on that company.
6. The journalist should not use for his personal benefit or for the benefit of his relations or friends, information received by him in advance for publication.
7. No newspaper owner, editor or anybody connected with a newspaper should use his relationship with the newspaper to promote his other business interests.

8. Whenever there is an indictment of a particular advertising agency or advertiser by the Advertising Standards Council of India, the newspaper in which the advertisement was published must publish news of the indictment prominently.

After deliberating on the issue, the Press Council of India endorsed the views expressed by the SEBI and stated that the relevant guidelines should be made applicable and mandatory not only to financial journalists but to owners of media companies as well. This would be in the interests of transparency and fairness and would reduce the incidence of biased news about companies being published that is inimical to the interests of investors.

The Mint code of journalistic conduct

The *Mint*, a daily newspaper published from the *Hindustan Times* stable in New Delhi (owned by HT Media), has devised a comprehensive code of journalistic conduct and provides all its employees with guidelines for appropriate professional conduct. The code is available on the newspaper's website. The newspaper claims that the code is intended not as a statement of new beliefs or a codification of new rules of conduct, but as a reaffirmation of enduring values and practices. As per the code of conduct, the newspaper does not pay newsmakers for interviews, nor does it pay them for taking their photographs or to film or record them. The code of conduct also enjoins upon its employees to prepare and place stories, graphics, and interactive features based solely on their editorial merits with an intention to treat companies that advertise with the newspaper in exactly the same manner as those that do not advertise. It asks its employees not to favour any company, or the subject of a story, nor to discriminate against any, for whatever reasons.

The newspaper also claims that editors and editorial imperatives dictate the design of their products and that the management makes allowance for the presentation of revenue-generating elements. However, the strong emphasis given to design elements ensures that the design always makes clear the distinction between editorial and commercial material. In the spirit of that rule, for example, the newspaper claims, it does not link, for any reason other than editorial purposes, from within the text of electronic versions of their stories to an advertiser's website.

In order to ensure that these principles are honoured, the newspaper places emphasis on the fact that there is no contact (beyond social conversations) between the vast majority of the *Mint*'s editorial staffers and those who work in its business department. It authorises the Managing Editor or a designated surrogate to grant exceptions as necessary for the running of the business. The code of conduct further lays down that if any of its journalists or other employees ever feel any pressure from outside, or from the business departments of *Mint* itself, to compromise editorial material, including pressure to violate the code of conduct, they must immediately bring it to the notice of the Managing Editor and/or Deputy Managing Editor.

Here are a few excerpts from the code of conduct laid down by *Mint* for the professional conduct of its employees:

“Every judgment we make as journalists must be free of conflicts of interest – free even of the appearance of conflicts. Therefore, we must observe the following rules:

(1) *Share ownership and trading:*

In making personal investments, all employees must avoid speculation or the appearance of speculation. No employee of *Mint* may engage in short selling of shares, including futures and options, such as a put option.

(a) *Shares you own:*

You may not report, write, or edit a story about a company in which you or members of your immediate family own shares--nor about other companies in the same industry, unless it has been cleared in advance by the Managing Editor. For instance, if you own shares in Reliance, you may not report, write, or edit a story about the company or its key rivals. Nor may you mention such a company on a broadcast or cable show or Web video except in passing (as in reading a list of closing market prices). Immediate family means spouse or significant other and children 18 or younger.

You may, however, invest in diversified mutual funds, diversified exchange traded funds.

In any instance where a conflict seems likely, you might have to recuse yourself from participating in the story. Again, when in doubt, ask.

(b) *Shares you plan to buy:*

If your job is such that you write about or edit stories on a wide variety of companies intermittently, do not invest in those companies.

You may, however, trade the shares of companies you don't cover, in industries you don't cover, provided you don't act on any information prior to being published in *Mint*.

You may not engage in day trading or so-called active trading, or short selling. Nor may you accept “friends and family” shares from companies that are about to go public. Nor may you knowingly participate in unethical market-timing schemes that any mutual fund may engage in. The three-month rule does not apply to publicly available mutual funds.

Additionally, you may not trade in any share or financial instrument based on information gathered by anyone at *Mint* before a story is published. If an article on the information is not published by *Mint* but the information becomes public information the above restriction does not apply. Be aware that we may report suspected insider trading to the appropriate authorities and will cooperate fully in any subsequent legal actions. Remember, as well, that people who are caught engaging in insider trading often spend time in jail.

Employees are encouraged to be long-term investors in *Mint* stock.

(c) *Special situations:*

There may be instances in which an editorial employee inherits stock from a non-spousal relative, or in which a newly hired employee or a person who is under contract to *Mint* arrives with stock holdings. In such cases, you have these options:

- You can divest your holdings.
- You can ask the Managing Editor to let you keep your holdings with the understanding that you must recuse yourself from covering companies (and their industries) in which you own securities.

Be aware, though, that even if you get such permission, recusing yourself extensively could limit your assignments and your ability to perform your job.

(2) *Reporting share ownership:*

You must disclose in a confidential memo to the Managing Editor your ownership of shares in individual corporations and also such holdings of your spouse, significant other, and other members of your immediate family. Your shareholdings memo does not have to disclose the number of shares you own, just the company names.

You must submit this memo on your holdings to the Managing Editor every six months using a form that will be provided to you. New editorial employees must sign this code when they are hired -- and immediately thereafter submit the required share-disclosure statement.

(3) *Reporting other conflicts:*

You must include with your financial disclosure memo a description of any other potential conflict of interest, including your other financial holdings plus any personal conflict that might arise from family connections or employment. If your spouse works at, for example, Reliance or *The Economic Times*, please disclose this information.

(4) *Other conflicts:*

During the discussion of a potential assignment, you must also disclose other business activities that may conflict with your *Mint* work, or that may appear to. Such activities include but aren't limited to: Holding a part-time job, working as a consultant, engaging in any form of public relations in any capacity, accepting speaking fees, ghost writing material for anyone other than an independent author, accepting compensation in any form for anything other than journalistic work, writing for publications that *Mint* considers to be competitors, and doing commercial photography or design work for the subject of a story or a broadcast segment you'll be helping *Mint* prepare.”

Mint further lays down guidelines on the financial dealings with sources and subjects of stories; restrictions on accepting gifts, meals and entertainment and travel advisories for its journalists.

“...In situations where a company with whom *Mint* has an editorial partnership offers you favours, you must comply with the *Mint* Code of Business Ethics, which states in part: “No gift having more than nominal value and no loan (other than a normal bank loan) may be accepted from any person or firm having current or prospective dealings with the corporation.”

In relation to political and civic activities, *Mint* lays down the following guidelines.

“Many companies, for a variety of reasons, participate in the partisan political process, at various levels of government. As a publisher, *Mint* will have a different tradition. *Mint* does not contribute, directly or indirectly, to political campaigns or to political parties or groups seeking to raise money for political campaigns or parties. All news employees and members of senior management with any responsibility for news should refrain from partisan political activity judged newsworthy by their senior editor or in the case of senior management, the Managing Editor. Other political activities (including “issue oriented” activity) are permitted, but should not be inconsistent with this code.”

It should be noted that very few publications have codified ethical norms of conduct and behaviour of its staffers in the manner the *Mint* has. The Press Council of India would encourage all media organizations to not merely emulate such an example but, more importantly, also ensure that all staffers adhere to the ethical norms and principles laid down in letter and spirit.

The late Shri Prabhash Joshi’s last speech on “paid news”

One of India’s most renowned journalists, the late Shri Prabhash Joshi was a crusader against “paid news”. He approached the Press Council of India and the Election Commission of India on his own and urged these two bodies to do their best to curb such malpractices. In one of his last public speeches before he expired on November 5, 2009, at a seminar organised by the Foundation for Media Professionals in New Delhi on October 28, 2009, he named some of the politicians who had either refused to pay money or those who had complained to him about publications charging money for carrying news stories.

Among the several politicians who had spoken to him on paid news, Shri Joshi referred to Shri Atul Kumar Anjaan of the Communist Party of India (CPI) and said: “Shri Atul Anjaan of the Communist Party of India would often start his speech by drawing a parallel between a marriage celebration and an election campaign. He would say that when a marriage takes place, those who build *pandals* and tents, decorators and food caterers, quote higher than normal rates for their services. On specific days, when marriages take place, these service providers increase their rates taking advantage of the rise in demand and shortfall in supply. Newspaper owners acted in an identical manner

when they demanded money from candidates in exchange for publishing news about them just before elections.”

On that occasion, he made a scathing attack on sections of the media that had masqueraded advertisements as political news in the run-up to the general elections. He sharply criticized particular media organizations for entering into covert agreements with candidates of political parties and accepting illegal money from them for publicizing their activities and/or putting down their rivals. Such practices undermined and compromised the very basis of the role that an independent media is expected to play in a democracy. He listed various instances of impropriety followed by journalists and media organizations in Hindi-speaking states before the 2009 general elections. Barring a few, most newspapers in these states entered into deals with candidates of various political parties contesting in the general elections whereby they offered publicity packages to specific candidates and/or political parties to which they belonged for money.

“Packages” had been formulated by various media groups and the newspaper offering the “package” would publish no news whatsoever about the individual candidate and/or his or her party if the candidate/party did not accept the package. Shri Joshi mentioned accounts of various political leaders who had complained to him regarding the widespread practice of paid news in media houses in the states. He mentioned in particular about the cases narrated to him by Shri Lalji Tandon, Member of Parliament from Lucknow, Uttar Pradesh (UP), belonging to the Bharatiya Janata Party (BJP); Shri Mohan Singh of the Samajwadi Party, who fought the election from Deoria in UP; Shri Harmohan Dhawan, who was a Union Minister in the government headed by former Prime Minister, the late Shri Chandra Shekhar; and Haryana Chief Minister, Shri Bhupinder Singh Hooda.

Here are translated excerpts from his speech delivered in Hindi:

“Most of the newspaper owners and a few editors as well believe that their brand of journalism is head and shoulders above public scrutiny. It seems some of them also believe that readers have, somewhere along the way, forfeited their rights to question the integrity of the press...the media primarily draws its freedom and independence from the fact that its readers are free citizens of this country. The notion of freedom of the press follows thereafter. And if newspapers or media organizations violate the rights of the citizens of India, the right of freedom of expression could be withdrawn from them.

“During the 2009 general elections, I visited all the Hindi-speaking states ... most newspapers in these states entered into deals with candidates of various political parties contesting in the general elections whereby they offered publicity packages to specific candidates and/or political parties to which they belonged in lieu of money. A package generally comprised rates (sometimes, in column centimetres) for coverage of the political activities and campaign speeches of the candidate, printing an interview with the candidate or even to launch a tirade against a particular opponent or opponents of the concerned candidate. Rate cards were prepared and given to candidates together with a warning that the newspaper offering the package would publish no news whatsoever

about the individual candidate and/or his or her party if the candidate/party did not accept the package.

“I have been hearing about Shri A.K. Roy, former Member of Parliament from Dhanbad in Jharkhand, for a long time. In the last election that he contested, not even a single newspaper cared to publish a line about him. Shri A.K. Roy represents the workers and labourers of that area. His inability (or unwillingness) to pay the huge sums of money demanded by newspapers for providing publicity is understandable.

“Take another example, namely, that of Shri Lalji Tandon, who helped Shri Atal Behari Vajpayee get elected each time from Lucknow. He said that there was not a single newspaper in Lucknow that had not tried to strike a deal with him. In the last election, a Lucknow-based newspaper asked him to pay a certain amount for getting news about himself published. A shocked Shri Tandon asked the newspaper owners as to why money was being demanded from him despite the fact that he had been in public service for a long time. The newspaper owners replied that no news would be published about him unless he paid money. Even newspapers that had accepted favours from him in the past refused to publish any news about him unless he paid them. Eventually Shri Lalji Tandon decided against paying money and went ahead with his decision to contest the elections without accepting any publicity package from any newspaper.

“During his election campaign, Shri Lalji Tandon would tell the public gathered at his political rallies to ignore what was written in those newspapers to which he had refused to pay any money. He said he would rather want those listening to him to read other newspapers. In the same election, an opponent of Lalji Tandon bought three packages: one that would ensure that negative news was published about him; another package for doing the same against Smt Rita Bahuguna Joshi, Uttar Pradesh Congress party chief; and the third package was for his own publicity. He paid the newspaper a sum of Rs one crore for carrying positive reports about him in the hope that it would ensure his victory. When Shri Lalji Tandon was declared the winner in the Lok Sabha elections, he again exhorted the public in his rallies to avoid reading certain newspapers and pointed out that despite the negative coverage given to him, he had still been able to win the elections. He is the same Shri Lalji Tandon, who had earlier ensured that a prominent newspaper owner was able to obtain a seat in the Rajya Sabha.

“Similarly, Shri Mohan Singh of the Samajwadi Party who fought the election from Deoria in Uttar Pradesh, was asked to purchase a publicity package if he wanted news about himself to be published. When nothing was eventually published about him, he openly asked questions as to why he should be paying any money to the same newspaper owner to have news about himself to be published when the owner of the newspaper did not have to pay a single paisa to get elected to the Rajya Sabha.

“Shri Harmohan Dhawan, who was a minister in the government of former Prime Minister, the late Shri Chandra Shekhar, contested the general elections of 2009 on a Bahujan Samaj Party (BSP) ticket from Chandigarh. Normally, BSP candidates spend large amounts of money in contesting elections, but Shri Dhawan refused to part with any

money that was asked of him by newspaper owners. In a diary, he has written down the names of all those newspapers that demanded money from him. While addressing several press conferences as well as public rallies, he urged people not to believe what newspapers wrote because owners of these publications were corrupt.

“The most interesting episode concerns the Haryana Chief Minister, Shri Bhupinder Singh Hooda. He once chanced upon a newspaper that was carrying on its front page, a detailed report of one of his meetings that had taken place three days earlier. Together with the report that had been printed in a box, a big picture of the Chief Minister had been published. A surprised Shri Hooda then called the newspaper’s office to know the reason why this report had been published after a delay of three days. The owner of the newspaper then said he would make necessary enquiries and get back to him. The owner then called Shri Hooda and told him that what had been published was not a report, but an advertisement. An angry Shri Hooda asked the newspaper owner as to why he had published such an advertisement on the front page. The newspaper owner informed him that they did provide such services for a fee. Shri Hooda then told the owner to publish an advertisement in the following day’s edition that would state: ‘This newspaper lies and takes money to print news’. Petrified over the Chief Minister’s terse and unexpected reaction, the newspaper owner thereafter provided free publicity to Hooda’s son.

“Every newspaper has made a calculation as to how much it would lose financially if it ever invited the ire of a chief minister. Some time ago I had been to Patna and happened to meet a newspaper owner during my visit there. He asked me to persuade (Bihar Chief Minister) Shri Nitish Kumar to help him by placing state government advertisements in his newspaper that had incurred a loss of Rs 73 lakh that month.

“A friend of mine who had gone to campaign for a candidate in Maharashtra reported that this particular candidate had spent Rs 18 crore during the election. Friends, I recount these stories not merely for the sake of it, but because I had been a witness to some of these conversations...I understand that these days particular candidates spend between Rs 1 crore and Rs 2 crore on payments to the media during elections. Each candidate hires on an average, two employees to write news stories about him which are printed without editing and sought to be passed off as independent editorial content.

“... I would like to conclude my speech with a suggestion that a law needs to be enacted, whereby, if one publishes an article after being paid a certain sum of money, it needs to be mentioned very clearly along with the article that the content has been paid for and therefore, happens to be an advertisement. Newspaper owners generally put forth an argument that what they bring out are products. But then they conveniently forget to mention the contents of their products. For example, every medicine that one buys carries information about its contents as well as its manufacturing, packaging and expiry dates. The day newspapers start giving out details of the sponsor of an editorial or a report, they would realise it is impossible carry on with the kind of fraud that is being perpetrated on readers. Secondly, before elections, the Election Commission should consider every political news story as an advertisement and should calculate the cost that must have been incurred by the candidate to publish the advertisement. This amount should then be added

to the official expenditure of the candidate and if the candidate is found to have exceeded the expenditure limits specified by the Election Commission, he should be disqualified from contesting the elections. This would help break the nexus that exists between politics and many sections of the media.”

Before he made this speech, Shri Joshi wrote a series of articles in various newspapers and magazines highlighting many of the instances already enumerated. For instance, on May 10, 2009, he wrote in *Jansatta* that on April 15, the Varanasi edition of *Hindustan* newspaper had published on its front page three articles praising a particular candidate named Tulsi Singh Rajput. These were the first lead story, the second lead article and a third article at the bottom of the page. In addition, three photographs of Shri Rajput, including one spread over three columns, were printed on the same page. The following day’s edition of the *Hindustan* carried a clarification that what had been published the previous day was an advertisement. The clarification added that the fact that the earlier “news” reports were advertisements should have been stated as such as this was the newspaper’s stated editorial policy.

Besides writing articles, Shri Joshi repeatedly urged all right-thinking individuals to protest against the “paid news” phenomenon and carry out a campaign against such malpractices. Shri Joshi has passed away but many people, including several journalists, have been inspired by the ideals he stood for and have taken the campaign forward. As Shri Joshi and others have pointed out, the phenomenon of “paid news” vitiates the election process simply because the money spent is not audited and violates the mandatory guidelines relating to election expenses laid down in the Representation of the People Act, 1951, that is meant to be enforced by the Election Commission of India.

Smt Mrinal Pande’s views on “paid news”

In a two-part article written for *The Hindu* (March 18-19, 2010), senior journalist Smt Mrinal Pande stated: “Many recent steps redefining news and its dissemination in the newspapers were taken hastily after bypassing the editorial department. They may have introduced lethal and invisible viruses within the system that may corrode and finally kill the newspaper. The vernacular media may be feeling cocky, having pulled themselves out of physical poverty under their own steam, but they have yet to learn how to deal firmly and decisively with another kind of poverty — that of the professional, ethical kind.

“One is not being paranoid here. Not too long ago, some major dailies introduced a devilishly cunning scheme of offering what was innocently labelled ‘Ad for Equity’. This met with loud applause from many managerial bosses all over. But before long the realty, aviation and automobile sectors went into a tailspin, and the scheme left the companies that had adopted it red-faced and holding bags of (economy class) air tickets, empty flats, unsold cars and so on.

“A little later, during some of the Assembly elections in 2008, the local editions of several multi-edition Hindi dailies started displaying laudatory and frequently contradictory news items on their front pages about specific candidates contesting from

the respective areas. With zero news value, none of these items merited such display, but through the election period the front pages and op-ed pages of some dailies continued to carry the mug-shots of particular candidates, even predicting a record win for him or her.

“The dailies may or may not have collected some Rs 200 crore with this little duplicitous exercise in psephology, but a new idea of what has now come to be called ‘political advertising’ was planted across the country, triggering a trend. And soon one heard that the marketing and media marketing managers at several media houses were getting ‘creatives’ prepared about what was on offer, in time for the general elections. Several party functionaries who manned party ‘war rooms’ during the period, when quizzed, confessed to having been shown ‘impressive’ PowerPoint presentations by major newspapers, and in turn professing an interest in the offerings.

“The hard copy version of one such offering made on behalf of one Hindi daily published from a rich western Indian State blatantly delineates the phenomenon. The script claims that some 36 Lok Sabha seats in two major cities in the State, including the State capital and the surrounding areas, were ‘fed’ by the daily. The proposal then lays down a clear sequential map of activities it can spearhead to promote the party or individual candidates, quoting prices. At the local level it addresses the candidate, his or her supporters and well-wishers, the district-level party office, the local MLA or MLC or corporator, other local political leaders, the local advertising agency and the guardian Minister of the ruling party. At the State level it is the State political party office, Cabinet Minister and State-level political leaders, businessmen and industrialists and a State-level advertising agency. At the national level it addresses the central offices of political parties (media cells), national-level political leaders and Central Ministers from the State.

“The working modalities include putting in place dedicated teams each day, comprising political or city reporters and correspondents, sub-editors, area advertisement managers and area sales managers, to do the needful. Fifteen days’ general coverage is priced at Rs 20 lakh, while seven days of exclusive coverage is pegged at Rs 25 lakh. Along with this, specially prepared four-page supplements in colour, exclusive interviews, positive views of the voters, positive editorial analysis, ‘only positive coverage’ and ‘no negative publicity of opposition candidate or party,’ and extra copies of the newspaper on payment basis, are on offer -- at a price, of course. There is flexibility in making the payment: 50 per cent can be paid in cash and 50 per cent by cheque. The last frame in the presentation, ironically titled *The Way Ahead*, suggests that the daily would be willing to offer publicity on ‘other occasions’ also, apart from the election-time offer... How can a media hawking inviolable editorial space to politicians and their parties for personal use during elections, capture this reality for its readers and analyse it with any degree of sensitivity or honesty?

“... why have the hugely successful Hindi print media that have always been in private hands and quite free professionally, begun to trivialize their own base and con their readership for piffling short-term gains? If this trend continues, the readers will react, and the next round of closures will have more serious implications, not just for those who will lose their jobs but also for the readers’ understanding of where they live and how their

reality is inviolable and a part of the nation's reality. Hindi newspapers inspired by the capitulation of their big brothers in the media business may dent the case for India's vernacular press, but cannot demolish it. When it does its job, a professionally run vernacular paper, funded jointly by advertising and paid-for-circulation, remains the best bet as a scrutineer of democracy and the best guard for the inviolable reality of our public spaces."

Examples of "paid news" from the Hindi press:

Here is a selection of examples from the Hindi language press that could be construed as examples of "paid news":

The Ranchi edition of *Dainik Jagran* published a "news package" on page 3 of its April 15, 2009 edition, in favour of a candidate belonging to the Jharkhand Mukti Morcha (JMM) Shri Kameshwar Baitha. This news item stated that Shri Baitha was "getting the support of each and every section of society" and that he would win elections from the Palamau Lok Sabha constituency. There is no credit line to this news item and the font used for this news item was different from the font used in other news items in the publication. On the same page, the newspaper had published another news item stating that there would be a triangular contest between three candidates belonging to the JMM, the Jharkhand Vikas Morcha and an independent candidate. This report has been credited to a reporter of the newspaper.

On April 13, 2009, the Ranchi edition of *Dainik Jagran* published two "news" items on page 7, both relating to the Chatra Lok Sabha constituency. The first item was in favour of the Rashtriya Janata Dal (RJD) candidate Shri Nagmani (one name) with the headline stating: "Nagmani is getting support from every class and section" virtually declaring that he would become the undisputed winner. The same page had another "news" item claiming that Shri Arun Kumar Yadav, a candidate belonging to Janata Dal (United), who contested from the same constituency, would emerge a "clear winner". Both the items do not carry any byline although the font used is different from the font used for other news articles in the publication.

Two other newspapers published from Ranchi, *Prabhat Khabar* and *Hindustan*, also published articles praising various candidates before the Parliamentary elections but the former placed the following line on top of each such item "PK Media Marketing Initiative" while the latter publication added "HT Media Marketing Initiative" at the bottom of such items.

Former Civil Aviation Minister Shri Harmohan Dhawan was quoted in *Pratham Pravakta* magazine (in its edition dated July 16, 2009) stating: "I was contesting the 2009 elections on a ticket of the BSP from Chandigarh. Representatives of the print medium came to me and asked for money. They said their newspapers will give me coverage if I paid them money. They offered a 'package' to me and in one such 'package' I was told editorials would be written in my favour. I have been contesting elections since 1974 but not a single newspaper asked me for money before this. Among the newspapers that

offered a 'package' to me was *Punjab Kesri*. A representative of *Dainik Jagran* came to me 20 days before the election and clearly told me: 'If you want coverage in this election, you have to buy a 'package'. These packages were worth lakhs of rupees. After that, a representative of *Dainik Bhaskar* visited me in my home. He too offered me a "package".

"I turned down all these offers. I felt that newspapers would cover large election rallies where many people are present but the rallies that were conducted on my behalf were not mentioned in these newspapers whereas the rallies of other candidates were covered in considerable detail. When I raised this issue with representatives of the managements of these newspapers, they told me that nothing could be done unless I paid for a 'package'. On April 28, 2009, I spoke about this 'paid news' business publicly in the presence of (Kumari) Mayawati (Chief Minister of Uttar Pradesh and leader of the BSP). On April 30, a general manager of *Dainik Bhaskar* came to me and said that he was personally of the view that the pre-election activities of the BSP and its candidates should get full coverage in his newspaper but that he was helpless in this regard because his newspaper's management had taken a decision not to publish any news about any party or candidate that would not pay the newspaper. He offered me a 'package' worth Rs 5 lakh but I refused to pay. Certain reporters also told me that reports that they had written about my election campaign were not published. I realized that newspaper owners were using reporters as their tools."

The Congress candidate from Azamgarh in Uttar Pradesh Dr Santosh Singh stated the following in an interview to *Pratham Pravakta* (July 16, 2009): "After I had filed my nomination paper, a representative of the Varanasi edition of *Dainik Jagran* contacted me and asked me to buy one of two 'packages' worth Rs 5 lakh and Rs 10 lakh respectively, for which I was offered comprehensive coverage of my election campaign. Another newspaper, *Aaj*, asked for an amount varying between Rs 50,000 and Rs 5 lakh. The representatives of these newspapers who met me said they were merely following orders given to them by their managements... These representatives told me that they are just following the order of management. I did not pay any money".

Shri Ramakant Yadav of the BJP who contested and won the Lok Sabha election from Azamgarh stated the following in an interview in *Pratham Pravakta* (July 16, 2009): "*Hindustan* newspaper asked me to pay Rs 10 lakh for publishing 'news' about my election campaign. I refused to pay any money. In an article, the newspaper claimed I would lose the election. But, now that the results have been declared, you know that I won."

Here are excerpts from what three contestants from the Ghosi Lok Sabha constituency in Uttar Pradesh told *Pratham Pravakta* (July 16, 2009):

Samajwadi Party candidate Shri Arshad Jamal said: "Newspapers such as *Dainik Jagran*, *Hindustan*, *Amar Ujala*, *Aaj* and *Urdu Sahara* asked me for money and offered 'packages' varying between Rs 2 lakh and Rs 10 lakh."

Communist Party of India candidate Shri Atul Kumar Anjaan said: “I have received phone calls from representatives of two of the largest newspapers in north India, *Dainik Jagran* and *Hindustan*. They asked me for Rs 15 lakh each for coverage of my campaign in their publications. When I rejected these offers, *Dainik Jagran* did not published anything about my activities between March 22 and April 16, the newspaper did not even publish any report about the rally that was addressed by the CPI General Secretary Shri A.B. Bardhan. When I contacted reporters and correspondents based in the Mau bureau of *Dainik Jagran* and *Hindustan*, they said they have to follow instructions issued to them from their offices in Varanasi and Delhi. When I complained to representatives of these newspapers based in Varanasi and Delhi, they slashed the rates of their ‘packages’ and I was asked to pay Rs 12 lakh.”

BJP candidate Shri Ramiqbal Singh said the following in an interview to *Pratham Pravakta* reporter Shri Rupesh Pandey in Lucknow on February 5, 2010: “During the election campaign in 2009, the bureau chief of *Dainik Jagran* came to me and asked me to pay money for coverage. He said that members of his bureau were just following instructions given to them by their head office. He demanded Rs 15 lakh from me. During those days, his newspaper had published a few lines about me. But much more space, in fact, two full pages, was devoted to reports about the activities of Smt Sudha Rai, the Congress party’s candidate from the constituency. I believe the publication of ‘paid news’ items resulted in between 50,000 and 60,000 voters shifting their allegiance in favour of the Congress candidate. No other newspaper asked me for money.”

The BJP candidate from Lalganj in Uttar Pradesh, Smt Neelam Sonkar said the following in an interview to *Pratham Pravakta* (July 16, 2009): “Representatives of *Aaj*, *Dainik Jagran* and *Amar Ujala* came to me and offered me a ‘package’ worth Rs 10 lakh for coverage in their newspapers. When I refused to pay for any ‘package’, senior executives working in these newspapers contacted me and said that they would slash the rate of their ‘packages’ for me.”

On April 16, the Patna edition of *Hindustan* published a banner headline stating that the “Congress is ready to create history in Bihar” but curiously, there was no news item related to this headline.

Shri Sanjeev Pandey, a freelance journalist based in Chandigarh, provided the Press Council of India, with over 70 clippings from different newspapers that were published from Haryana. All the clippings were from newspaper editions printed in the run-up to the assembly elections in Haryana and appeared to be “paid news” items.

The Rohtak edition of *Haribhoomi* published a news item on October 8, 2009 in favour of Congress candidate Shri Birendra Singh. Shri Singh was contesting assembly elections from Uchana constituency. However, this news item carried no byline. This news item claimed that Shri Singh had been getting support from all and sundry in society. Detailed descriptions of the plans of his election campaign were also mentioned. Using the same format, *Haribhoomi* published a news item in favour of BJP candidate Shri Meva Singh the following day, that is, on October 9, 2009. Giving an account of BJP National

President Shri Rajnath Singh's rally, this news item claimed that "after this rally Meva has got support from each and every section of society".

The Panipat edition of *Dainik Jagran* published a news item on page 9 of its edition dated October 8, 2009, that was in favour of the electoral prospects of the Congress. The news item did not carry any byline. The headline of the news item stated that the "good work" done by the Congress had marginalised the electoral prospects of the leader of the Opposition in the state. Each and every sentence of this news item is in favour of the Congress party. This news item criticises leaders of non-Congress parties and says that they would not be able to make a mark in the elections because the Congress had done very good work for every section of society. This news item added that candidates of the Haryana Janhit Congress (HJC) led by Shri Bhajan Lal would not be able to harm the electoral prospects of candidates belonging to the Congress.

By way of contrast, the Ludhiana edition of the same newspaper published a news item in favour of the HJC on October 11, 2009, with a headline that stated that the HJC would play the role of king or king-maker after the elections. Each line of this news item sings paeans of praise in favour of the HJC and prophesised that the party would play a very important role in forming the government after the poll results are declared. Surprisingly, on the very next day, that is, on October 12, 2010, the Ludhiana edition of the same newspaper again published a news item that was apparently paid for in favour of Shri Om Prakash Chautala's Indian National Lok Dal (INLD) in Haryana and is credited to "a reporter". The headline of this news item states that INLD would obtain electoral benefits against the incumbent ruling party, that is, the Congress.

In stark contrast to the post-poll projections of the earlier news items, each line of the last-mentioned news item clearly favours the INLD. This news item reported that there was a "wave" in favour of the INLD in Haryana and went on to predict a clear victory for Shri Chautala and the INLD. The news story claimed that the INLD would be able to easily win the magical number of 46 constituencies that would be required to obtain a majority in the state assembly in order to form a government. This news item states that the Congress party was "struggling" because of internal feuds and that this would benefit the INLD. The story did not end there.

On the next day, that is, on October 13, 2009, the Ludhiana edition of the *Dainik Jagran* reverted to praising the Congress in another news item. There is no credit line given to this news story, the headline of which claimed that the Congress was ready to "repeat the history" that was made during the Lok Sabha elections when the Congress won handsomely in the state. Every single line of this particular news story praises the Congress party and the Chief Minister of Haryana Shri Bhupinder Singh Hooda. The news item claimed that non-Congress parties would perform poorly in the elections, that their candidates would forfeit their deposits and went on to make a prediction that the Congress would win 75 out of the 90 seats in the state assembly.

In a letter to the Press Council of India dated December 02, 2009, Shri Om Prakash Chautala, National President of the Indian National Lok Dal, expressed his "disgust" at

the phenomenon of “paid news” and cited the example of the front page of the Haryana edition of the *Dainik Bhaskar* dated October 13, 2009, the day of polling for the state assembly elections, “which carried only the Congress party’s advertisement”. He added that half of the second page of this edition of the newspaper again carried an advertisement “along with a few news items that were obviously paid” (for) with headlines claiming that the Congress was “about to create history” in the state. Shri Chautala was of the view that if the power of the media was misused in such a blatant manner and used to drown dissenting voices, people of the country would lose their faith in the Constitution of India which guarantees free and fair elections.

On December 23, 2009, the Uttar Pradesh Journalists’ Association, Faizabad, sent a letter to the Press Council of India, condemning the practice of “paid news” adding that such malpractices would destroy the independence of journalism and thereby, democracy in the country.

A Lucknow-based non-government organization, the National Alliance of People’s Movements, analysed issues of four Hindi language daily newspapers that were published between April 01, 2009 and April 30, 2009 from Lucknow and Gorakhpur. These newspapers were *Dainik Jagran*, *Dainik Hindustan*, *Rashtriya Sahara* and *Voice of Lucknow* and documented a number of instances of “paid news” articles. The organization was of the view that these articles violated the Conduct of Election Rules. It suggested that the Registrar of Newspapers of India should cancel the registration of the concerned publications.

It was pointed out by the NGO that many of the so-called “paid news” articles were in favour of Shri Akhilesh Das Gupta, the candidate of the Bahujan Samaj Party who contested from the Lucknow Lok Sabha constituency (and who, ironically, stood in third position after Shri Lalji Tandon of the BJP and Smt Rita Bahuguna Joshi of the Congress after the results of the election were declared). Shri Akhilesh Das Gupta was quoted in *Outlook* weekly (December 21, 2009) saying: “I don’t blame my party if it pays for news in its favour; there is a general media bias against my party.”

There are many more examples of “paid news” that were brought to the attention of the Press Council of India from newspapers published from, among other states, Andhra Pradesh and Maharashtra. Before enumerating these instances and providing examples of how representatives of newspapers denied having asked candidates to pay money for publishing news articles about their activities despite considerable circumstantial evidence to the contrary, it would be instructive to first provide an overview of the laws of the country as they stand in this regard.

Rules and Regulations of the Election Commission of India

On December 16, 2009, two representatives of the Election Commission of India deposed before the Press Council of India and *inter alia* stated that under the existing laws of the country, there is no ceiling on election campaign related expenses by “political parties for their general party propaganda”. According to the Election Commission of India, when a

political party incurs expenditure to promote the interest of any particular candidate – as distinct from “general party propaganda” – such expenditure forms part of the candidate’s expenditure. The only exception relates to the expenses incurred by 40 leaders of a recognized national or state party and 20 leaders of a registered (unrecognized) party on their travel in connection with election campaign, according to Section 77 of the Representation of the People Act, 1951 and Rule 90 of the Conduct of Election Rules, 1961. Section 171H of the Indian Penal Code prohibits all expenses by supporters, voters etc. of a candidate, without his authorization.

The Election Commission stated that advertisements on the electronic media (radio, television and the internet) are regulated by the order of the Supreme Court of India dated April 13, 2004 (in the case of *Secretary, Information & Broadcasting, Government of India versus M/s Gemini Television Pvt Ltd* [2004(5) SCC 714]) and the order of the Election Commission of India dated April 15, 2004, pursuant to the Supreme Court’s order. There is an anomaly in that this order does not extend to the print medium but only relates to the electronic media. Thus, whereas television channels and radio stations are prohibited or banned from broadcasting election campaign related news after campaigning stops 48 hours before polling is scheduled to take place, a similar ban does not apply to the print medium and hence, newspapers carrying election campaign related news and advertising even on the morning of polling. The Press Council of India is of the view that this anomaly should be rectified with immediate effect by the Election Commission of India and it appears unlikely that this rectification would be opposed by owners of media companies simply because it would place on par both the print and the electronic media.

In order to keep a check on the expenditure incurred by political parties, their candidates and others and also to ensure that no one prints any material in the form of advertisements, pamphlets etc., that could be considered scurrilous or objectionable, the following restrictions are imposed under Section 127 A of the Representation of the People Act, 1951.

Section 127 A of the Act states:

1. No person shall print or publish, or cause to be printed or published any election pamphlet or poster which does not bear on its face, the names and addresses of the printer and the publisher thereof.
2. No person shall print or cause to be printed any election pamphlet or poster – (a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer, in duplicate; and (b) unless within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document – (i) where it is printed in the capital of the state, to the Chief Electoral Officer; and (ii) in any other case, to the district magistrate of the district in which it is printed.
3. For the purposes of this section – (a) any process for multiplying the copies of a document, other than copying it by hand, shall be deemed to be printed and the

- expression “printer” shall be construed accordingly; and (b) “election pamphlet or posters” means any printed pamphlet, handbill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having references to any election, but does not include any handbill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.
4. Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs 2,000, or with both.

Further, in order to monitor the expenditure of political parties and candidates, the Election Commission of India has issued standing instructions to be followed by those who are responsible for the printing and publication of such election posters and pamphlets, etc., as follows:

- (1) As soon as any election from a Parliamentary, assembly or council constituency is announced by the Election Commission, the district magistrates, shall, within three days of such announcement of such an election write to all printing presses in their district
 - (a) Pointing out to them requirements of Section 127(A) and specifically instructing them to indicate clearly in the print line, the names and addresses of printer and publisher of any election pamphlets or posters or such other material printed by them;
 - (b) Asking the printing presses to send the copies off the printed material (along with three extra copies of each such printed material) and the declaration obtained from the publisher, as required under Section 127(A)(2) within three days of its printing;
 - (c) Impressing on them in clear terms that any violation of the provisions of Section 127(A) and the above directions of the Commission would be very seriously viewed and stern action which may in appropriate cases include even the revocation of the license of the printing press under the relevant laws of the state would be taken.
- (2) The chief electoral officers shall do likewise in respect of the printing presses located in the state capitals.
- (3) Before undertaking the printing of any election pamphlets or posters etc., the printers shall obtain from the publisher a declaration in terms of Section 127(A)(2) in the proforma prescribed by the Commission.
- (4) As directed above, the printer shall furnish four (4) copies of the printed material, along with the declaration of the publisher within three (3) days of the printing thereof. Along with such printed material and the declaration, the printer shall also furnish the information regarding number of copies of the document printed

and the price charged for such printing job in the proforma prescribed the Commission. Such information shall be furnished by the printer not collectively but separately. In respect of each election pamphlet, poster etc., printed by him within three (3) days of the printing of each such document.

- (5) As soon as the district magistrate received any election pamphlet or posters etc. from a printing press, he shall examine whether the printer and publisher have complied with the requirements of law and the above directions of the Commission. He shall also cause one copy thereof to be exhibited at some conspicuous place in his office so that all political parties, candidates and other interested persons may be able to check whether the requirements of law have been duly complied with in relation to such document and which would also enable them to bring to the notice of the authorities concerned the cases of other election pamphlets, posters, etc., in respect of which the above requirements of law have been violated.
- (6) The chief electoral officer shall also likewise take further follow-up action as mentioned in sub para (5) above in respect of the pamphlets, posters, etc., received by them.

According to the Election Commission of India, it has been observed that the above-mentioned restrictions on the printing and publication of posters and pamphlets and the obligations to be fulfilled thereunder, by the printers especially, are “seldom observed”. Rarely are copies of the posters etc. printed by the printing presses furnished to the District Magistrates and the Chief Electoral Officers concerned, said the Election Commission of India in a statement to the Press Council of India. In one particular case, the commission observed certain press advertisements appearing in a leading national daily, which did not disclose the name of the publisher of that advertisement. The commission considered it to be a violation of the said Section 127(A). When asked by the commission to give the details as required under Section 127 (A), the newspaper refused to part with that information on the plea that the said Section 127 (A) did not apply to newspapers.

When the Press Council of India contacted Shri S.K. Mehndiratta, Legal Adviser to the Election Commission of India, he stated that the newspaper being referred to by the Commission in this context was the *Times of India* and that the letter had been issued by the Commission to the newspaper before the 2004 general elections.

According to the Election Commission of India, political campaigns being carried out by certain organisations or individuals either espousing the cause of a particular political party or a candidate or projecting a political party or a candidate in negative terms so as to prejudicially affect their political prospects, through surrogate advertisements, was posing problems, in effectively monitoring the election expenditure of candidates. Advertisements in a surrogate manner were resorted to earlier, as the understanding of the law under Section 77 of the Representation of the People Act, 1951, at that time, was that candidate was not accountable for any expenditure incurred by any organisation, or his

friends and supporters. The Election Commission of India then issued the following standing instructions in the matter:

“The following points may be noted in respect of the advertisements that appear in the print media, especially newspapers, for and against particular political parties and candidates during election period:

(a) In the case of advertisements, the source of which is traceable, the following action may be taken:

(i) if the advertisement is with the consent or knowledge of the candidate, it will be treated to have been authorised by the candidate(s) concerned and will be accounted for in the election expenses account of the candidate(s).

(ii) if the advertisement is not with the authority from the candidate, then action may be taken for prosecution of the publisher for violation of Section 171(H) of the Indian Penal Code (incurring expenditure in advertisement without written authority from the candidate(s) concerned).

(iii) if the identity of the publisher is not indicated in the advertisement, then you may contact and get the information from the newspaper concerned and consider appropriate action, as above.

With a view to curbing expenditure on what it described as “surrogate advertisements”, the Election Commission of India also made the following recommendation to the government of India in 2004, as a part of its package of electoral reforms:

The Election Commission of India is of the view that “there should be clear provision to deal with cases of surrogate advertisements in the print media. For this purpose, Section 127(A) of the Representation of the People Act, 1951, may be suitably amended, adding a new sub-Section (2A) to the effect that in the case of any advertisements/election matter for or against any political party or candidate in print media, during the election period, the name and address of the publisher should be given along with the matter/advertisement. Sub-section (4) should also be suitably amended to include in its ambit the new proposed sub-section.”

The proposed recommendation of the Election Commission of India has not been given effect to by the government so far. Meanwhile, the law relating to election expenses has undergone a sea change on account of the Election and Other Related Laws (Amendment) Act, 2003, whereby all expenditure incurred by supporters and workers of a candidate is deemed to be expenditure incurred or authorised by the candidate and subject to the overall ceiling fixed on his election expenses under the law.

In its note to the Press Council of India, the Election Commission observed: “Of late, the campaign using the media (especially print media) has taken a more disturbing turn. There have been several complaints of surrogate advertisements or ‘paid news’ appearing

in the form of news items. On the face of it, such advertisements give an impression of a genuine news report covering the election campaign of a particular candidate. But when such reports repeatedly appear in that newspaper more or less on a regular basis, the matter does give rise to a doubt or suspicion whether the reports are 'honest' coverage of the election campaign of the candidate as innocent news item."

"The matter", says the note given by the Election Commission to the Press Council, "assumes bigger dimensions when such 'news items' appear in more than one newspaper as 'word for word' reproduction or with a few minor deviations. Obviously, in the publication of such news items, there is more than what meets the eye. This trend has implication for the voters' right to correct information. The Commission has received complaints, mostly informal, that some political parties and candidates have resorted to buying space in the print media by making hefty payments to the journalists or press reporters in return for projecting their image by publishing planted stories at their instance as 'paid news items'."

The Election Commission note adds that "the more disturbing phenomenon recently emerging and which is causing serious concern to the commission is the latest complaint to the Commission that some of the newspapers have even offered packages at hefty sums, offering three types of services – one, projecting the image of a political party or a candidate in a positive manner; two, giving negative publicity to the rival party or candidate. The rates of such packages vary, depending upon the standing and circulation of the newspaper in the area covered by the constituency. These rates further vary depending upon the duration for which such publicity campaign by the newspaper is to be carried out, that is to say, whether for the whole campaign period or for the last one week of the campaign period or even for the shorter duration close to the day of poll. This worrisome phenomenon is causing concern not only to the Election Commission but also to the entire enlightened section of the society and even to some of the sections of the print media and political formations. But sufficient initiative from political parties or media to counter this problem is yet to be seen on (the) ground."

The Election Commission of India asked the Press Council of India "to devote serious consideration to this growing menace which, if not checked in time, may erode the credibility of the electoral system. As any consideration of surrogate advertising will also involve issues like media regulation, media freedom, media ethics, etc., the Press Council of India may like to suitably address it. In particular, the commission would like some guidelines to be laid down by the Press Council of India to determine what is 'paid news', so that the expenditure incurred by political parties and candidates on such paid news may become accountable."

The Press Council of India is of the opinion that is, in fact, very easy to define paid news: it is an article in a newspaper/magazine or a television broadcast that appears as a news item, where, though the contents appear to have been independently produced, in reality and in fact, a financial transaction has taken place that has facilitated the publication or broadcast of the news item. The problem is not in defining what "paid news" is but in trying to establish that money has changed hands, that a payment has been made by a

candidate who has stood for elections or his political party or his representative or associate to a representative of a media company that has published or broadcast the so-called “news” in favour of the concerned candidate. Since such payments are invariably made in a clandestine or illegal manner, in the form of hard cash and not by cheque, and since official records (in the form of receipts or bills/invoices) are deliberately not kept or recorded in the concerned media company’s balance sheet or statements of account, the only way such transactions can be unearthed if search-and-seizure raids are conducted by the concerned law-enforcing authorities, including officials of the Income Tax Department or members of the police force.

Before proceeding further, it is worthwhile to reiterate why publication or broadcast of “paid news” is bad for the media itself since it is inimical to its credibility as a provider of independent, balanced and fair information. The idea that the media plays a central role in the maintenance of a democratic society has framed debates about media ethics. A healthy democracy requires, among other things, the participation of informed citizens, and one of the roles of the media is to enhance the level of public participation by providing information and analyses on a range of political, economic, social and other issues. This information thus has to be as truthful and objective as possible.

Unfortunately, sections of the media in India have begun to treat the political arena like any other market. The underlying assumption is that if the politician pays, he will be covered in a complimentary and favourable manner. Instead of providing objective and unbiased information, publications that put out “paid news” items that are akin to pamphlets praising candidates, eventually end up damaging – if not destroying – their own credibility. Whereas such malpractices were confined to individual transgressions and to a few newspapers and television channels in the past, the sheer scale of what has taken place is alarming and frightening for this phenomenon strikes at the very core of democracy by turning the media which is supposed to be the fourth estate and a watchdog of society into a “first estate” of sorts by adversely influencing democratic processes.

Dainik Jagran: Allegations and Counter-Allegations

Senior leader of the Bharatiya Janata Party (BJP) Shri Lalji Tandon who contested and won the 2009 Lok Sabha elections from the Lucknow constituency in Uttar Pradesh has publicly gone on record as to how the “the largest circulated (Indian) language newspaper in the world”, refused to publish any news about him in the run-up to the 2009 elections because of his refusal to pay any money. “When I enquired, I was told that I should pay up if I wanted news in my favour,” Shri Tandon said, adding that his rival from the BSP got more publicity than any other candidate in his constituency. Though Shri Tandon said the issue was later sorted out with the newspaper, his allegations levelled in public highlighted how rampant the malpractice of “paid news” was in the particular newspaper which is not just the largest circulated language newspaper of India but also one of the most widely circulated newspapers of the world.

The largest circulated paper that Shri Tandon referred to was the *Dainik Jagran*, which he also named in public. On January 11, 2010, the Press Council of India asked a

representative of the newspaper whether what Shri Tandon had claimed was true and whether the newspaper had in fact demanded any money from him to carry favourable news on his election campaign. This is what he said: “When a politician of the stature of Shri Lalji Tandon speaks, it is natural for the media to take note. We can only assert that we did not offer our editorial space for money.” When asked further as to whether Shri Tandon was lying when he said the newspaper’s representative had asked him for money to publish news about his campaign, the *Dainik Jagran* representative repeated that no one from his newspaper had asked Shri Tandon for money.

When Km Anuradha Raman of *Outlook* magazine asked Shri Tandon if he had patched up with the owners of the newspaper, his reply made it evident that this was indeed what had happened. Shri Tandon asked a counter-question: “*Kyon wahi baat doharana chahte hain? Rehne dijeeye.* (Why do you want me to repeat it again? Let it be.)”

In a formal letter handed over to the Press Council of India on January 10, 2010, Shri Nishikant Thakur, Chief General Manager, Jagran Prakashan Ltd., claimed that the controversy relating to “paid news” was “nothing but rumours spread by lost candidates in frustration”. Describing the allegations as “frivolous” and “factually” incorrect, Shri Thakur claimed that he “could say with certainty that no editor of a reputed newspaper in the country is distorting news for money”. He added that amount spent on “publicity material” in newspapers is “marginal” in comparison to the total expenses incurred by candidates standing for elections.

Shri Thakur claimed that the ceilings of expenditure laid down by the Election Commission of India were “unrealistic” and “out of tune with reality”. Further, he claimed that attempts by candidates to influence individual reports “in the rush” of election coverage could go “undetected by the editorial board” of the concerned newspaper. He suggests that there should be “state funding” of elections, that the Election Commission of India should “implement appropriate measures” to verify expenses incurred by candidates and also that there should be “inner party democracy” in political parties.

Shri Thakur argues that the right of the citizen to get “un-polluted information” needs to be balanced by “the rights of the media to conduct its business in an economically viable manner which is also guaranteed by the Constitution of India subject to permissible legal restrictions”. He adds that the press has the right to “project (the) good achievements of (a) particular candidate” and concludes with the assertion that what is required are electoral reforms, systemic correction and not merely “limb operation”.

Shri P. Sainath’s findings on “paid news”:

One journalist of a mainstream newspaper who has written a number of articles highlighting this pernicious trend of “paid news” is the Rural Affairs Editor of *The Hindu* Shri Palagummi Sainath. In his deposition before the Press Council of India on December 13, 2009, and again on January 27, 2010, Shri Sainath made the following observations:

“Throughout my journalistic career, I have witnessed how money power and corrupt journalism have always been major factors influencing the outcome of any election – this is not a phenomenon that has appeared overnight. Yet, the last two general elections – of 2004 and 2009 – were exceptional even by past standards in the manner in which huge amounts of money were spent by candidates in their election campaigns. The no-holds-barred expenditure by candidates in the 2004 elections was shocking by any standards, but the amounts of money spent by candidates in the 2009 general elections far exceeded the amounts that were spent by candidates in 2004. The general elections of 2009 were the seventh covered by me and never before in my career had I witnessed such large sums of money being spent on election campaigns. Though I was aware that candidates were spending large amounts, I did not have evidence that would help me expose the fact that candidates were incurring expenditures that were far higher than what is officially permitted by the Election Commission of India. It was visible to the naked eye. Proving it with documentary evidence was another matter.”

Shri Sainath observed that the general elections of 2009 witnessed a paradigm shift in the manner in which candidates and political parties worked hand in glove with the press and media houses in masquerading advertisements of candidates and parties as political “news”. He stated:

- The size of the market for “paid news” is very big. In Andhra Pradesh, unions of journalists have estimated the size of the “paid news” market to be somewhere between Rs 300 crore and Rs 1,000 crore.
- In Uttar Pradesh, politicians complained about how leading newspapers sold various “packages” or “rate cards” for publishing news in their favour and/or completely blacking out news about their opponents.
- In Punjab and Haryana, complaints from politicians showed how it was the newspapers that set the agenda much before the elections were announced. While the language papers claimed that it was the national dailies with their local editions and political supplements that were forcing them to offer their editorial space for a price, the national dailies denied resorting to such practices. Even media houses in the national capital of New Delhi were not immune to the malaise.
- “Paid news” has become an organized and properly structured “industry”. It is corporate-controlled and functions with the full patronage and participation of some of the largest media groups in the country. The individual journalist has no importance in this “industry” because what is published as “news” has not been independently gathered and reported by reporters and journalists but written and published as per the wishes of the political party or the candidate who has paid money to the concerned publisher or media organisation. Indeed, in some cases the reporter was not even required as the public relations (PR) machinery behind the politician got down to work. In some newspapers in Gujarat, reporters complained that they were ordered not to file political reports.

- This “industry” has become so organized that large PR firms, professional designers and advertising agencies handled contracts worth many crore rupees – not just to position advertisements but to create “news”. Propaganda put out as “news” was customised by these image-creation agencies to appear as “exclusive” news articles in the publications these appeared in. But the scale of the operation was so large that confusion and overlap were inevitable and many giveaway mistakes occurred (for instance, the same “exclusive” story appeared under different bylines in rival newspapers – word for word). The use of these large corporate PR firms gave resource-rich parties an unfair edge over their electoral rivals (about whom, news was blacked out because they could not pay) and this malpractice has sullied India’s proud electoral democracy.
- The new aspect of this phenomenon of “paid news” in 2009 is that there was widespread participation by political parties in this process. The integration and assimilation of leading political parties and corporate public relations bodies in this racket is also unique to the elections of 2009.

Shri Sainath spoke on how the ruling party in Maharashtra exploited the situation to the hilt. “In Maharashtra, it is definitely the Congress-NCP (Nationalist Congress Party) that occupies the top slot because other political parties in the state are really strapped for resources. The reason for this is not embedded in the character of any particular party: it is simply that one coalition has been in power in the state for ten years and thus has far more money. In another state, it could be another ruling party.

“For example, a news item headlined, ‘Young, dynamic leadership’, eulogising the Maharashtra Chief Minister Shri Ashok Chavan appeared using exactly similar words from beginning to end in three competing Marathi newspapers – *Lokmat*, *Pudhari* and *Maharashtra Times*. If a question were posed to these three newspapers as to how the exactly same articles appeared in their pages, their reply would be customised. They would say that accidentally one of the press releases of the Congress party went directly to the press without passing through the copy desk and therefore the same news appeared in a similar manner in all three newspapers. But, had it been a press release, it should have been circulated to all newspapers and not just three. The question, therefore, arises as to how the press release found its way only to three newspapers. The news was published by *Pudhari* on October 7, 2009, whereas, the other two newspapers had carried it on October 10. Is there a practice among these newspapers to carry three-day-old press releases?”

In the general elections of 2009, the head offices of newspapers and television news channels, said Shri Sainath, set “targets” and “quotas” for their regional centres. These targets were then worked into individual quotas for reporters, correspondents and special correspondents, depending on the rank of the employee in question. In April 2009, during the fifteenth general elections, the *Hindu* carried a story on individual journalists from several small towns in Maharashtra, like Nagpur and Amravati, complaining that they were being forced to write news stories that were paid for being published.

Shri Shakil Ahmad, a lawyer and an independent candidate from Sion-Koliwada in Mumbai, said the very newspapers that had earlier given him space as a social activist “demanded money to write about me as a candidate”. “Since I refused to pay, nobody wrote about me,” said Shri Ahmed, who added that he was eager to depose before the Election Commission of India and has filed a legal affidavit/undertaking in this regard wherein naming newspapers like that tried to extort money from him. Shri Ahmed’s statements would earlier get space because he was very useful to the media in, for example, in covering the proceedings of the Justice B.N. Srikrishna Commission that inquired into the communal riots that had taken place in Mumbai in 1992-93. His services to the media were in the nature of a public service from which he derived no monetary gain. And his name was soon well known in the press. When it came to his contesting elections, he was blacked out as he would not pay money.” (Subsequently, on January 27, 2010, Shri Ahmed deposed before the Press Council of India reiterating the allegations that were recounted by him to Shri Sainath.)

In the course of tracking down the trend of “paid news”, Shri Sainath observed: “Several editions of newspapers published from Maharashtra in between October 1 and 10, 2009 bear testimony to the fact that there was huge scramble by candidates to get news space. There are instances of mysteriously fixed size news items, each say of a length of 125-150 words with a double-column photo. The ‘fixed size’ news items hid more than they revealed. News items are seldom written in such a rigid format and size whereas advertisements are most often. In specific newspapers, multiple font types and multiple drop case styles were noticed within the same page of a single newspaper. This happened because just about everything – the layouts, fonts, printouts, photographs – was provided by candidates who had paid for slots in the pages of the newspaper.”

Shri Sainath pointed out that in the election expenditure statement submitted to the Election Commission, Maharashtra Chief Minister Shri Ashok Chavan, disclosed that he had spent less than Rs 7 lakh on his election campaign. The expenditure limit in terms of election campaign that is imposed on a candidate by the Election Commission of India is Rs 10 lakhs. Of the Rs 7 lakh, Shri Chavan stated that he had spent a mere Rs 5,379 on newspaper advertisements and another Rs 6,000 on advertisements that were on cable television networks. These figures, according to Shri Sainath, are “clearly at odds with the unprecedented media coverage the Chief Minister got during the election campaign”. “I have with me 89 full pages of news which are devoted just to Shri Ashok Chavan. Most of these news items are printed in colour. A substantial number of these pages have been culled out from those editions of the big Marathi daily newspaper *Lokmat*, which is the fourth most widely circulated daily in the country according to the National Readership Survey of 2006,” said Shri Sainath.

Several pertinent questions arise from this huge media coverage that was accorded to Shri Chavan, said Shri Sainath. What would have been the total expenditure incurred by Shri Chavan if all the “news” that had been carried about him and his achievements been considered advertisements that were paid for? How does one justify the presence of over 150 pages of “news” on one man who had at that time held the post of Chief Minister of Maharashtra for a period of only 11 months? Even Barack Obama, the first African-

American to win the US Presidential elections did not find any newspaper in the US giving him five full pages of 'news' before his election. And his was the costliest election campaign ever.

What Shri Sainath said was borne out by the statements of Shri Yogi Adityanath of the BJP who told *Outlook* that his name did not figure at all in the reports appearing in the leading dailies of Uttar Pradesh. "In my constituency of Gorakhpur from where I had won in the past, my candidature did not find a mention in the newspapers," the BJP MP remarked, adding how every newspaper in his constituency was offering its editorial space for a package.

Shri Sainath also observed how a spate of genuine advertisements of politicians hit the pages of certain newspapers in Maharashtra on August 30, 2009. "This was 24 hours prior to the date elections were formally announced on which day, the model code of conduct specified by the Election Commission came into effect. After the model code of conduct came into effect, the word 'advertisement' disappeared from all items on political events and candidates. Even the fig leaf describing a paid news item as a 'sponsored feature' or a 'response feature' disappeared and the items were simply published and were sought to be passed off as 'news'.

"These so-called 'news' reports that appeared subsequent to the crucial dates of August 30 and September 18 were fascinating in more ways than one. These reports that raised toasts to the candidates who paid for them did not carry a single critical or negative statement about the candidates in question. Across hundreds of pages, 'news' was solely those kinds of information that made readers aware as to how wonderful particular candidates were and about their achievements. There was not even a small mention of the real issues that mattered to voters in these constituencies. The names of their rivals, who might have been people of lesser resources, simply did not exist in these newspaper pages except, perhaps, as fall guys."

It would be a mistake to conclude that the business of paid news was confined to language dailies, said Shri Sainath. He added: "Even English dailies like the *Vidarbha Plus* (a supplement of the *Times of India*) published advertisements for candidates in the form of news. The *Vidarbha Plus* carried an advertisement disguised as news on the Congress candidate from Amravati assembly constituency, Shri Raosaheb Shekhawat, son of the President of India Smt Pratibha Devisingh Patil. The report carried a headline 'Motorbike rally marks conclusions of electoral campaign'. The contents of the news item, that comprised endless praises for Shri Shekhawat, make for interesting reading. No regular reporter would ever use the language of this 'news item' which says, for example, that Shekhawat 'epitomises politeness, potential and promise' and that he is 'blessed with extremely charming personality', and 'a charisma (that) attracted huge crowds throughout his campaign'. This 'news item' was published on the very day of polling in the assembly elections," said Shri Sainath.

"As I wrote in the *Hindu* on June 20, 2009: 'The average worth of a Lok Sabha MP is Rs. 51 million. But there are 74 MPs with serious criminal charges against them whose

wealth averages Rs 60 million (or Rs 6 crore). That is, they are well entrenched in Parliament's Platinum tier. And the average wealth of a Cabinet Minister is around Rs 75 million (or Rs 7.5 crore).' (These data were derived from the ongoing studies on the subject released by the NEW (National Election Watch) an initiative of the non-governmental organisation Association for Democratic Reforms (ADR). As I noted in that article on the 15th Lok Sabha, its 543 MPs are worth close to Rs 28 billion (or Rs 2800 crore, the 64 Union Cabinet members from the Lok Sabha account for Rs 5 billion or Rs 500 crore). And the links between wealth and winning elections are firmer than ever before.

“Money power of politicians clearly enables them acquire media power during elections. Likewise, the propaganda power of media barons enables them to control or acquire political power – both financially rewarding exercises. In one way, the media is leading the charge in keeping the *aam aadmi*, who is much poorer than the elected representatives, out of the electoral process. Please also note that media owners can also be leading politicians and financially powerful too. *Lokmat*, for instance, is the fourth largest circulated daily in India.

“One of its owners, Shri Rajendra Darda, has been made a cabinet minister in Maharashtra in 2009 (earlier, he had been a Minister of State). In its ‘Analysis of Ministries – Maharashtra, Haryana and Arunachal Pradesh based on 2009 elections’, a NEW-ADR report states that the ‘the maximum assets (of an MP) from Maharashtra are (those) of Rajendra Jawaharlal Darda from Aurangabad East, Maharashtra – Rs. 32 crore.’ It also found that based on his own election affidavits, his assets between 2004 and 2009 had increased by 408.13 per cent. What happens when we stir this lethal mix of media power, money power and advertising-passed-off-as-news? And *Lokmat* does not come out of the paid news game smelling of roses,” said Shri Sainath.

He concluded: “The real issue is to prove that news has been paid for? All such clandestine dealings, which involved the exchange of a lot of money, left no trace or evidence in their trail. No agreements and no receipts of payment that could serve as proof of transactions exist.”

Maharashtra Chief Minister Shri Ashok Chavan's defence:

The Press Council of India raised the issue of “paid news” with Maharashtra Chief Minister Shri Ashok Chavan in Mumbai on January 28, 2010, and questioned him on the various allegations made against him by Shri Sainath. Produced below are excerpts from his deposition.

Press Council of India: What is your opinion about newspapers publishing articles that appear to the reader to be news items but are actually paid for to be published? The reader is unable to distinguish between such paid news items and advertisements as there is nothing to indicate that there has been a financial transaction behind the publication of these news items. In your opinion, should these ‘news items’, which actually are paid for, be published by the press?

Shri Ashok Chavan: These news items that are frequently appearing in various newspapers should first be interpreted. First, it needs to be firmly established whether the news item that has appeared is actually a news item or an advertisement. If it happens to be an advertisement, then it should be proved by documentary evidence like receipts for payment against publishing of the item. Opposition parties have made allegations that advertisements were passed off as news items printed in newspapers. Political parties making such allegations do not have evidence to prove that advertisements have been published in the garb of news. It should first be ascertained whether a particular news item is indeed an advertisement.

PCI: In the absence of documentary evidence like payments having made through cheques, which would establish that there has actually been a financial transaction between a candidate or a political party and a newspaper or a television news channel, we have with us circumstantial evidence that Shri P. Sainath made available to us and about which he has also written extensively in his newspaper, *The Hindu*. He has made available to the Press Council of India copies of three newspapers: *Lokmat*, *Pudhari* and *Maharashtra Times*, which are essentially competing brands. In all three newspapers, the same article on Shri Ashok Chavan appeared, word for word. The article appeared in *Pudhari* on October 7, while the other two newspapers carried it on October 10. The only difference in the three articles was that there were three different bylines. This means that there is circumstantial evidence to indicate that these were not news items but advertisements.

AC: Let me correct your statement since you have referred to a particular issue which concerns me directly. Several political parties have also launched complaints against me regarding this issue. According to me, the appropriate forum for challenging such complaints is through an election petition in a court of law. I will put forth my views on this issue in the court. Technically, once the election process is over, the appropriate manner to address grievances is through the mechanism of an election petition in a court. The Representation of the People Act and the Constitution of India provide that all such matters that are raised after the elections shall be challenged in courts of law. Hence, the matter should be settled under a court's jurisdiction. Secondly, during the process of election a huge number of press releases are handed out and many press conferences also take place. Prior to the election, a number of advertisements are also issued by the government highlighting the achievements made by the government. So, we don't know what is the source of information of these news items. In my party, the Pradesh Congress Committee also organizes a number of press conferences where a lot of press releases are issued to newspapers. It is a matter of fact that the contents of newspaper articles are culled from these press releases. I have never come across anyone who has demanded money from me. Does the Press Council of India have any guidelines to help differentiate between news and advertisements?

PCI: *Lokmat* with over 14 lakh copies a day has 13 editions. What we witnessed was that there was a flood of advertisements in the newspaper during elections. Now you may argue that since Shri Rajendra Jawaharlal Darda, MP from Aurangabad East, is the owner

of this newspaper and is also a member of the Congress party, he has written all these articles in your favour. What we have found is that *Lokmat* published 156 pages of advertisements in the run-up to the election and all of them were in your favour. These articles were published in the months of August, September and October 2009. Now would you say that this was done by Shri Darda's organisation voluntarily and no money was paid for it?

AC: I have repeatedly told you that whatever articles have appeared other than the advertisements, there is no question of paying any money to anyone. Official advertisements, which were issued by the Pradesh Congress Committee, have been accounted for. At the same time, you should not forget that I was leading the party in the state as the Chief Minister. So it was not surprising that there were articles written about me. Reporters have picked up from whatever press notes and press releases that have been issued by the party.

More Allegations and Counter-Allegations

In a letter to the Press Council of India dated January 23, 2010, Shri Vijay Darda of the *Lokmat* group of newspapers wrote: "at the outset, it would not be out of place to mention that the Press Council has 'woken up' to this issue pretty late in the day. Media organisations have been officially selling their news space for quite a long time and the Press Council of India has been a mute spectator. As the number one Marathi newspaper group in the country, we have a firm commitment to maintaining credibility and the faith of our readers. We adhere to the highest standards of professional excellence of our volition, it is our chosen path and shall remain so."

Yet another Hindi language newspaper, *Hindustan*, published by HT Media, had prominently carried advertisements of a politician, without identifying him as such, in its Varanasi edition – the text size and the font were designed to give it the look of a news item. On April 30, 2009, the day when elections took place, the Varanasi edition of *Hindustan* carried an item that deceptively looked like a news story on top of its front page with a headline that suggested that there was a "wave in favour of the Congress". The following day, the newspaper later apologised to its readers for the mistake and said that it made a distinction between news and advertisements. The representatives of *Hindustan* told the Press Council of India that when they realised their mistake they were quick to point this out to readers.

The representatives of HT Media provided the Council a letter that had been published in *Outlook* weekly (January 18, 2010) wherein Shri Rajiv Verma, Chief Executive Officer, HT Media Limited wrote: "We do not pass off sponsored news in the garb of editorial content. To the specific instance related to the Varanasi edition of *Hindustan*..., the articles were published under the advertiser sponsored content tag. Owing to a mistake by an overzealous advertising manager, the style and look turned out to be similar to the main paper. To remove any confusion among our readers, a clarification was issued the very next day on the front page of *Hindustan*'s Varanasi edition. The erring manager was also suitably reprimanded. We have had no instance of any editorial transgression other

than the unfortunate incident stated above....For all our publications, we have clear guidelines for 'sponsored' features that get carried with a clear notation or marking and in a look and style that is visibly different from our editorial content."

HT Media also denied that the former editor of *Hindustan* Smt Mrinal Pande had resigned owing to the incident in the paper's Varanasi edition, among other things. "Nothing could be farther from the truth as the said incident took place in April 2009, while the editor resigned five months later in September 2009 due to entirely different reasons..."

Speaking to the Press Council of India, a representative of *Punjab Kesri* too denied of ever having sold editorial space for money. When the Council specifically asked him what he had to say about a senior manager's comment to *Outlook* that the same newspaper had earned anywhere between Rs 10 crore and Rs 12 crore for carrying "paid news" items during the 2009 Lok Sabha elections, the representative said that it was not his prerogative to comment on the internal matter of another family-held publication. (*Punjab Kesri*'s editions are published from Delhi and Jalandhar but under different managements.)

That the malaise had spread through the country, infiltrating big and small newspapers alike is evident from what Haryana Chief Minister Shri Bhupinder Hooda's admission that he was so disturbed by a series of negative reports in a leading multi-edition Hindi daily in his state that he offered to pay in order to ensure that the reports were factually correct! In fact, Shri Hooda was also questioned by the press for the expenditure incurred on advertisements that praised his government in the run-up to the assembly elections of Haryana in 2009.

Newspapers continue to deny that editorial space was put up for sale during elections. But reports coming from Gujarat, Karnataka and Chhattisgarh showed how editorials of various newspapers were pressurised by their respective managements to stop asking questions. Shri Hooda went as far to state that news reporters were not at fault for the malaise of paid news. "The journalists are not at fault here because fact-finding journalism has now become a commercialised activity with the present owners having turned newspapers into a business proposition," said Shri Hooda to *Outlook*.

Several politicians have blamed the media, on record, of trying to extort money from them by either subscribing to their rate cards devised especially for the elections or by paying a certain sum in lieu of substantial positive coverage.

In a letter to the Press Council of India, Shri K. Ramasubramanian, state secretary of the Bahujan Samaj Party in Tamil Nadu said how he was assured of positive publicity by the media during the election campaign provided he shelled out money in the range of Rs 4-5 lakh for a period of 15-20 days under a special scheme designed by the newspaper management. "Further I was also enlightened by a publication's management that if I released advertisements soliciting votes in newspapers I was accountable to the Election Commission which was monitoring the election expenses of candidates contesting in

elections. Whereas, when the message appeared as an editorial piece, it would help the candidate conceal the expenses incurred”, said Shri Ramasubramanian.

Congress Member of Parliament from the East Delhi Lok Sabha constituency in Delhi, Shri Sandeep Dikshit narrated as to how he was asked by newspapers and television channels to pay up if he wanted his favourable editorial coverage. “I refused to pay up when reporters (under pressures from their management) came up to me asking whether I wanted to get into an arrangement with their newspapers if I wanted news in my favour,” he said.

Shri Atul Anjaan of the Communist Party of India named television channels *Aaj Tak* and newspapers *Dainik Jagran* and *Punjab Kesari* for demanding money to publish positive news about him. When he refused to pay, the newspapers responded by blacking out any news about him altogether from its pages. His election campaign went unreported.

Shri Parcha Kodanda Rama Rao of the Loksatta Party, in a letter to the Chairman of the Press Council of India dated February 10, 2010 and his subsequent deposition before Press Council of India members on February 10, 2010, stated: “I made (a) representation to the Returning Officer of my constituency to include the expenditure on paid news in respective candidates expenditure account, all in vain. I enclosed copies of all the paid news items of three candidates namely, K. Daya Sagar Rao of Congress, M. Ravindra Reddy of PRP (Praja Rajyam Party) and Vinay Bhaskar of TRS (Telegana Rashtra Samithi) from March 16, 2009 to March 28, 2009 and also calculated the amount of total paid news for the said period based on the prevailing market rates as approved by the state government department of public relations and information. Further as the Telugu newspapers were completely ignoring my campaign and my expenditure, in their coverage, I called up the *Eenadu* advertorial executive on April 10, 2009 to cover my campaign. For the remaining days he demanded Rs 1 lakh but I agreed to pay Rs 50,000 and paid it there and then in cash. He neither gave me any receipt nor acknowledgement for the said amount. The result of my payment was evident in the news coverage given to me on April 13, 14 and 15, 2009 as compared to inconsequential coverage given to me from March 28, 2009 to April 12, 2009.

“What is happening between the candidates and the newspaper managements is known only to both of them and it is a perfect cash transfer scheme from one to the other. It cannot be proved unless a secret detective operation is carried out with video cameras. However, I have established circumstantial evidence for the whole shady transaction in an election petition in the High Court of Andhra Pradesh.”

Shri K. P. Reddaiah Yadav, former Member of Parliament and Vice President, Praja Rajyam Party, Andhra Pradesh, wrote to the Press Council of India on August 21, 2009, alleging that Sri Ramoji Rao, who heads the *Eenadu* group of publications, had “hatched a plan with other newspaper managements” to charge money from candidates for “election packages” for each Parliamentary and assembly constituency. The “package” envisaged that each candidate should pay Rs 10 lakh to each newspaper for 15 days for favourable coverage about himself or herself. Shri Yadav alleged that a number of

publications such as *Eenadu*, *Andhra Jyothi*, *Sakshi*, *Vartha* and *Andhra Bhoomi* and television news channels like TV9, ETV-2, TV-5, HMTV News had received money for publishing or broadcasting “paid news”.

Among other publications, *Eenadu*, quite predictably, denied accepting any money. Shri Ramoji Rao, who heads the *Eenadu* group of publications stated that the problem of “paid news” was part of a larger malaise afflicting the media in the country. He, however, claimed that *Eenadu* maintains a strict distinction between advertisements and news. In a letter to the Press Council of India dated February 1, 2010, Shri Ramoji Rao wrote that the “the politician of the old days enjoyed popularity and people’s love,” adding: “His involvement in the freedom movement, his activism in various social reform movements and his service to the public earned him great respect in the society. But the latter day politician, the one from the ranks of moneyed and muscled sections needed positive coverage to earn name and fame. With the money power at his command the new entrant manipulated the local media person to gain popularity and public acceptance.

“Gradually, favourable coverage in the press and the capacity to spend big money in poll campaign became the sole eligibility on the basis of which political parties chose their candidates. Money thus acted as a ladder to gain political power. Quite naturally, those who spent money also began expecting returns. Thus was formed the vicious cycle of corruption. Elected candidates justified their corruption by citing the amount they spent for getting elected. The so-called paid favourable coverage by the press is one of the off-shoots of this tendency,” Shri Rao stated.

On the other hand, campaign managers of the Congress openly admitted that television channels were open to accepting money from any political party if it wanted to improve its fortunes in the opinion polls and surveys telecast over their channels. Still others, like Shri Sudhakar Reddy of the Communist Party of India from Andhra Pradesh said that his party was assured of news space only after it had committed itself to some advertisements. “We were told that if we placed advertisements, news could be published,” said Shri Reddy.

Member of the Andhra Pradesh Legislative Council, Dr K. Nageshwar, told the Press Council of India in Hyderabad on February 10, 2010, that as attempts were made by the Election Commission of India to control money power in politics and as this effort intensified, so did the phenomenon of “paid news” which became a “new and creative channel” for illegally funding election campaigns. “After the candidate of a political party pays money to a particular newspaper, he starts treating journalists working for the newspaper as his servant or slave,” he said, adding that the phenomenon of “paid publicity” had degenerated further to become “paid mud-slinging”.

He provided an example based on his personal experience: “On February 6, 2009, the day elections to the Andhra Pradesh Legislative Council took place, *Sakshi* quoted the Mehboobnagar district president of the BJP virtually describing me as a traitor. What was worse, the newspaper defamed me by claiming that I was visually challenged because I had ignored the advice given by scientists and stared at a solar eclipse. This was a

complete cock-and-bull story. I wrote to the newspaper and also represented to the Election Commission but nothing happened thereafter.”

Independent analyses of newspapers like the *Gujarat Samachar*, done by a non-government organization, People’s Media Initiative, indicates that in one particular edition the newspaper carried reports of all three candidates winning from two assembly constituencies in Maharashtra, Magathane and Malad. This naturally raises the question as whether the reports were paid for to be published. *Gujarat Samachar*, however, vehemently denied the charges. “We will conduct an enquiry into this and check whether it is for a fact,” a representative of *Gujarat Samachar* told *Outlook*.

Shri Jatin Desai of People’s Media Initiative told the Press Council of India in Mumbai on January 28, 2010: “So arbitrary is the paid news phenomenon that sometimes two conflicting news items appear on the same page because the paper would have reached an understanding both with a politician as well as his rival. The paper ‘reported’ that candidates belonging to the Maharashtra Navnirman Sena (MNS) and the Nationalist Congress Party were both going to win from the same assembly constituency of Magathane in Borivli. On October 13, 2009, the second page of the *Gujarat Samachar* carried an article without a byline that stated that Gujaratis of Magathane should vote for Shri Prakash Surve of the NCP. The same page carried another article stating that because of the support of Gujaratis, the MNC candidate Shri Pravin Darekar would win.

“The management of *Gujarat Samachar* (which claims a readership of 46.2 lakh) has predictably denied having sold its editorial space despite being confronted with two issues of its paper from Mumbai where conflicting reports on the fortunes of a single party were published. The Congress candidate in the Malad constituency of Mumbai was shown as trailing and winning on the same day! The same page of the newspaper on the same day published an article stating that the Gujaratis of Malad are supporting the candidature of Shri Aslam Sheikh of the Congress and also carried a photograph of Shri R.U. Singh, the BJP candidate from the same constituency, with a caption that stated that the Congress was losing ground.”

Evidence provided by the Andhra Pradesh Union of Working Journalists

The Andhra Pradesh Union of Working Journalists (APUWJ), the first union of journalists to raise its voice against paid news and, in fact, the first body to have coined the phrase “paid news”, in its memorandum submitted to the Press Council of India on February 9, 2010, said that “the genesis of paid news started (during the) general elections (of) 2004 when small and local newspapers in mofussil towns and district headquarters in some parts of Andhra Pradesh and Gujarat started this practise in an organised way. These small newspapers owned and edited by the same person assisted by a few others entered into agreements with the local leaders of prominent parties or candidates and started publishing propaganda material of these parties or candidates as news for a fee in the run up to the elections.”

The union observed that during 2009, when the 15th general elections to country and the legislative elections to the state of Andhra Pradesh were held simultaneously, advertising copy appeared as “paid news” along with a credit line of a staffer of a newspaper in order to mislead readers into believing that the article had in fact been written by a reporter of the newspaper. Newspaper managements collected money for “paid news” items according to their advertisement tariffs without acknowledging that these were advertisements.

The APUWJ raised the issue of “paid news” during the campaign for the general elections of 2009 before the Chief Electoral Officer of Andhra Pradesh on April 10, 2009. The union pointed out that “paid news” items were leading to a subversion of the democratic election process as well as the institution of a free press. The union compiled a considerable volume of circumstantial evidence, the highlights of which included the following:

The *Andhra Jyothi* daily in a tabloid attached to its West Godavari district edition dated April 23, 2009, carried an article on the front party claiming that the Telugu Desam Party (TDP) candidate from Narasapuram Parliamentary constituency, Smt Thota Sitarama Lakshmi, would emerge victorious from the election battle. The article carried a headline claiming that a “huge victory” was awaiting the candidate. The same edition of the newspaper, on its back page, carried a story saying the Congress candidate from the same Narasapuram constituency, Bapi Raju was going to win the seat, with a headline that read “victory, victory”. The union observed that it was indeed unusual that the same paper was endorsing two rival candidates from the same constituency on the same day and alleged that the stories appeared to have been written not the newspaper’s journalists but by the publicists of the candidates.

A similar set of stories appeared the same day, April 23, 2009, in the West Godavari district edition of the *Eenadu* daily. The newspaper published on its front page an article from Bhimavaram predicting the victory of TDP candidate from Narasapuram, Smt Sitaram Lakshmi. The story carried a headline stating that she was “on her way to victory with a huge majority” On the back page of the same edition of the newspaper the same day, another story was published claiming that Congress candidate Shri Bapi Raju would win. The story’s headline read: “everybody says Bapi Raju will win”.

The APUWJ said that “a common phenomenon” that was witnessed in the run-up to the 2009 elections was newspapers would issue receipts claiming that an amount of Rs 3 per square centimetre was received whereas the actual amounts that were received were much higher.

The union stated that the pernicious practice of “paid news” not only exposed the greed of managements of media companies in their endeavour to maximize their profits but also posed a danger to the independence of the media, the process of elections and democratic institutions. “It is immoral, unethical and unprofessional to publish ‘paid news’...to mislead the reader that (such stories are the product of the) independent and unvarnished observation of professional journalists,” the APUWJ stated, adding that this phenomenon “also raises ethical and legal questions regarding the responsibility of the media towards the people in a democratic society...Those who have money power get publicity and

those who have less resources will be left behind and blacked out. At times, those who do not pay money would attract negative reporting... (This is against) the concept of (a) level playing field for all candidates which is essential in an election. In addition, the candidates do not need to show this expenditure in their election expenditure. It leads to violation of election law and encourages the use of black money. Thus the democratic process of elections is subverted.”

The APUWJ made a detailed study of newspapers in the West Godavari district of Andhra Pradesh for 27 days between March 28, 2009 and April 23, 2009. The study found that *Eenadu* published 94 political advertisements and 92 “paid news” stories, while the *Andhra Jyothi* published 87 political advertisements and 163 paid news stories in this period. Other publications like *Sakshi*, *Vaarta*, *Andhra Bhoomi* and *Surya* were also found to have carried similar advertisements and “paid news” stories. One particular trend noticed by the union in the newspapers that they perused was the fact that there were a number of reports appearing in the same edition of a newspaper that would simultaneously predict the victory of two or more rival candidates contesting the same constituency. “It is all right for the candidates and their parties to claim victory and the claims can be published as news stories attributing the stories to their party leaders or their spokespersons,” the APUWJ observed, adding: “But the correspondent of the concerned newspaper cannot file two stories on the same day predicting two different candidates winning from the same constituency.”

The Telugu daily *Sakshi* in its letter to Press Council of India, dated February 10, 2010, on the issue of “paid news” claimed that “we are way off the target while addressing the problem. It is more like ‘barking upon the wrong tree’. As per the Election Commission guidelines, the expenditure limit in major states like Andhra Pradesh, Uttar Pradesh, Bihar and Madhya Pradesh is Rs 25 lakh for a Lok Sabha candidate and Rs 10 lakh for an Assembly candidate. In smaller Lok Sabha constituencies like Lakshadweep, the expenditure limit is Rs 10 lakh.

“It is no secret that in the days of inflation and the ever increasing cost of living, Rs 10 lakh expenditure for Assembly candidates is ridiculously low. So is the limit for Lok Sabha constituencies. At the same time we know that Assembly candidates end up spending not less than Rs 2 crore and the figure goes up in case of Lok Sabha candidates. Even the Election Commission knows it pretty well that no candidate would reveal true expenditure nor they spend within the specified limits. In the process, the candidates invented several ways of concealing the expenditure and one of them is paid news.”

The Editors Guild of India on “paid news”

The Editors Guild of India in its annual general meeting on December 22, 2009 in New Delhi strongly condemned the practice of paid news, which, in its opinion, whittled the foundations of Indian journalism. The Guild called upon all editors in the country to desist from publishing any form of advertisements which masquerade as news. The guild took cognisance of the fact that based on data compiled by media monitoring agency AdEx (a unit of TAM Media Research Private Ltd), which was reported in the *Mint* on December 2, 2009, that in the assembly elections in Maharashtra in October 2009, the

total advertising volume (measured in column centimetres) in Marathi newspapers declined by around one-fifth from the levels in 2004, suggesting the possibility of the increased incidence of advertisements disguised as news.

The Guild noted that it had always stood for publication of news which is in public interest, news which has been gathered due to the professional efforts of journalists and news which is not influenced by malice, bias, favouritism or monetary influence. The Guild also noted that it is imperative upon news organisations to clearly distinguish between news and advertisements with full and proper disclosure norms, so that no reader and viewer is tricked by any subterfuge of advertisements published and broadcast in the same format, language and style of news.

The Guild decried the unsavoury and unacceptable practice of some political parties and candidates offering payment for “news packages” to news media and its representatives to publish and telecast eulogising and misleading news reports on the political parties. It held both the media organisations and editors who indulge in it, and the customers who offer payment for such “paid news”, guilty of undermining the free and fair press. It further elaborated that such irresponsible acts by a few media organisations and journalists is discrediting the entire media of the country, which has a glorious tradition of safeguarding democratic rights and exposing all kinds of injustices and inequities. The Guild expressed deep shock over the fact that companies, organisations and individuals, apart from political parties, also used the “paid news” practice. The Guild also deplored the practice of “private treaties” where news organisations accepted free equity in unlisted companies in lieu of promoting these companies through news columns and television news programmes.

The Editors’ Guild of India, at the same meeting, announced the formation of an ethics committee headed by Shri T. N. Ninan of *Business Standard*, to curb the practice of publishing advertisements masquerading as news. The other members on the committee include veteran journalists Shri B.G. Verghese, Shri Sumit Chakravarty and Km Madhu Kishwar. The immediate task of the panel will be to frame a code of ethics in the context of the “paid news” phenomenon.

“Paid news” at seminars and conferences:

In his inaugural address at a workshop on “Parliament and Media” that was held on November 4, 2009 at the Parliament House Annexe, New Delhi, the Vice President of India and Chairman, Rajya Sabha, Shri M. Hamid Ansari said that the explosive growth in the media in the country had highlighted the fact that the Fourth Estate is the only one among the pillars of democracy that has an identifiable commercial and explicitly for-profit persona. He said that while the primary professional duty of media organizations is to their readership to keep them informed and apprised with news, views and ideas, the commercial logic brings in a new set of stakeholders in the form of the shareholders of these companies.

These developments have brought into focus new considerations that guide professional media decisions. Today, the demands of professional journalists are carefully balanced with the interests of owners and stakeholders of media companies and their cross media interests. The interplay of these conflicting demands is evident and subject of public debate. Shri Ansari also referred to *The Hindu* journalist Shri P. Sainath's exposure of extensive malpractice of "paid news" and "coverage packages" during the elections and pointed out that the Press Council of India's guidelines to the media call for "not accepting or publishing any advertisement at the cost of the public exchequer regarding achievements of a party or government in power." The Council had noted that paid news could cause double jeopardy to Indian democracy through a damaging influence on press functioning as well as on the free and fair election process, he observed.

Speaking at a seminar organized by the Press Council of India on November 16, 2009, at Hyderabad to commemorate the National Press Day, the Chief Minister of Andhra Pradesh Shri K. Rosaiah referred to the "paid news" phenomenon and said "a dangerous tendency that has been gaining ground is the resort to what is described as paid coverage especially during elections". He added: "Advertisements paid for in cash by different parties or candidates are being published or telecast, camouflaged as news and features. Sections of the media guilty of such practices are undermining democracy either wittingly or unwittingly. A candidate with immense money power can create an illusion through media that he is winning and influence voting behavior since people are given to bet on a winning horse."

The Chief Minister further said: "I would not be true to myself, the people of the country and Press Council of India if I do not draw the attention to the growing nexus between journalists on one hand and politicians, businessmen and other celebrities on the other, I am told there is a price for every thing. And it is a win-win situation for both sides."

Turning to the Chairman of the Press Council of India, Justice G.N. Ray, who was presiding over the seminar, he said: "I appeal to the Press Council of India to arrest such media aberrations since any government intervention in media freedom will be a remedy worse than the disease."

At a seminar organised by the Editors' Guild of India, the Indian Women's Press Corps, the Press Association and others on "paid news" in New Delhi on March 13, 2010, leaders of the Congress, the BJP and the CPI-M condemned the malpractice of "paid news" and suggested that the Representation of the People Act be amended to declare "paid news" as an "electoral malpractice". Leader of Opposition in the Lok Sabha Smt Sushma Swaraj (BJP), CPI-M general secretary Shri Prakash Karat and Congress spokesperson Shri Manish Tewari called for steps to check the malpractice of "paid news", which had been widely witnessed in the run-up to the fifteenth general elections held in 2009.

Shri Karat said that self-regulation by media would not be enough to solve the problem and hence suggested that "paid news" be declared an electoral malpractice. He also said that "the Election Commission cannot take any action unless the Representation of the

People Act is amended.” He added that “if existing laws do not allow this, then suitable changes can be made” while noting that the model code of conduct for elections does not cover the problem. He said that a major hurdle in checking the “paid news” syndrome was that there was no record of money exchanged in the deal. Those who paid money should also be held accountable, he said.

Shri Karat’s suggestion of declaring “paid news” as an electoral malpractice was supported by Smt Swaraj and Shri Tewari. Smt Swaraj said that in her own constituency of Vidisha in Madhya Pradesh, her own media officials had told her how they had been offered a “package of up to Rs one crore by a media organisation” to publish “news” in her favour and print her campaign photographs. “I rejected them all,” she said, adding that this phenomenon had become institutionalised over the years.

She said that she and her party’s representatives were ready to name publications that had approached them with offers of “paid news” if the Election Commission sought details in this regard. “We are ready to name them. We are ready to give evidence if Election Commission formally asks us,” Smt Swaraj said and gave an assurance that the Opposition would push for amending the Representation of the People Act in the Lok Sabha.

Shri Tewari said that there was a need to address the “contradiction between freedom of press and the freedom of the owner of press”. Stressing self-regulation for the media, he also called for giving statutory basis to the model code of conduct for elections and said that he too would provide details to the Election Commission of India if asked for.

Election Commissioner Shri S.Y. Quraishi, who was also present at the seminar, said the Election Commission only had powers when elections were taking place when it could “roar like a tiger”. It was up to legislators to use their power to halt the menace. He promised that the Commission would augment its own machinery, but pointed out that only circumstantial evidence had been put forth so far. There was no transactional evidence that would hold up to legal scrutiny, he said, adding that no political party had made a formal written complaint to the Election Commission as yet.

Shri Shahid Siddiqui, former MP belonging to Bahujan Samaj Party and Shri Karat both said the Election Commission’s decision to ban hoardings and wall graffiti as a campaigning method deprived political parties of cheaper means of reaching out to the people, and forced them to depend on corporate media houses. Senior journalist Shri Kuldip Nayar suggested the setting up of a media commission to look into the “affairs of television and print media”.

Shri Jagdeep S. Chhokar of the Association for Democratic Reforms disagreed with the argument made by Smt Swaraj that political parties were victims of “paid news” and said that only four out of the nearly 6,500 candidates in the last general elections had declared their expenditure as having exceeded the ceiling set by the Election Commission. Shri Chhokar said that while 30 candidates had declared their expenditure to be in the range of

80 per cent to 90 per cent of the limit, most of the candidates had declared it to be less than 50 per cent of the limit.

Views on “paid news” by political leaders, Press Council of India members and others:

Speaking to the Press Council of India, Leaders of the Opposition in the Lok Sabha and Member of Parliament belonging to the Bharatiya Janata Party Smt Sushma Swaraj said the “paid news” phenomenon had “started out as an aberration, went on to become a disease and is now an epidemic”. She said she was not directly approached by media companies but her campaign managers were. They told her that the media could be “managed” if she purchased a “package” worth Rs one crore.

Smt Swaraj pointed out when her party’s MP Shri Sanjay Jaiswal had spoken about the “paid news” phenomenon in the Lok Sabha during the debate on the President’s address, members cutting across political lines had thumped their desks in approval. This indicated that the malpractice had impacted the representatives of all political parties. “We are all suffering because of such malpractices and I believe we should amend Section 123 of the Representation of the People Act to make ‘paid news’ an electoral malpractice,” she said.

When asked to name the media company that had asked her managers for money, Smt Swaraj said she would prefer not to. She said: “Don’t ask me for names of persons or individual newspapers. We have to deal with the bigger problem. News has become a business and this is one aspect of the influence of money power in politics. The media is also guilty of hypocrisy. Newspapers keep lecturing us about what we should be doing but large sections of the media have become corrupt. My supporters came to me and pleaded with me to ‘please pay’. They said that otherwise my political opponents would get all the publicity and I would get nothing. However, I refused to pay even a single paisa and it is a separate matter altogether that the nomination papers of Shri Raj Kumar Patel of the Congress, who was my principal political opponent in Vidisha, were rejected.”

Shri Hussain Dalwai, Congress spokesperson from Maharashtra, told *Outlook* magazine (December 21, 2009): “Nothing was published unless you gave money. In fact, in some media sections, different deals were struck with owners and reporters”.

Shri Yogi Adityanath, BJP MP from Gorakhpur, told the same publication: “Every single newspaper was on sale in my constituency and I was told that I had to pay up for publicity”.

Shri Suresh Shetty, Congress MLA and Health Minister of Maharashtra said: “Newspapers and television channels were offering ‘packages’ to politicians across party lines. I had to file an FIR (first information report) against *Hamara Mahanagar* for defamation”.

Also quoted in *Outlook* was Shri C. Vidyasagar Rao, politician belonging to the BJP from Karimnagar, Andhra Pradesh and former Union Minister in the National Democratic Alliance government, who said: “There was tremendous pressure on politicians to pay up for favourable news. I may not spend but I cannot stop my party men from spending on me.”

Shri Sanjay Dina Patil, Member of the Rajya Sabha, belonging to the Nationalist Congress Party, who is also a member of the Press Council of India, said that the representatives of owners of newspapers had openly threatened candidates standing for election who were not ready to pay money. He said he and his wife were themselves “victims” of the phenomenon of “paid news”. When he was asked to identify such people he said, “even if I mention the names, it won’t have any effect since I don’t have any evidence against them.”

Shri Hormusji Nusserwanji Cama, member of the Executive Council of the Indian Newspaper Society (INS), who is a past President of the INS and a member of the executive committee of the Indian Language Newspapers Association (ILNA), said that this practice of “paid news” is completely unethical but wondered how such a practice could be stopped in the absence of hard evidence establishing payments between candidates of political parties and representatives of media organisations. He said the INS had discussed the issue and everyone was aware of the ground realities. He said that there were instances of journalists who were receiving bribes on their own initiative.

In this context, it should be noted that whereas employers of journalists can remove from service individual journalists who are found to be corrupt, the issue of “paid news” is more complex since it concerns the owners and representatives of managements of media companies (some of whom are actively promoting such corrupt practices). In other words, to reiterate a point already emphasized, the “paid news” phenomenon transcends individual corruption as it has acquired an institutional or organizational form or manifestation.

Senior journalist and Rajya Sabha MP, Shri H.K. Dua, former editor-in-chief of the Chandigarh-based *Tribune* newspaper, wrote to the Press Council of India stating that the phenomenon of “paid news” “is one of the most unethical practices I have come across during my fairly long journalistic career”. Shri Dua said that what is “at stake is the credibility of a noble profession which is supposed to serve society by giving news which is objective”.

Shri Devalapalli Amar, Chairman of the Press Academy of Andhra Pradesh, told the Press Council of India that the phenomenon of paid news is tantamount to cheating the public. “In one particular instance, a certain newspaper carried three different reports, wherein it projected a different candidate as the winner from the same constituency in each of the reports,” Shri Amar told the Press Council of India. He also said, “as long as managements of newspapers do not pay their stringers well, it would encourage journalists to indulge in corruption.”

Hyderabad-based advocate Shri M. Krishna Kumar, who has studied the Working Journalists Act, 1955, said that many journalists working in small towns and rural areas were susceptible to corrupt practices and could be easily bribed since they had no security of employment and their working conditions were often pitiable. “As far as their legal status is concerned, these journalists are no different from piece-rate workers,” he stated.

Corruption in the media has been a subject of discussion across the world and in India for some years now. In 1941, the late Orson Welles, the US actor and filmmaker, scripted and directed a classic film, “Citizen Kane”, about the rise and fall of a newspaper tycoon, that most believed was a thinly disguised biography of the late William Randolph Hearst, the US newspaper publisher whose introduction of large headlines and sensational reporting changed American journalism. On its release, Hearst banned his newspapers from reviewing the film. The film traced the life and career of a man whose career in publishing was first motivated by ideals of public service but who eventually became a ruthless businessman who could go to any length – including organizing a murder – to be the first to report the “news”.

In India, film director Shri Ram Gopal Verma’s movie, “Rann”, that was released in February 2010, deals with the topic of corruption in the media. In the film, popular actor Shri Amitabh Bachchan plays the role of a media tycoon who is committed to the principles of ethical journalism, and fights against his own son to bring out the truth before the public. In response to a question put to him by a reporter of the Indo-Asian News Service as to whether he believed that news is planted, Shri Bachchan said: “It is the media’s job to put up news. There is no problem if you are being paid to do so. But you should make a disclosure.” He expressed concern that the phenomenon of “paid news” was undermining the credibility and the independence of the media after reading an article in the *Hindustan Times* by Shri Rajdeep Sardesai, who currently heads the Editors’ Guild of India.

“Paid news” in Parliament:

Speaking in the Lok Sabha on March 3, 2010, the then Leader of the Opposition and senior BJP leader Shri L.K. Advani said election campaigns should be publicly funded while expressing concern about the phenomenon of “paid news” which he described as a “very serious issue”. He said publications and television channels should be made to account for the revenue generated from “paid news”.

On March 5, 2010, the Rajya Sabha took up a discussion on “paid news” on the basis of a calling attention motion moved by Shri Sitaram Yechuri of the Communist Party of India –Marxist, in which the Union Minister of Information and Broadcasting Ambika Soni and the Leader of the Opposition in the Rajya Sabha, Shri Arun Jaitley of the BJP participated. Here are excerpts from their speeches.

Smt Soni stated: “The government is committed to ensuring the right to freedom of speech and expression guaranteed under the Constitution of India. In pursuance of this objective of preserving the freedom of press and maintaining and improving the standard

of newspapers in India and to inculcate the principles of self-regulation among the press, the Press Council of India, an autonomous body was set up under the Press Council Act, 1978. The Press Council of India has developed norms of journalistic conduct that cover the principles and ethics regarding journalism. The Press Council of India has also laid down guidelines on reporting of specific issues of public and national importance. In 1996, it drew up a set of guidelines that are particularly applicable to financial journalism. The Press Council of India has also issued guidelines on reporting of elections.

“In recent months, however, there have been a number of media reports that sections of the electronic and print media have received monetary considerations for publishing or broadcasting news in favour of particular individuals or organizations or corporate entities, what is essentially ‘advertisements’ disguised as ‘news’. This has been commonly referred to as the ‘paid news syndrome’. While this is not a new phenomenon, it has attracted greater public attention of late, and is being widely discussed and debated across the country. It has been reported that the owners of some media organizations have financial relationships, including share-holdings, with advertisers. Further, cases have been reported wherein identical articles with photographs and headlines have appeared in competing publications carrying bylines of different authors or sometimes even without bylines, around the same time. On the same page of specific newspapers, articles have been printed during elections, projecting rival candidates, both as winning candidates! While it is widely agreed that it is not easy to find proof for such malpractices, there exists strong circumstantial evidence.

“It is, however, very commendable that this issue of ‘paid news’ has been vigorously raised by some sections of the media itself. The Editors Guild of India has in its press note on this issue dated December 23, 2009, condemned this unethical practice and called upon all editors of the country to desist from publishing any form of advertisements which masquerade as news. They went on to say that it is imperative upon news organizations to clearly distinguish between news and advertisements with full and proper disclosure norms, so that no reader or viewer is tricked by any subterfuge of advertisements published and broadcast in the same format, language and style of news. The Indian Women’s Press Corps, a body of working women journalists from print, television and online media are also highlighting this issue in a seminar...in order to build an opinion against this malpractice. The Andhra Pradesh Union of Working Journalists (APUWJ) conducted a detailed sample survey to highlight the manner in which newspapers had published ‘paid news’ items. A number of senior journalists have formally complained about the phenomenon of ‘paid news’ to the Press Council of India and the Election Commission of India.... The representatives of APUWJ named six newspapers, carrying numerous paid news stories...

“This phenomenon of ‘paid news’ is therefore, a serious matter as it influences the functioning of a free press. The media acts as a repository of public trust for conveying correct and true information to the people. However, when paid information is presented as news content, it could mislead the public and thereby hamper their judgement to form a correct opinion. Thus, there is no denying the fact that there is an urgent need to protect

the right of citizens to correct and unbiased information. It is important that all sections of society should introspect on this issue as it has wide-ranging implications for our democratic structure.

Shri Yechuri stated that “paid news” was “not merely a serious matter influencing the functioning of a free press, but it is an issue that also concerns the future of parliamentary democracy in India”. He added: “The health of our democratic system rests on the inviolable principle of sovereignty being vested with the people. The people’s representatives, through the legislative bodies, exercise vigilance on the government or the executive thereby making it accountable to the people. The sovereignty of the people, therefore, is established through this system and this inviolability is crucially dependent upon unbiased information and the proper news that the people receive. So, the role of the Fourth Estate or the media has always been very crucial in disseminating unbiased information to the people and helps them understand the policies that are involved in governance as also to decide as to who would be capable of effective governance in the country. So, this is an issue that not only affects the media or the Fourth Estate but it also affects the future of parliamentary democracy in our country....providing access to unbiased, unfiltered and objective news or information is the role that media is supposed to play. This comes under very severe strain with the emergence of the ‘paid news’ syndrome.

“The Hon’ble Minister has said that the phenomenon of ‘paid news’ is not a new phenomenon. But it is a completely new phenomenon in terms of the staggering proportion it has reached and the corporatization of media houses has actually led to a situation whereby this sort of paid news is no longer confined to any one print medium or electronic media. There are instances where large media houses not only own print media but also own electronic media and radio waves. These media houses offer packages for the projection of certain individuals in all the forms of media that they own and control. This distorts parliamentary democracy in multiple ways: (a) (the) media ceases to be objective and, therefore, distorts public perception; (b) it distorts the electoral political choices of the people by providing undue advantage to those candidates/political parties who are able to afford these packages, (c) it manipulates democracy, negating it completely by denying or by not providing equal access to those who cannot afford to indulge in such malpractices thereby breaching the provisions of the Constitution of India, and (d) it demeans the idea and essence of journalism itself.

“There are of course well-meaning and good journalists, who have actually played a stellar role in shaping public policy in our country and in guiding political parties into directions that are better for the country and its people. Such journalists have been completely weeded out of this sort of system. In order to protect journalism from getting into this abyss, it is necessary to prevent journalism from being muscled by corporate powers. All the good work done by journalists does not find expression in the print or electronic media mostly, because the choice of what needs to be reported is directed or dictated by the money power that emerges from behind the scene. The Press Council of India, the Editors’ Guild of India and the Vice-President of India, have at least, on three occasions in the recent past, referred to this ugly syndrome of ‘paid news’....

“... vibrant journalism has to be restored. If this has to be restored, the undue influence of money power in journalism has to be eliminated. The Election Commission of India has listed various restrictions to ensure the conduct of free and fair elections. As per the rules of the Election Commission of India, political parties are prohibited either to paint advertisements or to stick posters on walls. Candidates are also prohibited to deliver speeches after 10 pm. However, 24-hour news channels are allowed to broadcast the campaign of a candidate or party all through the night. This is tantamount to distortion of democracy. The syndrome of ‘paid news’, actually, negates India’s system of parliamentary democracy and undermines the very essence of journalism. Corporatization of media houses is leading to such a situation and if not checked immediately, it would completely negate parliamentary democracy in our country. Therefore, ... I draw the attention of the Hon’ble Minister and the government that it is not enough to deliver morally sanctimonious lectures. A serious effort needs to be made to ensure probity and accountability on the part of media houses. As per reports, the size of the ‘paid news’ market in Andhra Pradesh in the elections in 2009 alone was over Rs 1,000 crore (this is a very gross underestimation). In Maharashtra, which is the cradle of ‘paid news’, the size of the market has reached a figure of some thousands of crores. It was for this reason that I said on some other occasion that elections in India are the single largest stimulus for the economy.

“Huge amounts of money are being spent on ‘paid news’ and this completely distorts news. I, therefore, suggest that there needs to be accountability on the part of media houses and journalists. I cannot, however, specify how this accountability is to be ensured. But, one method is to institute an enquiry wherever such complaints come up. If it is established that any newspaper or news channel has been indulging in this practice, the government must stop doling out its advertisements in that newspaper or news channel. Unless some deterrents of this sort are thought out, it will not be possible, at least, to control this phenomenon which is a very serious malady affecting our parliamentary democracy. Apart from putting in place such deterrent action, a consciousness against ‘paid news’ needs to be generated in society.”

Shri Jaitley stated: “... I completely share the spirit and substance of what my friend, Shri Yechury, said. I only disagree with him partly on his suggestion of possible solutions. The menace has assumed such large proportions that a solution cannot be to just deny them government advertisements. I have read the statement of the Hon’ble Minister, which is actually based on two premises – first, that this constitutes free speech; second, that the Press Council of India, which I would state is a toothless wonder, is already looking into the matter. And, therefore, both these premises, that the Press Council of India is capable of finding a solution to this, and that this is an expression of free speech, are fundamentally erroneous. If you look at the menace of money power in elections over the last few years, it has grown disproportionately. It is directly linked to the collection of funds for elections by candidates and political parties and by state governments. This leads to increase of political corruption. It pollutes the very stream of administration and public life in this country. The volumes have grown.

“Therefore, if we are to suggest a solution, as Shri Yechury has suggested of not releasing advertisements from governments in those newspapers, the magnitude of the problem, which is so large, is to be kept in mind and the solution suggested has to be proportionate to the problem and the evil that is sought to be curbed. And, what is the problem? The problem is that about a decade ago we noticed that during elections some strange media organizations would ask for money over and above the money paid for advertisements. In the last two years, the phenomenon has grown disproportionately in the sense that there has been the evolution of paid packages which are news packages. Whatever the Hon’ble Minister has highlighted in the statement is all evidence of that. Not only this, political parties and candidates are being compelled to pay to prevent blackout of their campaigns by media houses and to prevent disproportionate coverage to rival candidates.

“This problem also exists, besides elections, in the sphere called business journalism. In fact, one of the outgoing chairpersons of the Securities and Exchange Board of India, in his farewell speech, referred to the existence of the anchor investor. Therefore, this problem, in a different sense, though it cannot be termed as ‘paid news’, also existed in the sphere of business journalism. But, here, we are predominantly concerned with the manner in which the practice is polluting the whole electoral process. Some respectable media organizations, as I witnessed in the last general elections, legitimized this practice. It was legitimized by the former organization of broadcasters, saying to its members that all of you must, now, form a cartel and increase your rates over and above commercial advertising for political advertisement. This was called ‘election premium’. And, when candidates and political parties protested as to why they were being charged more, they were told that they would be compensated by way of live coverage of rallies and of press conferences. Therefore, coverage of rallies and press conferences got linked to those who paid this extra election premium. This is where the problem stands.

“So, the first issue the Hon’ble Information and Broadcasting Minister will have to address: Is this an expression of free speech? Unquestionably, this is not an expression of free speech. Free speech is intended to be a right guaranteed to people to express their views. What seems to pollute the very political system and the electoral system is that we all came up with a conservative notion that news must be fair and views are free. There is freedom to express your views, but as far as news coverage is concerned, it is sacred. Whatever the newspapers write and the television channels broadcast is secondary. The primary rights of free speech belong to a viewer or a reader. It is the right to knowledge; it is a right to information. He is entitled to unadulterated information, as far as news is concerned.

“Today, ‘paid news’ is passed on to the viewer/reader without even mentioning that this is just another form of ‘advertisement’ and is nothing more than propaganda; and if the gullible viewer or reader is asked to absolve that, that affects the human mind. When we grow in terms of economy, let us not forget that while industries can shape the economy of the country, media will shape the human mind. Therefore those who are in a position to pay more for this adulterated information are shaping the human minds in this country accordingly. No student of constitutional law will ever tell you that ‘paid news’ is free

speech. At best, it could be trade, it could be business, and, therefore, the government has to take this out of the arena of free speech and put it in the arena of business or trade, all in public interest, rather than leaving it in the hands of the toothless wonder called the Press Council of India.

“Therefore, if the government has a will to stand up and find a solution, it would be possible to find solutions. Once ‘paid news’ is sent to the arena of business, it would be clear to establish that it is nothing more than trade and that too a trade with an unlawful objective. It is unlawful because there is violation of the Income Tax Act. You are taking money in a colour which is not permitted. You are inciting people and involving people by wholesale violation of electoral laws. You are subverting one of the basic features of India’s Constitution which is the conduct of free and fair elections, and, therefore, the entire exercise that is being done is a complete corruption of the electoral process and is a trade or a business with an unlawful purpose.

“Therefore, does the government of the day have the ability to stand up and say that this business or trade which threatens Indian democracy is going to be prohibited or not prohibited? When market malpractices come up in terms of business, you have anti-trust law, you have market regulators to try and stop this. The kind of evidence that the minister has given in the statement itself saying that a simple solution, a remedy is possible, and I am requesting the Hon’ble Minister; and that is going to be my query. Once it gets into the area of unlawful trade or trade with an unlawful purpose, you prohibit it through legislation, you create a regulator. A regulator must be a judicial authority and therefore the easiest thing to do is: (once) the Election Commissioner, on receipt of a report from the Returning Officer or even otherwise from any other person, (is) ... satisfied that there is some case made out, (he) refers it to the tribunal headed by a judge. Then, the candidate concerned, the political party concerned, the media organization concerned, must face that.

“The world over, regulators have now started a new system. Prosecutions take years and years and nobody is scared of them and so the regulators hear these matters and deterrent penalties are imposed. Look at the competition law. If somebody is accused of cartelization, the penalty will be ten times the volume of business. So, it may be Rs 50 crore or Rs 100 crore. In the case of media organizations, you need not be so harsh; it could be lesser. But certainly, it has to be a deterrent penalty. In the case of (a) candidate, it has to be an offence under election laws of the world.... (The phrase) ‘corrupt practice’ must be amended in the Representation of the People Act and this should be a ground for setting aside the election and disqualifying the candidate and if parties indulge in this...there must be action against this. My question therefore to the Hon’ble Minister is, (whether) the government is willing to accept (the) position that this is a trade and business with an unlawful purpose which has started...It threatens Indian democracy. Are you merely going to ask the Press Council to look into this matter or are you going to take some precipitate action as far as this is concerned?”

Curbing “paid news” using extant legal provisions: Dr Madabhushi Sridhar’s suggestions

Speaking to the Press Council of India on February 10, 2010, in Hyderabad, Director of the Centre for Media Law and Policy, Hyderabad, of the National Academy of Legal Studies and Research (NALSAR), Dr Madabhushi Sridhar, said the “paid news” phenomenon represents a “fatal combination” of three “Ms”, namely, the media, money and mafia, that has subverted free and fair elections. He said that 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,” he stated.

Dr Sridhar stated that news items misguide readers about particular candidates by reporting that they are forging ahead in elections. “They use expressions which are most of the time absolutely false. The lack of truth in such statements can be easily verified as the same page of the same newspaper also publishes a similar story about a rival candidate. It is also reported that some pages of district edition tabloids were changed twice or thrice every day to accommodate the ‘success trail’ of different candidates in the same constituency.”

Dr Sridhar says that the “Election Commission has prohibited exit polls and opinion polls and surveys by any media before the polling process is completed. This is based on the principle that news about one party’s candidate winning from one constituency should not influence voters in different parts of the state or country to favour the winning party. If the media takes money to say a particular candidate is receiving unprecedented support from the people, it could send a signal to others influencing them to vote for him. A frenzied campaign based on fabricated stories about people supporting one candidate or the other is a misuse of freedom of expression both by candidates and by the media.”

Dr Sridhar argues that the trend of publishing news for money is on par with criminalisation of elections. “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....”

Dr Sridhar added: “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 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.

“After declaring candidates elected, the only remedy before a losing candidate is to challenge the validity of the election... But, this legal procedure is time consuming. By the time, the court’s verdict reaches a final stage and assuming that the allegations of the complainant are upheld and conviction is confirmed, the winning candidate would have served much of his term before ‘justice’ is delivered to losing candidate. If losing candidates do not choose to get involved in a prolonged legal battle, the elected candidate may amass wealth during his term as an elected representative... Thus, the Election Commission has to become more responsible in preventing this unfair information war which favours paying candidates and is heavily against the interests of voters of this country.”

Dr Sridhar argues that “undue influence” by the media to curb free exercise of electoral rights is an election crime under Section 171C of Indian Penal Code as well as the Representation of the People Act, 1951. 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. Section 171C of the IPC also refers to similar language used in Section 123 and states that this is tantamount to interference or attempt to interfere with the free exercise of an electoral right.

The punishment for the offence of undue influence is prescribed under Section 171F of IPC, which says punishment of imprisonment up to one year or fine or both could be imposed. In both laws, whereas the first part is a general definition which could include any attempt to unduly influence, the subsections in both laws provide examples of undue influence but these are not limited to these examples only. Subsection (2) of Section 171F of the IPC starts by stating “without prejudice to the generality of the provisions of subsection (1)” and this means that any undue influence not contemplated by this law might also be offensive. This could include the media’s interference through “paid news”, argues Dr Sridhar. Voters can be influenced with statements of the good deeds of the candidates and their achievements, but these should not be “undue” and become tantamount to “abuse of influence” (*Bachan Singh versus Prithvi Singh, AIR, 1975, SC 926*). The Supreme Court said (*Shiv Kripal Singh versus V.V. Giri, AIR, 1970, SC 2097*)

that “what amounts to interference with the exercise of an electoral right is ‘tyranny over the mind’”.

Dr Sridhar argues that under both laws (the Representation of the People Act and the Indian Penal Code), not only any interference, but also an attempt to interfere with free exercise is defined as an electoral offence. He says that if the content of each “paid news” item is examined, 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 if the reporter or the publisher were acting on behalf of the candidate as either of them took money to write such a news item during the election campaign. Dr Sridhar cited 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 Abbayigari Abbayi”. While the first headline seeks to influence votes using a divine reference, the second alleges that candidates distributed money. According to him, these two claims could be construed as criminal offences committed by the concerned newspaper under both the laws.

Publication of a false statement is both corrupt practice and electoral offence, Dr Sridhar adds. To be precise, the circulation of falsity during an election is a clear offence, he says, arguing that there is a need to investigate campaign advertising camouflaged as news during elections and prosecute offenders, whether these be poll agents or media personnel, because such “paid news” items contained false statements that may have violated the provisions of Section 123(4) of the Representation of the People Act, 1951.

Section 123(4) of the Act 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 candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of the candidate’s election”. Dr Sridhar says this definition could include the media which publishes or broadcasts statements after taking money which amounts to receiving the consent of a candidate or his agent.

Critical 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, argues Dr Sridhar. He says that 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 section 171G of the IPC which reads: “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) fine.” He contends that this interpretation of the word ‘falsity’ decides the criminality of the publication or broadcast.

Dr Sridhar says that if newspapers become akin to pamphlets of politicians during election campaigns, they should be treated as such. Section 127A of the Representation

of the People Act, 1951, states that 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 both. The concerned newspapers might have not violated 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 newspaper is in the nature of a pamphlet or advertisement, the newspaper may have committed a crime under Section 127A(2)(b) of the Act.

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. Dr Sridhar points out that 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 election.

Dr Sridhar adds that 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 void under Section 100 of the Representation of the People Act, he argues. If it is proved that a candidate is guilty of having indulged in a corrupt practice, then he can be disqualified from contesting elections, according to the provisions of Section 8A of the Act. Along with him, those who committed this corrupt practice would also forfeit their right to vote under Section 11A of the Act. The Election Commission is empowered to enforce these provisions of the law.

Dr Sridhar points out that 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 end.

Dr Sridhar points out that 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. He suggests that the Press Council of India should constitute a special task force in each district during the elections to receive complaints, make preliminary studies and report to Election Commission of India 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, Dr Sridhar opines.

He believes that while existing legal provisions are adequate to punish offenders, 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. Dr Sridhar argues, adding that over and above the suggestions outlined, the Press Council of India should shape public opinion and make more people aware of the implications of the pernicious practice of “paid news”.

In the opinion of the Press Council of India, Dr Sridhar’s recommendations are extremely comprehensive and cogently presented and deserve serious consideration.

Other Suggestions:

Shri Jagdeep S. Chhokar, former Dean of the Indian Institute of Management Ahmedabad and one of the founders of the non-governmental organisation, Association of Democratic Reforms, whose initiative National Election Watch, puts out information on declared assets as well as criminal records of contesting candidates on its web site has suggested the following measures that can be undertaken to ensure greater accountability in the conduct of elections that could curb the phenomenon of “paid news”.

Writing in the *Indian Express* (February 1, 2010), Shri Chhokar stated: “...the first and foremost body that is responsible for taking action is the Election Commission, primarily because it is responsible for superintendence, direction and control of elections under the Constitution. The seemingly absolute and sweeping power should, theoretically, enable the EC to do whatever it thinks necessary in the interest of free and fair elections, in practice this power is circumscribed, as it should be, in a democracy by interpretations of

the constitution by the judiciary. The Supreme Court, has in several cases, overruled some of the progressive actions of the EC, specifically in the context of its power to register political parties.”

Shri Chhokar added that the responsibility then lies on the judiciary, “which despite its 1974 ruling that expenditure incurred by friends and supporters directly in connection with the election of the candidate should be considered as expenditures incurred by the candidate, found it overruled by Parliament which nullified the judgement”. “Data for the 2009 elections shows that only four out of 6,753 candidates exceeded the prescribed limit of election expenses. The average expenditure was between Rs 12.5 lakh and Rs 13.75 lakh against the limit of Rs 25 lakh!”

Shri Chhokar stated that eventually, “it is the media and the political parties who have to put their house in order.” He also added that “a call for tapping into one’s own conscience may be a tall order in the times of increasing scepticism and commercialisation, but perhaps not entirely misplaced.”

Dr N. Bhaskara Rao, head of the Centre for Media Studies, told the Press Council of India that a multi-pronged approach was required to deal with the problem of “paid news”. Such an approach included elements of self-regulation (such as ensuring that proper disclosure norms were maintained), redressal arrangements and a proactive involvement of civil society organizations and professional bodies (like the Editors’ Guild of India, associations of journalists) and statutory organizations like the Press Council of India, the Telecom Regulatory Authority of India and the Election Commission of India. In addition, awareness campaigns, conferences, workshops and seminars should be organized to raise awareness about such malpractices, to sensitize employees of media companies and also to counsel journalists. The cancer is deep and the issues need to be addressed in a holistic manner, Dr Bhaskara Rao stated.

Dr Y.C. Halan, member, Press Council of India representing the Editors’ Guild of India, pointed out that the media in India has become a strong force and that “it is impossible to dictate it by passing legislation”. He stated that “journalists cannot be associated with the work of controlling the media during elections” and that “any journalist who accepts to do that will lose his credibility”. He suggested that the Union Information & Broadcasting Minister convene a round-table of prominent newspaper owners, editors, representatives of the Press Council of India, the Election Commission of India and political parties to deliberate on the issue and reach to an acceptable and workable solution. Dr Halan further suggested that newspapers and television channels should accept “self control” in the way they have agreed to do while reporting matters relating to national security and terrorism. He said the Council should try and shape public opinion against the “paid news” phenomenon. Just as the Securities and Exchange Board of India and certain banks had introduced campaigns to create financial literacy among investors and preventing them from getting defrauded, the Press Council of India could persuade particular publications, political leaders and journalists to become part of such an awareness-generating programme.

Shri Kalyan Barooah and Shri M.K. Ajith, Press Council of India members and representatives of Press Association, New Delhi, made a number of valuable suggestions to fine-tune the sub-committee's recommendations.

Shri S.N. Sinha, member, Press Council, argued that the Working Journalists Act needed to be strengthened to improve working conditions and conditions of job security for journalists and that the contract system should be done away with. He has also called for the restoration of the autonomy and the primacy of the editor as the sole decision-maker in selecting news. In a communication to the sub-committee, Shri Sinha suggested that the Election Commission should expeditiously scrutinise all complaints received by it of incidents and occurrences of "paid news" and transfer to the Press Council all cases in which a *prima facie* case of offence is made out. He further suggested that the Press Council be empowered to adjudicate all such cases and be conferred the power to impose penalties, including the suspension of publication/broadcasting by errant media companies up to one year. The Council, he has suggested, should be entrusted the task of sending copies of its judgements to the Election Commission for appropriate action against the candidate or the political party concerned. He has further argued that the Press Council should be converted into a "Media Council" with adequate powers to oversee and regulate the working of the electronic media along with the print medium.

Conclusions

Though the phenomenon of widespread practice of "paid news" has been verbally confirmed and vindicated by politicians and campaign managers of political parties, there is no recorded documentation that would firmly establish that there has been exchange of money between media houses/advertisement agents/journalists and politicians/political parties. The problem in establishing the practice of "paid news" is simply one of obtaining hard proof or conclusive evidence. With one notable exception (Shri Parcha Kodanda Rama Rao of the Loksatta Party in Andhra Pradesh), no complainant has been able to provide the Press Council of India with documents as proof of money having been paid to carry positive news. Even the rate cards that had been formulated by media houses and had been passing around during elections were just typed sheets of paper which carried nothing on it to attribute it to a newspaper/television news channel that had put it together nor anything that could be attributed to a journalist/advertisement agent.

However, the huge amount of circumstantial evidence that has been painstakingly gathered by a few well-meaning journalists, unions of journalists, other individuals and organizations together with the testimonies of the politicians and journalists who have deposed before the Press Council of India, goes a very long way in establishing the fact that the pernicious practice of "paid news" has become widespread across media (both print and electronic, English and non-English languages) in different parts of the country. Interestingly, this phenomenon appears to be less pervasive in states (such as Kerala and Tamil Nadu) where the media is clearly divided along political lines. 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.

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.

Section 123 of the Representation of the People Act, 1951, should be amended by Parliament to make the practice of paying for news coverage in newspapers and television channels an “electoral malpractice” or an act of corruption and made a punishable offence.

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.

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 moto* 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.

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.

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”.

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.

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".

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.

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. Civil society oversight can also deal with the problem, but only to an extent.

There should be a debate among all concerned stakeholders on 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 elections take 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.

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.

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.

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Dated: Thursday April 01, 2010

Acknowledgements

The authors of the report would like to thank the following for their generous support and cooperation without which this report would never have been completed:

The Chairman and Secretary of the Press Council of India, Justice G.N. Ray and Smt Vibha Bhargava respectively together with other staffers of the Council, in particular, Shri Pradeep Behl.

Shri K. Sreenivas Reddy would like to thank the following for their support in Hyderabad: Shri K Amarnath, Secretary, Indian Journalists Union, the Andhra Pradesh Union of Working Journalists, its president Shri D. Somasundar and general secretary Shri Y. Narender Reddy and Dr Madabhushi Sridhar, Professor, National Academy of Legal Studies and Research.

Shri Paranjoy Guha Thakurta would like to thank the following for assisting him in transcribing recordings of interviews, collating material, providing background research and assistance in drafting the report: Shri Ayaskant Das (*Current*), Shri Himanshu Shekhar, Km Anuradha Raman (*Outlook*), Shri Akshat Kaushal (student of the Indian Institute of Mass Communication, New Delhi) and Shri Ram Bahadur Rai (*Pratham Pravakta*).

This report is dedicated to the memory of the late Shri Prabhash Joshi who fought fearlessly to curb corruption in the Indian media and uphold the independence of journalists.

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Word count (including headings and sub-headings): 36,188