
INFLUENCE OF TAXATION ON MEDIA

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Introduction

The overlap between Media and Taxation is not quite as obvious as one would hope in a jurisdiction like India. The field is not expansive, and resources or deliberations that directly link the two fields of law are rare. A mere superficial investigation into the taxation that is applicable to the various media sources in the country is not sufficient or the aim of this project, but rather the interconnection between the two, and how taxation is often used as a tempering mechanism to effectively regulate Freedom of Press. As the mouthpiece that amplifies singular voices into a collective cry, the Freedom of Press granted to Media is also a metastatic amalgamation of Freedom of Speech of individuals who are heard through the Media, for better or for worse. This article shall look into the effect modes of taxation has had on this quality of media enterprise in recent human history.

History of Media and Taxation

The earliest known forms of taxation imposed on the crude origins of what we would now consider media would be the Knowledge Taxes in England and their Colonies. Through the English Stamp Act of 1712, these taxes were levied upon “dissemination of Public Information”. Media at that time was not a strictly labelled sector, but the vague and broad applicability of the tax had scope to include the dynamic nature of the media industry that was rapidly developing and diversifying.

Knowledge taxes posed a paradox for the government. The initial intention was to encourage loyalist information and propaganda, and effectively sanction anti government information through thinly veiled pecuniary measures in the form of Knowledge Taxes. But the same had the opposite effect. Publications that were hostile to the government found ways to evade taxation by opting to sell through blackmarkets and exploit loopholes in the administration of laws governing media, while Publications loyal to the government diligently stuck by the tax regime. This led to loyal publications suffering due to competition in pricing and the struggle to match the affordability as well as availability of publications hostile to the governments.

This was also the period when print publications were evolving into structured Newspapers as we know them today. Thus, Knowledge taxes met their demise in England by the 19th Century¹.

The implications of Knowledge taxes were less concerning to those in the colonies, and protests against the same were few and rare. The United States, which was a significant colony under the British Crown during that period, continued the usage of Knowledge taxes, well into this day and age. The scope of such taxes now are inclusive of electronic media. This is especially relevant considering the First Amendment of the US Constitution addresses freedom of speech and press, The 1862 Federal Advertising Tax, which was a national knowledge tax, did not raise any alarms within the congress, and was generally considered to be compliant to the principles enshrined in the First Amendment. There was bipartisan agreement and welcome for the tax, as it was also intended for raising funds for the war effort. The dissemination of information by way of freedom of press was a protected right, but it was also a taxable one.

With the rise of Newspapers as a behemoth industry, making and breaking billionaires and American society in the late 19th and early 20th century, taxes in addition to Knowledge tax was introduced across states in order to garner revenue from the rising industry. These state wise taxes included taxes on print, licenses, paper, ink etc, and directly affected the newspaper industry. This also saw the first instances of taxation as a tool of oppression against the media as states started imposing taxes with specific thresholds and eligibility criteria in order to target newspapers that did not align themselves with the policy of the state government. The sheer number of players in the newspaper industry during this period can be directly attributed to the short life expectancy associated with newspapers targeted by state taxes.²

20th Century saw the development of telecommunications, and media like radio, television, and the internet became common. They often outperformed and outshined print media due to their accessibility, and ease of management with developing technology. Even in this present state, several legal jurisdictions across the globe give tax exemptions to newspapers as a form of media, in a bid to honour the freedom of press, despite them being a remnant of the past. These exemptions are not a flat application, but rather often restricted to an exemption from

¹ Oats, L., & Sadler, P. (2004). POLITICAL SUPPRESSION OR REVENUE RAISING? TAXING NEWSPAPERS DURING THE FRENCH REVOLUTIONARY WAR. *The Accounting Historians Journal*, 31(1), 93–128. <http://www.jstor.org/stable/40698294>

² Bezanson, R.P. (2015). *Taxes on Knowledge in America: Exactions on the Press from Colonial Times to the Present*. Philadelphia: University of Pennsylvania Press.

Sales Tax. Other components of the newspaper, like advertisements, print, ink, and paper, may still be taxed.

In *Minneapolis Star & Tribune Co v Minnesota Commissioner of Revenue*³, the Court held that a paper and ink tax which exempted businesses using goods upto the first \$100,000, was unconstitutional, because it specifically targeted newspapers. Any and all other businesses that might have come under this particular tax was either directly exempted, or did not satisfy the threshold. Therefore, newspapers would be the only industry affected. Even within the newspaper industry, the smaller newspaper would not qualify for the tax due to the 100,000 dollars exemption, and thus the major publishers were specifically targeted.

In *Leathers v Leathers v. Medlock*⁴ the Court upheld a taxation scheme that was applicable to cable television but exempted Newspapers and Magazine Sales. The court held that the rather varied applicability of the tax was purely due to the nature of the particular industries and was not a discriminatory tool of oppression.⁵

Knowledge taxes while remaining relevant in America even in the age of internet, could not effectively adapt to the changing technological landscape of dissemination of information and the media industry.

Media and Entertainment Sector in India

Media and Entertainment is identified by the government as one of the Key Sectors under the “Make in India” scheme. Print, Television and Films are the major subsections of media in India, with the Ministry of Information and Broadcasting as the apex body governing policy and matters related to information, broadcasting, press and entertainment media in India.

Indian Approach to Taxation on Media

The Supreme Court of India, in *Indian Express v Union of India*⁶ placed emphasis on the Freedom of Press in India, but also studied the interlink between taxation and media. The court held that because newsprint is vital to the newspaper industry, and thus to freedom of press, the tests applicable to determine whether a taxation imposed on newsprint is unconstitutional must be fundamentally different from the usual tests applied to determine the constitutionality

³ 460 U.S. 575 (1983)

⁴ 499 U.S. 439 (1991)

⁵ Gregory S. Ascioia, *Leathers v. Medlock: Differential Taxation of the Press Survives Under the First Amendment*, 41 Cath. U. L. Rev. 507 (1992).

⁶ (1985) 1 SCC 641

of statutory taxations in any other industry. The test so applied has to be less rigorous in its definition of unconstitutional. This is because such a tax on newspaper and newsprint could be a tool to oppress, and the newspaper industry has to be seen separate from other businesses because of their intimate connection to the Freedom of Press. In an ordinary taxing statute, the law may be questioned only if they are openly confiscatory or a colourable device to confiscate. But, in case of taxation affecting newsprint, the parameters are such that all you need to prove is that the tax is burdensome to allow the newspaper to carry out their ordinary course of functions and business. Any such difficulty must be directly attributable to the tax imposed.

This special status of the newspaper industry is due to its representation of two fundamental rights - The Freedom of Speech and Expression under Article 19(1)(a) and the Freedom to engage in any profession, trade, occupation or business, under Article 19(1)(g). There cannot be taxation on the exercise of one's freedom of speech, but on the other hand, the freedom to engage in any profession is a taxable act. Thus, the newspaper industry, like other media, can be taxed on that ground, but only in a way that doesn't endanger the freedom of expression granted to it under Article 19(1)(a)

Until the implementation of the GST Act, vide the 101st Amendment in 2016, there was no service tax chargeable advertisements in newspapers, which was not the case for television and radio. This particular exemption of newspaper from many classes of taxation prior to this may be attributable to the fact that Entry 92A of the Union List in the constitution and Entry 52 of the State List both allow for levy of sales tax except for newspapers. This exemption might be a reflection of the times in which the provisions were drafted, where by and large the newspaper industry was the single most important representative of the media industry and embodiment of freedom of speech. With changing times, these lists were not revisited to amend or include other forms of media that gained popularity, thereby inadvertently favouring the newspaper industry over other media industries.

Taxation as a Tool Against Media

In recent times, there has been several instances where taxation has been weaponised to target media companies in order to further a cause that they do not publicly endorse through their resources. Examples of such instances can be seen across the world where governments use tax to silence media. The recent raid of the Newspaper Dainik Bhaskar's offices in India were widely considered to be such an intimidating tactic following their reports on the pandemic and protests against the government. This was condemned by the global community. In Poland,

recent taxes on media houses are seen as a tactic to stifle the industry, and Uganda had an unprecedented hike in taxation of internet, by 30% in a move widely interpreted as a way to curb unregulated speech in the Country.

Should Media be Taxed?

Media serves as an effective external measure against corruption. The risk of exposure, discussion, and deliberation of corrupted acts of the authorities by the media is an effective threat that can encourage abstinence from corruption. In *Grosjean v. American Press Co.*,⁷ the US Supreme Court held that the governments may not impose taxes on a newspaper's circulation, even if they are not directed to their content or by any publisher. The Court held that the Freedom of speech encompasses not only the right to speak or publish, but also protects from punishment when they report truths regarding matters of public concern. The protection is subsisting across time, seeing as how punishment for reporting may not always be concurrent, subsequent or even direct. It may even take the shape of a tax at a later point of time rather than a fine imposed immediately after reporting. Such a punishment in the form of taxation may significantly affect the ability to report matters in a similar vein like before and may compromise the ease of reporting.

Conclusion

Though it is not a generally applicable observation, taxation may at times be used as a tool of oppression against the media in order to curb their exercise of the Freedom of Press. Whether a particular tax scheme is discriminatory so as to impede Freedom of press, is a matter that is to be determined by examining whether it is a generally applicable or selective tax. Differential taxation of the press generally means the applicability of tax on members of media in a manner that contrasts with the treatment accorded to non media industries or businesses. Yet, such an examination only addresses levying of taxes through statutory measures in a bid to curb media freedom, which is more preventive in nature. The large scale violations of Freedom of press where tax violations are alleged and steps taken, accounting for a punitive use of taxation against media, require more attention to study and dismantle.

⁷ 297 U.S. 233 (1936)

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