

**MEDIACRACY AND ITS IMPACT ON JUDICIAL JUSTICE SYSTEM: A
CRITICAL STUDY**

Thesis submitted for the Partial Fulfilment of the requirements for the award of the
degree of Doctor of Philosophy

By

Ms. KRITIKA GOSWAMI AHUJA

Enrollment No: MUIT0119038038

Under the Supervision of

PROF. (DR.) K. B. ASTHANA

Professor & Dean

Maharishi Law School



Maharishi School of Law

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Maharishi University of Information Technology

Sitapur Road, P.O., Maharishi Vidya Mandir, Lucknow, 226013

Declaration

I hereby declare that the work presented in this thesis entitled "MEDIACRACY AND ITS IMPACT ON JUDICIAL JUSTICE SYSTEM: A CRITICAL STUDY" in fulfillment of the requirements for the award of Degree of Doctor of Philosophy, submitted in the Maharishi School of Law, Maharishi University of Information Technology, Lucknow is an authentic record of my own research work carried out under the supervision of Prof. (Dr.) K. B. Asthana and I also declare that the work embodied in the present thesis-

- i) is my original work and has not been copied from any journal/ thesis/ book; and
- ii) Has not been submitted by me for any other Degree or Diploma of any University/ Institution.

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Supervisor's Certificate

This is to certify that Ms. Kritika Goswami Ahuja has completed the necessary academic turn and the swirl presented by him is a faithful record is a bonafide original work under my guidance and supervision. He has worked on the topic "MEDIACRACY AND ITS IMPACT ON JUDICIAL JUSTICE SYSTEM: A CRITICAL STUDY" under the School of Law, Maharishi University of Information Technology, Lucknow.

Name of Supervisor

Prof. (Dr.) K. B. Asthana

Dean, School of Law,

Maharishi University of Information
Technology, Uttar Pradesh.

Signature of the Supervisor

Date:

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The thesis aims to investigate the importance as well as accountability of the media industry in Indian democracy. The topic chosen is quite difficult because it involves several factors. The areas of journalism industry's capabilities and influence have expanded enormously, and covering all these countermeasures was not a simple task for the researcher. The task of giving thanks and expressing profound gratitude can be hard because words cannot express how grateful the research student is; however, the research student wants to express his heartfelt gratitude and thank all those who made enduring and priceless contributions in order to.

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Ms. Kritika Goswami Ahuja

(Research Scholar, MUIT)

ABSTRACT

Mediacracy may be characterized as a dominant condition in which the media controls population decision-making. The word "mediacracy" is strongly tied to the function of media. In other words, the extent to which the media influences the country's legal system. In India, punitive justice is founded on a belief of innocence unless conviction is proven beyond any question of doubt to bring the truth in light it becomes necessary requirement that exclusive coverage should be done and therefore media frequently holds and conducts interviews with eye-witnesses, victims' nearby peoples, legal experts, and others, which may jeopardize the fairness of the judge's. The efficiency and speed with which media may reach the majority has a tremendous impact on how the general public views it. In the course of past few decades, media's involvement has played an important role in aiding victims' ability to seek justice in numerous scenarios, including nepotism, assault, violence, domestic violence, terrorism and so on. The deciding authorities are indirectly under pressure from the public eye to offer victims justice, which could interfere with the courtroom proceedings and undermine the accused capacity to establish his innocence.

The contemporary media landscape serves as a powerful conduit for disseminating information, shaping opinions, and influencing societal dynamics worldwide. Both traditional and modern media platforms are integral to individuals seeking to broaden their understanding, perspectives, and intellectual horizons. Widely regarded as the "fourth pillar of democracy," the media plays a pivotal role in holding power to account, facilitating public discourse, and fostering transparency within societies.

The pervasive impact of the media extends far beyond mere information dissemination; it actively molds public behavior, perceptions, and attitudes. In today's interconnected world, where media permeates every aspect of daily life, individuals are increasingly shaped by the narratives they encounter through various media channels. This phenomenon is not confined to any particular geographical region but is a universal reality.

However, the widespread influence wielded by the media also raises pertinent concerns regarding the accuracy and reliability of information presented to the public. Furthermore, questions arise concerning the boundaries of media freedom and the potential hazards posed by mediacracy – the dominance of media influence over governance and justice administration.

To address these challenges, researchers aim to explore legal frameworks that strike a delicate balance between preserving press freedom and safeguarding individual rights, such as privacy. They seek to assess the extent to which media influences political processes and societal norms, thereby informing legislative efforts to regulate media conduct effectively.

Within the Indian context, this entails a thorough examination of constitutional provisions and legislative measures governing media practices. By investigating legislative structures designed to protect freedom of speech while curbing detrimental media activities, researchers endeavor to enhance understanding of the media's function within India's justice delivery system.

Ultimately, this research endeavor seeks to unravel the complex interplay between media, democracy, and justice, providing insights into the mechanisms required to uphold democratic principles while mitigating potential risks associated with unchecked media influence. Through rigorous inquiry and analysis, the study aims to contribute to a more nuanced understanding of the evolving role of media in contemporary society and judicial system.

Keywords – Mediacracy, Media Trial, Judiciary, Justice, Media Industry, Journalism, Democracy, Technology, Media Influence, Legal System, Fourth Pillar Of Democracy, Governance, Judicial System, Media Sensationalism, Media Reporting, Public Perception, Public Behaviour, Society, Legal Framework, Judicial Impact.

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LIST OF ABBREVIATIONS

1. AI : Artificial Intelligence
2. AIDS : Acquired Immunodeficiency Syndrome
3. AIR : All India Report
4. AO : Appellate Officers
5. APIOs : Assistant Public Information Officers
6. ASA : Advertising Standards Authority
7. CA : Court Of Appeal
8. CBI : Central Bureau of Investigation.
9. CIC : Central Information Commission
10. CJI : Chief Justice Of India
11. Cr.P.C : Code Of Criminal Procedure
12. Crl. App : Criminal Appeal
13. ECHR : European Convention On Human Rights
14. FTC : Federal Trade Commission
15. HC : High Court
16. HIV : Human Immunodeficiency Virus
17. ICCPR : International Covenant On Civil And Political Rights
18. ILR : Indian Law Reports
19. IPC : Indian Penal Code
20. IT ACT : Information And Technology Act
21. KLD : Kerala Law Decision
22. L.J.R : Latest Judicial Reports
23. LSSP : Lok Seva Sanchar Parishad
24. Ltd : Limited
25. NBA : News Broadcasters Association
26. NCRWC : National Commission To Review The Working Of The Constitution
27. NFL : National Football League
28. NGO : Non-Governmental Organization
29. OFCOM : The Office Of Communications
30. PCI : Press Council Of India

- 31. PDPB : Personal Data Protection Bill
- 32. PIL : Public Interest Litigation
- 33. PIOs : Public Information Officers
- 34. Pvt. : Private
- 35. RSF : Reporters Without Borders
- 36. RTI : Right To Information
- 37. SCC : Supreme Court Cases
- 38. SCR : Supreme Court Reports
- 39. SEBI : Securities And Exchange Board Of India
- 40. SICS : State Information Commissions
- 41. SLP : Special Leave Petition
- 42. TADA : Terrorist and Disruptive Activities (Prevention) Act.
- 43. TV : Television
- 44. U.S : United States
- 45. UDHR : United Nations Declaration Of Human Rights
- 46. UK : United Kingdom
- 47. UN : United Nation
- 48. UNAIDS : United Nations Programme On HIV/AIDS
- 49. UOI : Union Of India
- 50. USA : United States Of America
- 51. VR : Virtual Reality
- 52. VSCO : Visual Supply Company
- 53. WNBA : Women's National Basketball Association

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CHAPTER-1

MEDIACRACY AN INTRODUCTION

1.1 INTRODUCTION

The realm of information-gathering, transportation, processing, and display-is the undeniable technical star of our times. Optoelectronics, electronic devices, microchips, machine learning, software design, and the internet are all advancing at breakneck speed. From expert monitors to printing newspapers, computer-aided manufacturing to e-news, the information or technological society is the technical realm that is moving us most forcefully and fastest towards a new century. Hence we can say that in this fast moving world all these factors put a great influence on transforming our life's and hence it do puts a great impact on our minds too. In one word the mediacracy can be used to combine all these technology which affect our lives and mind. Therefore Understanding this concept of mediacracy is crucial in today's world. Mediacracy refers to a scenario in which the mass media has control and power over the general people. In other word, it is a strategy of retaining control over a state by exploiting the media, generally conducted under the pretext of "Freedom of Expression". Yet, mediacracy is not confined in using media or mass news to achieve its goals. It may frequently employ "free" and "underground" media venues to achieve its goals, such as websites and podcasts.

Recently the CJI has also showed his growing concern regarding the trial conducted by media. In an event conducted in Ranchi, Jharkhand India's top judge, Chief Justice N.V. Ramana, slammed media sensationalism for hindering justice and weakening democracy. He criticized "media kangaroo courts" that hold biased discussions on complex legal matters, confusing the public and pressuring judges. Justice Ramana argued that this media frenzy not only slows down delivering justice but also undermines democratic values. He accused the media of prioritizing agendas and misinformation over truth and fairness, ultimately creating social unrest. The Chief Justice highlighted the difference between print and electronic media. While print media faces some scrutiny, electronic news operates with "zero accountability," allowing unverified information to spread with no repercussions. Social media's role in spreading misinformation further intensifies

the problem, according to Justice Ramana. This unchecked flow of false information fuels social unrest, prompting calls for stricter media regulations and increased accountability”.¹

In India, the legal system follows the principle of "presumed innocence." This means that according to criminal procedure laws, an accused person is considered innocent until proven guilty beyond a reasonable doubt in a court of law. The burden of proof lies entirely with the prosecution to establish guilt. The media reports, interactions with the victim’s family, friends, legal experts and others may affect criminal justice system as well as judiciary as a whole. This however impacts the mind set of society and also creates a negative perceptions regarding the accused. Over the past few years the effect of media reporting on numerous situations has increased, for instance the recent “Atiq murder case”, mafia activity, Brij Bhushan Sharan Singh sexual assault coverage and so on. The media's lobbying creates indirect pressure on legal authorities to provide victims with justice. This disrupts the procedures and may deprive the accused of his or her right to be proven innocent. Each time when media focuses solely on unidirectional claims and aims to stir up anger among the public rather than investigating the actual facts, the consequences could be catastrophic in nature. Further, whenever media is broadcasting stories and active cases in court, they must use extreme caution since it adds to a mediocracy on judges also. According Dr. VVLN Sastry of Walden University hypothesised in a research he did that there was a favourable association between media trials and court rulings in India, which would have an impact on that nation's judicial system Dr. Sastry's research explored the potential influence of media on judges in India's criminal justice system. While the theory suggests judges remain impartial to media portrayals, the study surveyed 450 lawyers and found a potential disconnect. Interestingly, around 430 lawyers (nearly 96%) believed media coverage could sway judges' decisions in ongoing cases. Only 12 lawyers agreed with the theory of judicial indifference, while a small group (around 8) strongly disagreed. This suggests a perception among legal professionals that media can indeed influence judges' perspectives.² Out of the 450 advocates that participated in the survey, 312'strongly agreed' that judges frequently

¹Media Running Kangaroo Courts, Agenda-Driven Debates': CJI Ramana Expresses Concerns Over Campaigns Against Judges,”*available at*: <https://www.livelaw.in/top-stories/media-running-kangaroo-courts-agenda-driven-debates-cji-ramana-expresses-concerns-over-campaigns-against-judges-204584> (last visited 2 January 2023).

²“Influence of Trial by Media on the Criminal Justice System in India | Semantic Scholar,”*available at*: <https://www.semanticscholar.org/paper/Influence-of-Trial-by-Media-on-the-Criminal-Justice-Sastry/1dab284dfb59d69e8f3ffbb57e3016c62f3ebe30> (last visited 22 Oct,2021).

provide tougher sanctions, which is affected by public opinion, based on their personal experiences. This finding provides another important insight. This proposal was 'agreed' upon by 82 advocates.³ These findings only demonstrate how frequently the media penetrates the walls and ceilings of the courts. Perhaps not as impregnable as it is portrayed as being, the Indian judicial system is not untouchable. However, it is not deniable that the media's investigative role has been beneficial in rectifying government misconduct, revealing crimes and illegal activities, and distributing societal knowledge. But we can say that the concept of "public interest" has no well-defined logic when media reports for TRP race.

The media serves as a cornerstone of democracy, intricately linked and arguably incomplete without one another. Functioning as a powerful information tool, it has the capacity to shape public opinion in either a positive or negative light. But it is seen that the Press often goes beyond its function of spreading information by taking the role of court especially when it influences the different facets of life such as our choice of government, justice system etc. This fact is not limited to Indian ground, but is worldwide. The public trusts the media not only to deliver informative content, but also to maintain confidentiality of sensitive information. This emphasis on responsible media practices underscores the crucial question. The question arises that whether the right to speak freely granted to media are used in the right direction or as per its whim or wish? Other question is that whether media responsible at all for the influence it creates on democratic society, if yes, to whom and how? In this thesis an attempt is made to find out the answer to all such questions. Also, some suggestive measures will be provided to the area where there is a requirement.

1.2 SCOPE OF RESEARCH

This research insight into the legal and regulatory framework surrounding media. Drawing from legal sources like statutes, ordinances, and judicial decisions (jurisprudence), it examines the rights and responsibilities of various media outlets (print, broadcast, etc.) and the governing bodies associated with them. The research considers the powers, limitations, and self-regulatory guidelines these bodies operate. Additionally, it explores the legal aspects of different media types, all of which contribute to the comprehensive scope of this investigation.

³*Ibid.*

1.3 AIMS AND OBJECTIVES OF THE STUDY

The following are the key objectives of this research:-

1. To analyze the concept of mediocracy in Indian democracy.
2. To analyze the potential methods for balancing the right to freedom of the press with the individual's right to privacy (or other relevant right, depending on the specific focus).
3. To determine the role of journalism in context with the right granted to media and the limitation imposed on them.
4. To determine whether media is accountable for influencing, if yes, to what extent it affects the society and Government machinery.
5. To evaluate the legal framework governing media, including both legislative enactments and constitutional provisions.
6. To explore legal frameworks that can effectively address harmful media practices while safeguarding freedom of expression.

1.4 HYPOTHESIS

1. Hypothesis1: The media plays a significant role in shaping public perception and understanding of the justice system, potentially influencing the fairness and effectiveness of legal processes.
2. Hypothesis 2: Media coverage in court contexts can impact the rights of individuals involved, potentially affecting their right to a fair trial, privacy, and presumption of innocence.
3. Hypothesis 3: There may exist a tension between freedom of the press and individual rights to freedom of speech, expression, and privacy, as extensive media coverage could infringe upon the privacy and fair treatment of individuals involved in legal proceedings.

1.5 STATEMENT OF RESEARCH PROBLEM

In modern democracies, freedom of speech and press are foundational principles essential for fostering informed public discourse and accountability. However, the unchecked exercise of these freedoms can potentially undermine the integrity of judicial processes, particularly through the phenomenon of mediocracy. Mediocracy refers to the excessive influence and power wielded

by the media, often leading to premature public scrutiny and interference in legal proceedings, especially high-profile criminal cases.

The problem at hand revolves around reconciling the rights and responsibilities of the press with the need to ensure fair trial rights guaranteed by the judicial system. The media's investigative role in high-profile cases can significantly impact the preliminary stages of legal proceedings, including the collection and presentation of evidence, witness testimony, and the impartiality of jurors.

Key questions arise:

- What regulatory frameworks or guidelines can be established to mitigate the negative impact of mediocracy on the judicial process?
- How can the balance between press freedom and the integrity of court procedures be maintained to safeguard fair trial rights?
- What are the appropriate limitations that should be imposed on the media to prevent undue influence on legal outcomes while preserving their role in informing the public?

Despite existing legal limitations on press freedom, the expanding scope of media influence suggests a need for updated and nuanced regulations. The lack of structured academic research on the specific impacts of mediocracy on the judicial justice system further underscores the urgency for scholarly inquiry in this area. Investigating these issues can provide valuable insights into potential reforms or safeguards necessary to uphold the principles of justice and fairness in the face of evolving media dynamics.

1.6 RESEARCH QUESTIONS

Following the research questions:

1. What influence does media coverage exert on the fairness and integrity of judicial trials?
2. How extensively is media freedom safeguarded, and what are the legitimate constraints on this freedom?
3. Does the dominance of media influence, or "mediocracy," endanger the impartial administration of justice?
4. What strategies can effectively balance the demands of media coverage with the integrity of court verdicts?

1.7 RESEARCH METHODOLOGY

This research will employ a doctrinal legal research approach. This involves analyzing relevant legal sources such as textbooks, scholarly articles, legal journals, judicial decisions (including those from the Supreme Court and International Court of Justice), and legislative materials. Additionally, relevant news media and online resources may be consulted. All gathered information will be critically analyzed and compared to form a comprehensive understanding of the topic. Ultimately, the research aims to provide a critical evaluation of the media's role and its impact on both the public and the legal system.

1.8 SCHEME OF CHAPTERIZATION

This research is divided into eight chapters, and the scheme of chapterization is as follows:

Chapter I – Introduction of this research deals with the research methodology, which is followed while conducting this research. The objectives, the research problem along with the hypothesis the nature of research, the sources of data are mentioned in this research. Keeping this in mind the researcher has tried to apply the

Research aspects to some of the principles and theories of Jurisprudence.

Chapters – II this chapter insights into the core concept of this research: the role of media in a democracy. The media has evolved as a crucial tool for exercising the fundamental right of freedom of speech and expression. To thoroughly analyze this role, a historical perspective on the press is essential. Here, we will examine the history of the press in two distinct eras: (A) the Pre-British Era and (B) the British Era. By exploring this historical trajectory, we can gain valuable insights into how the press has fulfilled its diverse functions, from the Mughal Period to the time of British rule in India. After dealing with the history, the researcher has dealt in depth, with the types of media. The researcher has made humble attempt to deal with the national and international aspects of medial along with 200th law commission report.

Chapter-III Regulatory framework of media. The researcher has stated briefly about the some important legislations which govern or control the media. Apart from the constitutional provisions there are number of statutes which deals with the press. It becomes imperative on the researcher to deal with these statutes exhaustively (only the provisions related to the press) to make his research Comprehensive and complete. Further an attempt is been made to study the

government policies and programs related to it. Further some statutory bodies which deal with the aspects of the press are also dealt in this chapter.

Chapter IV- This chapter focuses on the critical role of e-media in a democratic society, particularly in a nation like India where media consumption is high and public opinion is significantly shaped by it. This chapter is one of the most important limb of this research, it explores the multifaceted impact of e-media in detail.

Chapter V – International Perspectives, the researcher has discussed the position of UK and US along with European touch to it. Further a comparative approach is been taken on the same.

Chapter VI- judicial approach on media and media trial, the researcher has tried to bring in notice vicarious incidences in which unjust approach of media can be seen towards the accused rights. In this chapter Indian cases along with media influence can be traced. Further regulatory measures are also discussed.

Chapter VII- This chapter tackles the critical responsibilities of the media in today's world. The media not only bears a heavy burden of serving an important and crucial role, but also faces significant challenges. Here, we will explore into these issues and challenges in detail.

Firstly, we will explore the concept of media responsibility and the various theories surrounding media's influence on society. Following this, we will examine the multifaceted challenges faced by the media today. This includes issues like paid news, media ownership concentration (cross-media holdings), neglecting important issues, and media illiteracy (aliteracy). Finally, the chapter will explore the rise of social media, its development, and its complex legal implications.

Chapter VIII- The final chapter of this research deals with the concluding remarks, a few suggestions in the light of the objectives of this research are also made, so also the researcher has tried to state that his hypothesis is correct

1.9 REVIEW OF LITERATURE

Following is a tentative literature review depending on further findings in the topic.

1. Books

- Durga Das Basu, “Shorter Constitution of India”, Lexis Nexis, Haryana.

The author insights book published by Lexis Nexis, offers valuable insights for our research on media freedom. Basu delves into the concept of 'free expression' enshrined in the Indian Constitution, highlighting how 'freedom of the press' stems from this fundamental right. He further analyzes the limitations placed on press freedom and explores situations where the media's role can be impeded by the judicial system. These discussions within Basu's book directly connect to the research topic and can be instrumental in a nuanced understanding of media freedom in India.

- 'Cases and Materials on Media Law' by D. S. Chopra and Ram Jethmalani, published by Thomas Reuters.

The author provides a valuable resource for research on media law in India. The authors analyze relevant legislation and court decisions impacting the media. They explore various cases that raise questions about balancing press freedom with reasonable restrictions. Additionally, the book examines defamation and contempt of court laws, which can act as limitations on journalistic freedom. Notably, the authors may express critical views on media sensationalism surrounding certain trials. The researcher took several notes, which aided the researcher in contributing to the study.

- Dr. S.R. Myneni Media Law (Asia Law House 2014)

The book's author has offered a historical facts about media. Furthermore, it addresses constitutional issues as well as numerous media laws pertaining to both print and digital media. The researcher has identified certain critical elements that may be used to the investigation. In the fourth chapter, the book discusses electronic broadcasting mediums such as radio and television. The principles of digital media, the influence of television on individuals, and so on are addressed here. Government policy, as well as the freedom to broadcast, is also discussed.

- Madhavi Gorakh Diwan Wrote The Book Facets Of Media Law.

Offers a deep dive into the multifaceted legal landscape surrounding media in India. This extensive work, spanning 638 pages across 17 chapters, meticulously examines various aspects of media regulation. Notably, the opening chapter delves into the cornerstone of media freedom the right to free speech and expression enshrined in Article 19(1)(a) of the Indian Constitution. It explores various facets of this right, including the right to circulate ideas, access information, report on legislative processes, and publish judicial proceedings. There is a wide range of judicial activism, and the court has frequently defended press and media freedom when the government attempted to unfairly restrict it. However, the restriction are also discussed in the same chapter. The author handles delicate issues such as morality, obscenity, and censorship quite effectively in the second chapter. The author does not like the stringent moral standards imposed by

legislation or traditional principles. She also claims that attempts to prevent a publication due to obscenity or immorality have a negative impact. It is impossible to adhere to conventional moral and ethical parameters in today's technological age. The author has also directed the judiciary to interpret the statutes liberally in order to broaden the meaning of the phrases indecency and immorality. Further the third chapter and fourth chapter of the book deals with the criticisms on the judiciary and defamation.

2. Articles

- Purna Priyanshu, “Media Trial: Freedom of Speech v. Fair Trial”, 3 IJLLJS 2842015.

The article explores the media's impact on public opinion and its potential misuse of free speech. It delves into the critical issue of media trials, contrasting them with the principles of fair trials. The author analyzes the impact of media trials on the accused, the potential influence on judges, and the justifications media outlets may offer for such practices. Additionally, the article provides a brief overview of the proposals made by the Seventeenth Law Commission to address these concerns.

Drawing upon this article's insights, the research will delve deeper into the phenomenon of media trials and critically examine the Law Commission's suggestions. This in-depth analysis will significantly contribute to your overall research effort.

- Kauser Hussain and Srishti Singh, “Trial by Media: A Threat to the Administration of Justice”, 3 SAJMS 195 2016.

The article begins by outlining the significance of the free press along with the way the media functions as the "fourth pillar" of society. The writers also emphasize the importance of the media in an atmosphere of democracy. The writers later seek to analyze the influence of trial by media on court procedures, making use of significant examples to do so. The scholar will consider this topic as well as try to argue the need of applying acceptable limitations when the situation calls for it.

- International Journal of Law Management and Humanities, Volume 4, Issue 2, Page 267 – 272 Trial By Media: An Overview written by Nikitha Suresh and Lucy Sara George in 2021

The media, encompassing social, print, and electronic platforms, has become an indispensable part of daily life. However, a critical review of Supreme Court judgments in India reveals a serious concern: media trials. These trials, often sensationalized and biased, pose a significant threat to the fair administration of justice.

A delicate balance is required. While the state should avoid undue censorship or criminalizing media activity, the media must also refrain from unjustified infringements upon the legal process. Media trials can prejudice public opinion and undermine the entire judicial process, from investigation and trial to sentencing.

In today's world of "click bait journalism" that caters to those with short attention spans, a clear line must be drawn. Factual reporting is necessary, but declaring someone guilty or innocent without due process is media overreach. The research will Deep insights into this vital problem.

- Indian Journal Of Law And Justice, Vol. 10 No. 2, September 2019, P 91 – 98 Right To Privacy As A Fundamental Right And Media Trials In India Written By Pandey, Sonakshi And Srivastava, Snigdha

This research investigates the right to privacy as an inherent facet of the fundamental right to life and personal liberty enshrined in Article 21 of the Indian Constitution. The study will explore how media trials conducted by various media outlets can potentially infringe upon this right. The researcher will employ a comprehensive approach, examining different media forms and platforms to gain a deeper understanding of the issue.

3. Report

- 200th Law commission report

The researcher did a thorough review of the Law Commission report in order to understand its suggestions and insights into media trials and the larger role of the media. This study sought to delve deeper into the subtleties of these themes, investigating how the media influences court proceedings and public perception.

CHAPTER: 2

CONCEPT AND ORIGIN OF MEDIA

“The media wields immense power in shaping public opinion. It can influence perceptions of innocence and guilt, but its ability to control minds is not absolute. Critical thinking and access to diverse information sources are crucial for audiences.”⁴

-Malcolm X

This chapter focuses on introduction to the background of media and brief outline to various aspect of media law both nationally and internationally along with pre and post era of independence. It also describes the meaning and historical development over the years in the area of media and its growing influence in brief.

The free flow of information is a cornerstone of a healthy society. Open communication, often referred to as freedom of the press, serves as the bedrock of a functioning democracy. By providing comprehensive and critical information on a nation's economic, political, social, and cultural landscape, the media empowers citizens to participate meaningfully in public discourse. This transparency is essential for holding governments accountable and ensuring a well-informed citizenry.

The media, as a mass communication channel, has the power to reach and influence vast audiences. In today's world, it plays a critical role in bringing to light issues that might otherwise remain hidden. By raising awareness and shaping public opinion, the media can be a powerful force for positive change. This necessitates a free and independent media landscape, as recognized by the Supreme Court's consistent upholding of press freedom.

However, concerns have arisen regarding media overreach. In some instances, media outlets have been criticized for venturing beyond their legitimate role and potentially interfering with the judicial process.

⁴“The Autobiography of Malcolm X,” *available at*: <https://www.penguin.co.uk/books/57282/the-autobiography-of-malcolm-x-by-malcolm-x-with-the-assistance-of-alex-haley-introduction-by-paul-gilroy/9780141185439> (last visited April 2 Nov, 2020).

Functioning of media as a public court raises the question on the rights of accused to get the chance of fair trial. Although it cannot be denied that since independence free press has played a vital role in departing the awareness amongst the society on one hand and curbing the actions of the government on the other hand. But does that gives the media the authority to intervene within the justice system?

Freedom of the press, also known as freedom of publication, is the right to circulate information through print or electronic media without prior government censorship⁵. It extends to the freedom of individuals to express themselves freely through various media platforms. However, legal scholars (jurists) recognize that no right is absolute. Just as other fundamental rights have limitations, freedom of the press also operates within certain boundaries. These limitations, established through legal principles and precedents, aim to ensure a balance between press freedom and other important societal interests. So it can be said that liberty of press should be rational and within the ambit of reasonable restriction. The media further should realize it demarcating line of freedom so that the golden rule of In India, the legal system follows the principle of "presumed innocence." This means that according to criminal procedure laws, an accused person is considered innocent until proven guilty beyond a reasonable doubt in a court of law. The burden of proof lies entirely with the prosecution to establish guilt.

It is evident that the effect and growth of media in recent years has resulted in revolutionary changes in the style of reporting and the responsibilities that come with it. While it has helped society by raising awareness, the media has also been chastised for its meddling into judicial matters. Unfortunately, the media remains mostly unregulated even now. To overcome this issue, an in-depth analysis of important aspects in functional media is required.

2.2 HISTORICAL BACKGROUND OF THE MEDIA LAW

The urge to express one is an innate human right, transcending any imposed limitations. This fundamental right forms the bedrock of press freedom, a concept with historical roots that predate formal legal recognition. Long before legal codes enshrined this right, the impulse to express thoughts and ideas found ways to manifest, as evidenced by ancient cave paintings,

⁵ Oxford dictionary

inscriptions on monuments, and artistic creations of emperors. These remnants serve as powerful testaments to the enduring human desire for self-expression, a desire that ultimately led to the formalization of press freedom. The history of media in Europe finds parallels in the Acta Diurna of the Roman Empire, which functioned similarly to modern newspapers. In India, one can trace its roots back to the Rock Edicts of Emperor Ashoka, inscribed on pillars and caves throughout his vast domain. These edicts, containing the Emperor's decrees and guidelines, bear a resemblance to the news content of today's media. Notably, there is no record of legal restrictions on communication during Ashoka's reign, highlighting a potential difference in the historical approaches to media control between Europe and India. With the innovation of paper, the press got its new face and all the records maintained by the states got a concrete shape in the form of documents, files, records etc. later these took the form newsletters, which is also consider as the first form of newspaper during the period of Mughal and Hindu regimes. This practice continued till the invasion of British emperor.

2.3 PRE AND POST ERA OF INDEPENDENCE

2.3.1 Pre-Independence Era

The arrival of the British in India undoubtedly played a role in the development of the press. Following the Industrial Revolution, the establishment of a printing system in India became more sophisticated. However, it's important to acknowledge the existence of pre-colonial Indian media forms, such as handwritten newsletters and public proclamations. The first printing press established in Bombay in 1674, by the British East India Company, primarily served their own commercial and political interests.⁶Madras witnessed the establishment of its second printing press in 1772. Just four years later, in 1776, William Bolts, a former employee of the East India Company, expressed his intention to launch a newspaper. Hoping to generate public interest, he boldly posted a notice on the gates of the Council Hall, announcing his possession of "manuscripts" containing information of critical importance to the public. However, Bolts's endeavor faced immediate censorship. Before his newspaper could even see the light of day, he was pressured by the East India Company to leave Calcutta and return to Europe. This incident highlights the Company's attempts to control the flow of information in colonial India.

⁶“A History Of The Press In India : Natarajan,s : Free Download, Borrow, and Streaming : Internet Archive,”*available at*: <https://archive.org/details/dli.ernet.148434> (last visited April 10, 2020).

Following the establishment of the first printing press in Calcutta in 1779, Irishman James Augustus Hickey launched the city's first newspaper in 1780.⁷ James Augustus Hickey, aiming to establish the independence of his publication, titled it "A Weekly Political and Commercial Paper open to All Parties but Influenced by none." This title served as a declaration of the newspaper's intention to provide a platform for diverse viewpoints without succumbing to any particular political influence. Lady Warren Hastings' policies were questioned in Hickey's weekly. Warren Hastings was India's Governor General at the time. He promptly exercised his authority and issued an order for the confiscation of the printing types. As a result, the publication was closed in March 1782. When the administrative authorities had slashed the neck of press freedom, the life of this periodical was cut short. Since then, the conflict between the free press and its repression by the administration has been a source of dispute. Censorship was imposed for the first time in 1795.⁸ The British government in India employed various tactics to restrict press freedom. These methods included pre-publication censorship, suspension of postal privileges, and deportation of editors and publishers.

One notable instance of pre-censorship involved the 'Madras Gazette,' which was required to submit government instructions for approval before publication. This practice highlights the lengths to which the British authorities went to control the flow of information.

The first censorship regulations were introduced by the Marquess of Wellesley in 1799. These regulations mandated that publishers, printers, and editors be identified in their publications and that all content be submitted for pre-approval by the government. However, these regulations were abolished by Warren Hastings.

Despite the restrictions, the early 19th century witnessed the emergence of a vibrant Indian press. In 1818, the Bengali newspaper 'Samachar Darpan' was launched, followed by the 'Bombay Samachar' in 1822, which continues to be published today, making it one of the oldest continuously running newspapers in Asia .

⁷ CA Rajkumar S. Adukia, Media Laws of India (Feb. 22, 2016), http://www.caaa.in/image/media_laws.pdf. with reference to M.P. Singh in "outlines of India Legal history" by universal law publication 2014. (Last visited 23 April, 2021)

⁸*Id.*

The following were the primary topics covered by Indian newspapers at the time:

- I. Get the Indians together and establish groups
- II. To instill in Indians a sense of nationality.
- III. To motivate people to join the liberation movement.
- IV. To draw attention to and condemn the British governments discriminatory practices.
- V. Demanding civil rights for Indians.

The popular newspaper Indian Mirror was in keeping with the following aims. Girish Chandra Gosh founded the Hindi Patriot journal, which advocated for the appointment of Indians to important positions. The owners of the weekly Newspaper Bazaar Patrika were prosecuted and convicted of sedition because their publication was very critical of the government's policies. To stifle the independence movement, British rulers established a variety of legislative limitations on the press. According to J. Natrajan, "the first two decades of the nineteenth century saw Lord Wellesley and Warren Hastings impose a strict control on the press."⁹

The newspaper laws not only limited circulations, but they also maintained a close eye on the content of the publications, for example, the Adams Regulations of 1818. Newspapers were likewise restricted under Royal authority in India.

The landscape of Indian media shifted dramatically with the establishment of the Bengal Gazette, the first Indian-owned newspaper founded by Gangadhar Bhattacharya. This pioneering publication inspired a surge in Indian press activity, fostering the growth of vernacular language publications. Urdu and Persian newspapers gained traction in North-West India, while Marathi, Gujarati, and other regional languages found a voice in their respective regions. By 1850, newspapers in Hindi, Malayalam, Kannada, Tamil, Oriya, Assamese, and Punjabi had emerged, reflecting the growing diversity of the Indian press.

However, this burgeoning press freedom was significantly curtailed by the 1857 revolt. The British, perceiving a role for the press in fueling the rebellion, enacted harsh measures to restrict its influence.

The newspaper rules are not just to control circulation but also kept a close eye on the subject matter of newspapers. For example, Lord Lytton knew that the press was the foundation of the

⁹*Supra.* note3

freedom movement and was concerned about the increased impact of writing in the press, particularly the language press. As a result, he enacted severe legislation that effectively eliminated the right to a free press. On March 1, 1878, he passed the Vernacular Press Act with this goal in mind.

This Legislation was harsh on the press. Under this regulation, any District Magistrate or Police Commissioner was authorized to take any of the following actions:

- I. To compel a newspaper's printer and publisher to agree not to publish particular types of information,
- II. To seek security, and
- III. To seize any written content considered undesirable

Due of the broad powers provided to the District Magistrate and police commissioners, the Vernacular Press Act of 1878 was India's heaviest blow to press freedom. This is why the Vernacular Press Act was dubbed the "Gagging Act," because it effectively silenced the free press's voice.

British efforts to control the press intensified in the latter half of the 19th century through various legislative measures. However, this period also witnessed the emergence of a vibrant nationalist press that challenged British authority.

A key figure in this movement was Bal Gangadhar Tilak, who launched the influential Marathi weekly 'Kesari' in 1881. This publication, along with another English-language weekly 'Maratha' co-founded by Tilak, became prominent voices for Swaraj (self-rule). Their outspoken criticism of the British administration, including articles by Tilak railing against the Diwan of Kolhapur, led to legal repercussions for both Tilak and Agarkar.

'Kesari' played a pivotal role in disseminating the message of the Swaraj movement. It actively supported the anti-partition movement in Bengal, framing it as a national issue. Tilak's defiance extended to challenging the Sedition Ordinance of 1908, ultimately resulting in his six-year exile from India. Notably, 'Kesari' expanded its reach with Hindi editions launched in Nagpur and Banaras.

This surge in nationalist journalism coincided with a rise in popular resistance to British rule. In response, the British government sought to tighten its grip on free speech and expression. Lord Morley Minto's Newspapers (Incitement to Offenses) Act of 1908 empowered local authorities to penalize publishers deemed to be inciting rebellion.

As evident from this historical context, British policies exerted significant control over press freedom. Their primary goal was to consolidate their power and suppress the growing independence movement.¹⁰

2.3.2 Post-Independence Era

Following India's independence in 1947, the newly formed government under the Indian National Congress took steps to establish a legal framework for a free press. The 'Press Law Enquiry Committee' was formed in 1947 to examine existing media laws and propose recommendations. This period witnessed the abolition of restrictive colonial legislations like the 'Indian Press (Emergency Powers) Act, 1931' and the 'Foreign Relations Act, 1932.' Additionally, section 124A of the Indian Penal Code (IPC), which penalized seditious speech, was amended. Revisions were also made to the 'Telegraph Act, 1885' and the 'Post Office Act, 1898' to reflect the new political reality.

However, the government's commitment to press freedom was not absolute. The 'Press (Objectionable Matters) Act' of 1951, intended to impose some limitations on the press, was enacted. This act, however, proved short-lived and was repealed in 1957. This episode highlights the ongoing tension between press freedom and potential restrictions.

A significant development in 1952 was the formation of the 'Press Commission of India,' which ultimately led to the establishment of the 'Press Council of India' (PCI). The PCI remains a crucial institution, safeguarding journalistic ethics and promoting a free and responsible press.¹¹

¹⁰*Supra.* note 4

¹¹ Article on "History of Media Law in India" "Published by Shruti Sharma on 2021. Available at <https://bnwjourn.com/2021/11/27/history-of-media-law-in-india/>. (Last visited 23 Mar, 2022)

In 1949, the Indian and Eastern Newspaper Society (IE&NS) played a pivotal role in establishing the Press Trust of India (PTI) as an independent news agency. This initiative aimed to strengthen the media landscape.

A distinct approach to press regulation emerged with the enactment of the 'Newspaper (Price and Page) Act, 1956.' This act sought to prevent unfair competition within the press by regulating pricing. However, the act's underlying assumption was that newspapers could not expand circulation without raising prices. This principle was challenged in the landmark case of *Sakal Papers versus Union of India*¹². The Supreme Court's verdict deemed the act an infringement on press freedom. Further, the court's reasoning centered on the principle that the government can only impose indirect restrictions on press freedom, as outlined in Article 19(2) of the Indian Constitution.¹³

This press freedom, however, was temporary. The National Emergency was declared in June 1975, resulting in the implementation of censorship rules in independent India. The 'Prevention of Publication of Objectionable Matter Act, 1976,' the 'Parliamentary Proceedings (Protection of Publication) Repeal Act, 1976,' and the 'Press Council (Repeal) Act, 1976' became law to prevent media access to justice through the legal procedure against their wrongful detentions. Almost every news item was monitored by the Ministry of Information and Broadcasting, and journalists were penalised appropriately. The national emergency was dissolved in 1977, and there was limited press censorship in India.¹⁴

2.4 TYPES OF MEDIA

The modern day media comes in various different formats which is used according to the preferences of people. Majorly it can be classified into two types the first is print media which includes the newspapers, magazines, books etc. and the second is electronic media which includes smart phones, social media platforms, apps, e books and so on some of the modes of media along with their roles of influencing people are discussed below:-

¹² AIR 1962 SC 305

¹³*Supra* note 9

¹⁴*Id.*

2.4.1 Newspapers

In India, The Times of India holds the distinction of being the largest circulated English-language newspaper, reaching over 2.14 million daily readers. Newspapers, like The Times of India, remain a significant source of information for a vast segment of the Indian population. It is available in National or local, daily or weekly newspaper with the inclusion of national and regional language. They include news related to sports, fashion, politics, day to day events and happening. It provides detailed coverage of news also. It plays a platform for many local and national advertisements. Printing was introduced in India in 1556. The first newspaper in our nation was founded by a British man. James Augustus Hickey established the "Bengal Gazette" on January 29, 1780. "Calcutta Advertiser" is another name for it. It was called "Hickey's Gazette" by readers. The paper's inaugural edition was two pages long, but it was eventually expanded to four pages. It was 35 cm by 24 cm in dimension.

2.4.1.1 Advantages of Newspaper

1. Broad foresighting - the newspapers offers a wide market for the advertisers. The newspapers are read by millions of pursuers including high salaried personal and educationist. The broad infiltration of papers makes them a medium and provides brilliant opportunities for advertisers to reach to population.
2. Flexibility – Newspapers offer advertisers a high degree of flexibility. Advertisers can choose from a variety of placements within the publication, such as dedicated sections, specific columns, or customized display options. Newspapers often provide templates and design services to assist with ad creation, further facilitating the communication of messages to a broad audience. Additionally, newspapers typically offer short lead times for ad placement, with deadlines as close as 24 hours before publication. This allows for time-sensitive advertising campaigns to reach their target audience quickly and effectively.
3. Reliability – The newspaper readers are widely involved with the content of newspaper be it daily, weekly, or Sunday brunch. Most of the people reading newspaper rely intensely on newspaper for upcoming events, jobs, entertainments, information of market. They trust the information provided in newspapers.

4. Low cost - While television and magazines reach a broad audience, newspaper advertising offers a targeted approach at a lower cost due to its production and printing efficiencies.
5. Easy availability - Newspaper can contact individuals from every one of the segments of the general public -rich or poor, youthful or old, and individuals from all standings, statement of faith, religion or sex.

2.4.2 Magazines

Magazines have evolved rapidly to cater to a wide range of demographics, addressing educational, informational, and entertainment needs. This versatility positions them as one of the most targeted advertising mediums. Magazines cater to a broad spectrum of consumer interests, encompassing socioeconomic concerns, lifestyles, hobbies, and professions. This specialization allows them to target specific audiences across various demographics, including both individual consumers and businesses. This vast array of niche publications makes magazines an attractive medium for a multitude of advertisers seeking to reach their ideal customer base.

2.4.2.1 Advantages of Magazines

Magazines offer a unique combination of features that make them highly attractive advertising platforms. Their selectivity allows for targeting specific demographics with tailored messages. Unlike fleeting television commercials, magazines boast excellent reproduction quality, allowing for visually impactful and detailed advertisements. Advertisers also enjoy creative flexibility in magazine formats, incorporating illustrations, photographs, and engaging text layouts. Magazines offer a degree of permanence compared to other media, remaining accessible to readers for extended periods. Additionally, some magazines carry a certain prestige associated with their brand or content, potentially elevating the image of products advertised within their pages. Perhaps most importantly, magazine readers often demonstrate high receptivity and involvement with the content, actively engaging with advertisements that resonate with their interests. Furthermore, some magazines provide additional services to advertisers, such as market research or data analysis, further enhancing their advertising value.

1. Selectivity – one of the major advantage of magazines are that they focus on selective or targeted group of readers. They cover different types of groups, for example women’s

era, ghrashoba etc. are read explicitly by women's at large. They focus on geographic and demographic aspect of readers.

2. **Reproduction quality** - One of the most esteemed properties of magazine promoting is the multiplication nature of the advertisements. Magazines are by and large imprinted on great paper stock and use printing processes that give phenomenal propagation clearly or shading. Since magazines are a visual medium where the representations are regularly a prevailing piece of a promotion, this is a vital property.
3. **Creativity** – Another feature of magazines offers consumers with creativity in terms type, feature, size, and advertisement. They insert offers, information, puzzle which gives a push to their creative appeal and create an increment consideration and readership among its users.
4. **Long life span** - Magazines boast another undeniable advantage: longevity. Unlike television and radio, which deliver fleeting messages, or newspapers, often discarded soon after reading, magazines offer extended exposure for advertisements. Readers revisit magazines multiple times over several days, potentially weeks. Furthermore, magazines are frequently kept as references, extending their lifespan within a household compared to other media. This enduring presence allows readers to refer back to advertisements on multiple occasions, potentially strengthening brand recall and message retention.
5. **Editorial Prestige** - One more certain element of magazine publicizing is its article glory. The item or administration with a great picture might acquire from publicizing in lofty distributions.
6. **Reader receptivity and inclusion** - Compared to some media, magazines offer a more receptive environment for advertising. Magazine content inherently caters to specific user interests, and well-crafted advertisements can provide complementary information that aids readers in making informed purchase decisions. This synergy between editorial content and advertising enhances the overall user experience.

Furthermore, magazine advertising benefits from a concept known as "editorial prestige." Products or services advertised in well-respected publications can leverage the magazine's positive reputation, potentially boosting their own perceived value and brand image. By

associating with a trusted publication, advertisers can subtly communicate a sense of quality and credibility to their audience

2.4.3 Digital Media

Television and radio share core characteristics as broadcast media. Unlike print media like newspapers and magazines, which are space-bound, television and radio operate on a time-based model. Both media sell their airtime in segments ranging from seconds to extended programs. They also share a similar structure of commercial classifications, including sponsorships, spot ads, and local advertising.

However, television possesses a distinct advantage: the power of visual storytelling. Its ability to combine moving images, sound, and color empowers advertisers to craft the most creative and engaging messages of any medium. This visual richness has propelled television to become one of the most popular media platforms. The proliferation of television channels has been phenomenal, with satellite technology enabling access to television for a vast majority of the population (around 80% nationally), solidifying its status as a true mass medium .

2.4.3.1 Advantages of Digital Media

TV enjoys various upper hands over different media, including innovation and effect, inclusion and cost adequacy, bondage and consideration, selectivity and adaptability, etc. A portion of the significant ones are recorded as under"

- Creativity and impact – benefit of TV gives an opportunity to its presenters. The association of sight and sound offers enormous innovative adaptability and makes conceivable sensational, similar portrayals of items. Television ads are additionally used to convey a mind-set or picture for a brand as well as to foster enthusiastic or engaging requests that assist with causing a dull item to seem intriguing. The innovative programs bring up the social messages which impact the mind of masses and influence to bring changes in the society. Many informative programs also help the views to enhance their knowledge in the field of their interests and also in other field.

- Coverage and cost effectiveness - Television boasts a remarkable ability to reach vast audiences. Its widespread appeal transcends demographics, attracting viewers across age groups, genders, income levels, and educational backgrounds. This broad reach, coupled with the fact that most people watch television regularly, makes it a powerful tool for information dissemination. Additionally, television advertising can be considered cost-effective when compared to the sheer number of viewers it can potentially reach in a single broadcast.
- Flexibility – the television provides its views with the flexibility of time. They are updated with the time of their interested programs which makes it convenient for the users to get entertained according to their availability of time.
- Selectivity- since all the populace watch TV to some extent so it can be said it's not selective and reach to people of all group, caste, sex, age. This makes TV more popular than other media mediums.
- Use of appeals - The effect of enthusiastic requests can be featured distinctly through TV in the most amazing way.
- Least exertion - In TV plugs, utilization of both sound as well as visual guides is made. So it calls for least exertion with respect to the interest group to convey the idea. As against this on paper media, individuals need to peruse and get the message, calling for huge exertion with respect to the ideal interest group.

2.4.4 Radio

Television has traditionally held the title of the most powerful advertising medium, captivating audiences with its dynamism and reach. Radio, on the other hand, has carved a niche for itself with highly specialized programming catering to specific demographics.

However, with the arrival of television in India during the 1980s, radio's overall appeal experienced a decline. This trend reversed course in the 2000s with the introduction of diverse FM channels. This diversification revitalized radio, making it a popular choice, particularly among younger demographics, due to the engaging content offered by these new stations. Furthermore, some FM channels cater to specific audiences, such as women, demonstrating radio's continued ability to target niche markets effectively.

2.4.4.1 Advantages of Radio

Publicizing Radio enjoys numerous upper hands over different media, including cost and effectiveness, selectivity, adaptability, mental symbolism, incorporated showcasing open doors and so forth. A portion of the significant ones are recorded as under:

- **Radio Cuts through-** Radio remains a prominent medium, potentially reaching listeners for extended periods throughout the day, thus increasing the likelihood of a message reaching its target audience. Individuals do a wide scope of exercises while at the same time paying attention to the radio. Furthermore, media studies generally show that radio audience members are undeniably less inclined to "block out" when advertisements come on the radio, contrasted with TV.
- **Selectivity -** Radio advertising offers a significant advantage: the ability to tailor messages to reach specific audiences. Advertisers can leverage demographics, network affiliations, geographic locations, and even special events or program types to target their ideal customers. Radio broadcasts are meticulously crafted with specific market segments in mind. Following a strategic selection process, your product or service can be advertised directly to your defined target market, maximizing the effectiveness of your advertising campaign.
- **Mobility -** • Radio is quite likely the most adaptable of all media channels. Because of the mobility of radio, advertisers may reach out to individuals quickly, providing them an advantage over competitors. The presence of radio enables paying attention to occur in areas where other media may encounter difficulties. For example, your target consumers do not read a newspaper or magazine while driving, nor do they sit in front of the television while working in the nursery. Radio now even addresses the peculiarities of advanced media via downloadable radio broadcast apps.
- **Imaginative-** One often overlooked advantage of radio is its ability to spark listeners' imaginations. Unlike television, which presents a visual experience, radio relies on sound to create vivid mental imagery. This allows listeners to actively engage with the message, filling in the visual details themselves.

Radio can also be a powerful tool to reinforce television advertising through a technique known as 'picture moving.' This strategy involves embedding audio elements from a television commercial within a radio spot. The goal is to trigger an association in the listener's mind, linking the radio message with the corresponding television imagery. This 'picture moving' approach fosters synergy between radio and television advertising, creating a multimedia advertising experience.

- Integrated marketing opportunities - Radio offers a unique strength for marketers: its potential for integrated marketing campaigns. Radio stations often hold a prominent place within their communities, fostering a sense of connection and trust with their listeners. This local influence extends to the station's DJs and program hosts, who can evolve into popular figures within the community. Marketers can leverage this dynamic by collaborating with radio stations and personalities to create integrated marketing initiatives. These initiatives can go beyond traditional advertising spots, potentially encompassing on-air endorsements, promotional contests, or even live event sponsorships.
- Broadest geographical coverage conceivable - Radio can and does reach practically everywhere in India. Even in locations where there is no television access and individuals can't read or write, they do have radio or a transistor via which they communicate with the world at large. As a result, radio is really mass media.
- Mass appeal - Radio is a universally accessible medium, reaching individuals across socioeconomic backgrounds, educational levels, religions, ethnicities, genders, and ages.
- Sound component - Radio advertising operates solely through the power of the spoken word. Listeners can readily absorb information and advertising messages while simultaneously engaging in other activities, such as driving or performing household chores. This multitasking capability is a distinct advantage of radio.

Furthermore, the human voice adds a unique dimension to radio advertising. Its warmth and power can be harnessed to deliver messages in a compelling and memorable way. Radio commercials, therefore, require minimal effort from the audience to grasp the key points and intended message.

2.4.5 Social Media

Nowadays social media has huge influence and impact not only on young blood but on every age group. Everyone is socially linked, whether it's through Instagram or Facebook. In other words, a single figure tip connects the entire universe. However, young people are more likely to utilize social media.

2.4.5.1 Advantages of Social Media

Following are some benefits which social media provides:

1. Long-term interaction methods can serve as a powerful toolkit for youth empowerment. These methods allow young people to delve deeper into issues and causes that hold their interest and directly impact them. Face-to-face communication strategies can be particularly effective in mobilizing youth. These strategies can be used to organize activities, events, or gatherings that raise awareness about important issues and emotions. Examples include organizing musical performances, pledge drives, and educational campaigns on various social or environmental concerns.
2. Long-term interpersonal communication methods offer a valuable toolset for fostering communication skills across local, public, and even global contexts. These methods provide participants with opportunities to develop public speaking techniques, including effective self-introductions. Furthermore, they cultivate essential life skills such as building and maintaining friendships, and establishing oneself as a trusted member within a group.

Informal communication methods can provide young people with valuable opportunities to learn effective collaboration within local settings, navigate public social spaces with confidence, and develop appropriate social behaviors as part of a peer group. The core principle of interpersonal communication methods lies in dynamic interaction. Participants engage in exercises and conversations in real-time, allowing them to exchange, modify, and co-create content. This fosters innovation and encourages discussions about accountability and responsible information management.

3. Young people who leverage interpersonal communication platforms to share creative content, such as music, film, photography, or writing, should be empowered with knowledge regarding the permissions granted to the hosting platform. This understanding will equip them to make informed decisions about the type and nature of content they choose to publish.
4. Users should also explore the potential licensing options available within these platforms, such as Creative Commons licenses. Understanding these options empowers them to control how others can share their work.
5. Interpersonal communication platforms are designed to foster collaboration, critical thinking, and teamwork among users. These platforms often require strong listening skills and the ability to compromise. Young people using these platforms may initially need to seek guidance and advice from others. Observing how others navigate complex online environments, particularly in sophisticated games or virtual spaces, can be a valuable learning experience. As users build trust and experience within these platforms, they themselves can become a source of support for others.

2.5 LAW COMMISSION REPORT

The 17th Law Commission of India, in its 200th report titled "Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)," addressed critical issues concerning law enforcement in India. The Commission took the initiative (*suo motu*) to examine the phenomenon of media trial due to the extensive coverage of criminal investigations and suspect information by print and electronic media. The rise of television has significantly altered the information dissemination landscape, and much of this coverage can potentially prejudice the accused, witnesses, judges, and ultimately, the entire justice system.

The Indian legal system upholds the principle of due process, where an accused or suspect is presumed innocent until proven guilty by a court of law. However, media trials can jeopardize this principle by portraying individuals as guilty before a verdict is reached.

"Article 19(1)(a) of the Indian Constitution guarantees the fundamental right to freedom of speech and expression. However, this right is not absolute and can be subject to "reasonable restrictions" on various grounds, including "contempt of court" as outlined in Article 19(2).

Interestingly, Article 19(2) does not explicitly mention the "organization of justice." However, the Contempt of Courts Act, 1971, specifically addresses interference with the "administration of justice." Section 2 of the Act defines "criminal contempt," while Section 3 defines "civil contempt." Both sections highlight publications that have the potential to influence or obstruct the fair administration of justice as falling under the purview of contempt.

Therefore, the 1971 Act establishes a framework for balancing the right to free speech and expression with the need to uphold the integrity of the judicial system. This balance is achieved by imposing "reasonable restrictions" on free speech in cases where publications could potentially prejudice court proceedings."¹⁵

A careful examination of Section 3(2) of the Contempt of Courts Act, 1971, alongside its accompanying Explanation, reveals that prejudicial publications attempting to influence the judicial process in a criminal case are granted a degree of protection. This protection applies when, at the time of publication, neither a chargesheet nor a challan (formal complaint document) has been filed, nor have any summons or warrants been issued. Only publications made after the commencement of criminal proceedings can be considered contemptuous under the Act.

However, the key question remains: should the current legal framework continue as is, aligning with the Indian Constitution? Or, should there be stricter regulations on publications concerning accused or suspected individuals, potentially starting from the day of their arrest.

The Law Commission Report highlights a concern raised by both the Supreme Court and the House of Lords: the potential for negative media portrayals of accused or suspected individuals to subconsciously influence judges. This influence could manifest during decisions related to bail applications or throughout the trial process itself.

¹⁵ Contempt Of Court Act 1971 (Act 70 of 1971)

The report further clarifies the legal landscape surrounding contempt of court. Prior to the Contempt of Courts Act of 1971, the Acts of 1926 and 1952 lacked clear definitions for "civil" and "criminal" contempt. Consequently, "common law" principles guided the handling of "prejudicial publications" made before an individual's arrest for contempt. Confusingly, some courts even considered such publications to be "criminal contempt" if issued after the filing of a First Information Report (FIR).

In *Surendra Mohanty v. State of Orissa*,¹⁶ The Supreme Court of India has ruled that the filing of a First Information Report (FIR) in a criminal case does not automatically mark the commencement of the case.¹⁷ According to this decision, adverse publications are immune from the statute of contempt if they are made just after FIR is filed.

In *A. K. Gopalan v. Noordeen*¹⁸, The Supreme Court has distinguished between pre-arrest and post-arrest publications. Publications deemed "prejudicial" and made after an individual's arrest can potentially be considered contemptuous.

The Law Commission disagreed with the Joint Committee's arguments for removing the reference to "imminent" legal proceedings. The Commission argued that the Committee had overlooked the landmark Supreme Court decision in the *A.K. Gopalan* case. This case established a clear legal principle: the date of arrest signifies the commencement of "pending criminal proceedings." The Supreme Court's judgment carefully balanced the rights of the accused and the defendant with the right of the press to publish information.

In the *A.K. Gopalan* case, the Court acquitted *A.K. Gopalan*, who had issued a statement after an FIR was filed but before his arrest. However, the editor of the newspaper publishing the statement and other parties were found guilty of contempt. This outcome reinforces the principle that prejudicial publications made after an arrest can be considered contemptuous.

In *Maneka Gandhi v. Union of India*¹⁹, The Supreme Court's interpretation of Article 21 of the Indian Constitution, established in subsequent rulings, emphasizes that the "procedure

¹⁶ CrI. App. 107/56 dt. 23.1.1961

¹⁷ 200th Law Commission of India Report, *Trial by Media: Free Speech v. Fair Trial under Criminal Procedure* (amendments to the Contempt of Court Act, 1971), 46 (2006), <http://lawcommissionofindia.nic.in/reports/rep200.pdf> (last visited on 19 Feb, 2022).

¹⁸ 1970 SCC (2) 734

established by law" must be just, fair, and reasonable. This interpretation emerged after the Joint Committee submitted its report in 1970 and the enactment of the Contempt of Courts Act of 1971.

The Law Commission of India has proposed several amendments to the Contempt of Courts Act, 1971, aiming to strike a balance between freedom of speech and fair trials.

A key recommendation is to define the starting point of a pending criminal proceeding as the date of arrest, not the filing of a charge sheet. This clarifies when publications can be considered contemptuous. The Commission emphasizes that only prejudicial publications, not all types, would be restricted after arrest.

Another proposal involves replacing "pending" with "active" in Section 3 of the Act. Additionally, the Commission suggests provisions allowing High Courts to directly handle subordinate court contempt cases without requiring the Advocate General's consent.

Furthermore, the report recommends courts be empowered to issue "postponement orders" to restrict publication, but only upon demonstrating a "substantial danger of harm to the administration of justice." This is a stricter standard compared to the UK's "potential for harm" approach.

The Commission also identifies specific types of publications that could be considered contemptuous after arrest, including those revealing confessions, past convictions, character details that hinder identification, or attempts to influence witnesses or pre-judge guilt or innocence.

Finally, the Commission advocates for training journalists on the legal aspects of free speech under Article 19(1)(a) and its limitations under Article 19(2). They recommend incorporating these topics into journalism curriculums and establishing specialized degree or diploma courses combining journalism and law. These measures aim to enhance media awareness of legal boundaries while upholding journalistic freedoms.

¹⁹ AIR 1978 SC 597

The Law Commission's proposals seek to refine the Contempt of Courts Act to ensure a fair and balanced legal system that protects both free speech and the right to a fair trial.

2.6 NATIONAL AND INTERNATIONAL ASPECT ON MEDIA LAWS

2.6.1 Comparison between Indian and American Legal Systems

The Universal Declaration of Human Rights (UDHR), adopted in 1948, enshrines the fundamental right to "freedom of opinion and expression." This right encompasses the liberty to express one's views without censorship and to disseminate ideas and information freely through any media platform, regardless of national borders.²⁰

Similarly, the First Amendment to the United States Constitution guarantees that "Congress shall make no law abridging the freedom of speech, or of the press." This principle underscores the critical role of a free press within the American legal system. Press freedom safeguards the ability to share information and articulate diverse viewpoints across various media outlets.

This freedom plays a vital role in a functioning democracy. An informed citizenry is essential for a government to operate effectively. Without access to independent reporting, citizens lack the capacity to monitor governmental actions comprehensively. The press fulfills this crucial role by investigating and reporting on government activities. By exposing potential misconduct or mismanagement, the press empowers citizens to hold their elected officials accountable and participate actively in the democratic process

If we track the American history of freedom of press back to the fourteenth century, we will come all across media history of England, when government and church pioneers consistently suppressed manually produced works that endangered their power. With the invention of the printing machine, the public authority said that printers must obtain permission from an administration or religious official before releasing anything. The control of force was so severe

²⁰“Universal Declaration of Human Rights | OHCHR,” *available at*: <https://www.ohchr.org/en/universal-declaration-of-human-rights> (last visited 2 Mar, 2022).

that by the mid-1600s, anyone discovered possessing a book that criticized the British government may be killed.²¹

In 1639, printing was first introduced to the American colonies at Cambridge, Massachusetts. By 1765, the colonies had produced more than thirty newspapers. The press, on the other hand, was subject to regulations comparable to those found in England. Censorship rules governed what could and could not be published in several colonies. They also had sedition laws in place to penalize those who spoke out against the administration. The Stamp Act, enacted by the British government in 1765, imposed a levy on colony newspapers. The history of press freedom in the United States is marked by two key milestones. In 1735, the Zenger case established the right of the press to criticize public officials and the defense of truth in libel suits. This principle was further solidified by the First Amendment in 1791, which aimed to prevent government censorship of the press.

The First Amendment protects a wide range of journalistic activities. The government cannot:

- Prevent publication, even of potentially sensitive information.
- Force newspapers to publish unwanted content.
- Punish truthful reporting on matters of public concern, even if damaging. (There are rare exceptions.)
- Discriminate against the press through taxes.
- Compel journalists to reveal sources (with some exceptions).
- Restrict access to judicial proceedings.²²

The bedrock of journalistic freedom in the United States lies in two historical cornerstones. The 1735 Zenger case established a precedent for press criticism of government officials. John Peter Zenger, a publisher, successfully defended himself against libel charges for exposing negative stories about government leaders. This case cemented the principle that truth is a valid defence

²¹Freedom of press: comparative analysis of Indian and American legal system. Available at <http://jciil.syncicate.com> 2016. (Last visited 2 Mar, 2021)

²² India Law Journal article on “*Freedom of Speech and Expression India v America - A study*”. By Dheerendra Patanjali (2007) Available at https://www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html. (Last visited 2 Mar, 2021)

against libel suits, granting the press greater latitude in its reporting. Following this landmark case, the First Amendment was ratified in 1791. This crucial amendment aimed to prevent the government from stifling a free press by specifically prohibiting a range of practices that could unduly influence or censor what journalists report.

India and America are two greatest democratic country of the world that recognizes the fundamental right of free press. The United States and India share a commitment to free speech enshrined in their respective constitutions. The First Amendment of the US Constitution prohibits Congress from restricting "the freedom of speech, or of the press." Similarly, Article 19(1)(a) of the Indian Constitution guarantees the right to "freedom of speech and expression."

While both amendments acknowledge the importance of free expression, there might be nuances in their interpretations and applications. A deeper examination of these legal frameworks could reveal interesting comparisons:

- Scope of protection: Do the protections extend beyond speech to other forms of expression like art or protest?
- Reasonable restrictions: Both constitutions allow for "reasonable restrictions" on free speech. How are these restrictions defined and applied in each country?
- Prior restraint: To what extent can the government restrict speech before it occurs?"²³

Further, as already mentioned that in American constitution provisions the word 'freedom of press' is specially mentioned. It further provides no restrictions on the freedom of speech whereas in India the Supreme Court has held that there shall be no special provisions on freedom of press separately. Also the press enjoys no specific privileges (unless conferred by any law) separate from the restrictions imposed on citizens under the arc of freedom of speech.

*Express Newspapers (Pvt) ltd v. UOI*²⁴In this landmark judgment, Justice Bhagwati acknowledged the influence of the First Amendment of the United States Constitution on India's fundamental right to freedom of speech and expression enshrined in Article 19(1)(a). He recognized the value of referring to relevant decisions of the US Supreme Court to gain a deeper understanding of this right's "true nature, scope, and extent." However, Justice Bhagwati also

²³*Ibid.*

²⁴ 1986 AIR 515

cautioned against uncritically adopting American jurisprudence, highlighting the need to consider India's unique social and legal context.”²⁵

In conclusion, while the First Amendment of the US Constitution and Article 19(1)(a) of the Indian Constitution share a commitment to free speech, there are nuanced differences in their application. These variations stem from the concept of "reasonable restrictions" and the prevailing societal norms in each country.

The United States leans towards a more permissive approach, with a higher threshold for restricting speech. India, having transitioned from a more restrictive past, is evolving towards a regulatory model similar to the US. However, India's approach likely considers its unique social context when determining the boundaries of acceptable speech .

2.6.2 International Perspectives On India And China Legal System

China one of the strongest countries of the world and also is known for strictness over the freedom of press and on disruption of its journalists attempting to challenge the dictator rule.

In the midst of unofficial laws, sanctions and severe regulations media scarcely appreciate their essential freedoms. There have been multitudinous cases where columnists and media houses were approached to bring down some article or any piece of information that is criticizing the decision china government in any conceivable manner. Individuals living in China are not permitted to access channels like BBC, The New York Times, Google, Facebook and so on, due to²⁶ the protection walls provided in the name of the ‘great Firewall of China’.²⁷ As the name recommends, the extraordinary firewall of china is utilized for carrying out rigid laws of restriction. It concludes what should be visible to individuals on the web and keeps them from getting to the rest of the world.

²⁵*Id.*

²⁶ News article in The News Indian Express “Reporters without Borders release damning report on Chinese regime's repression against journalism; India ranks 142 out of 180 countries.” Available at <https://www.newindianexpress.com/world/2021/dec/08/reporters-without-borders-release-damning-report-on-chinese-regimes-repression-against-journalism-2393272.html>.(Last Visited on 2 March, 2023)

²⁷ Bill Ide & Joyce Huang, *PressFreedom Continues to Face Setbacks in China*, VOA (2019), <https://www.voanews.com/east-asia-pacific/press-freedom-continues-face-setbacks-china>. (last visited on 2 March, 2023)

According to the report China was ranked 179th out of 180 countries in the rank list of freedom of press by RSF World Press Freedom Index ranks just before North Korea.²⁸ Whereas, India was 161th rank in index. A 2023 press freedom index report paints a concerning picture, revealing that the environment for journalism is considered "bad" in 70% of the countries evaluated, with only 30% experiencing satisfactory conditions.²⁹ According to the report the condition of journalist and media housing were deteriorating and alarming for freedom of press. The report doesn't just highlight the concerning environment for journalists; it also raises alarms about the growing threat of propaganda and fake news. This threat is particularly concerning in light of advancements in artificial intelligence technology³⁰. Programs like Mid journey, which can generate realistic images based on text prompts, illustrate the potential for manipulating public perception. Furthermore, the report identifies China as both the world's biggest jailer of journalists and a major exporter of propaganda content.³¹ The report further emphasizes another worrying trend: the acquisition of media outlets by oligarchs with close ties to political leaders. This phenomenon, exemplified by India's "hybrid" government model, can dangerously restrict the free flow of information.³²

China presents a complex case regarding press freedom. Article 35 of its Constitution guarantees citizens the right to "freedom of speech, the press, assembly, association, procession and demonstration." However, the government's implementation of this right falls short in practice. Various other laws restrict access to government information and curtail citizens' ability to freely express dissenting views. This discrepancy between the constitutional right and its practical limitations raises concerns about the true state of press freedom in China.³³ However, it seems the other way in practical instances. According to the report released by the Committee to Protect

²⁸ In the 2023 edition of the World Press Freedom Index, released annually by the non-profit organization Reporters without Borders. Available at <https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry>. (last visited on 7 March, 2023)

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ "Constitution of the People's Republic of China," available at: https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html (last visited Sept 23, 2021).

Journalists at the end of 2019 revealed that 48 journalists were in prison.³⁴ The term which is utilized in the constitution that is exceptionally abused by authorities and encourages their activity of cross country control and confining journalists is 'upsetting social order'. The said term makes equivocalness and authorities utilize this for defending their explanations behind choking columnists and media houses. Some of the instances that can be trace in recent years is the example in covid 19 pandemic period where the Chinese government restricted the social media news, journalist from publishing the news over pandemic. Further it can be concluded that in India when compared to china the media has more stringent laws and less privileges and freedom.

³⁴“One Country, One Censor: How China undermines media freedom in Hong Kong and Taiwan - IFEX,”*available at*: <https://ifex.org/one-country-one-censor-how-china-undermines-media-freedom-in-hong-kong-and-taiwan/> (last visited Sept 23, 2021).

CHAPTER -3

REGULATORY FRAMEWORK FOR MEDIA

The media keeps an eye on things and reports the news as it happens and is often referred to as the “fourth pillar” of democracy because of the important role it plays in keeping citizens informed. That is, serving as a go-between for the general population and various branches of our government. This body needs to be self-sufficient and immune to interference from more powerful entities like political groups in order to do its job effectively.³⁵

The “Press Council of India” steps in to ensure that press freedom is protected while also ensuring that the quality of India's media remains high.

The Parliament established it on the advice of the First Press Commission led by Justice J.R. Mudholkar on July 4, 1966, and it began hearing cases on November 16, the same year (hence the date of the annual National Press Day celebration) (then a Judge of Apex Court).

The regulatory framework for media refers to the set of laws, policies, and regulations that govern the creation, distribution, and consumption of media content. This framework is designed to ensure that media content is appropriate, accurate, and respectful of the rights of individuals and communities. The specific components of the regulatory framework for media vary from country to country, but may include laws on freedom of speech, media ownership, broadcast licensing, content standards, and consumer protection.³⁶

Retired Justice P. B. Sawant said, “When it comes to sharing news and other important information, journalism has been a game-changer. One of the four pillars of our democracy is a free and independent press. The media has become a watchdog, speaking for the people in denouncing injustices and leveraging their influence for greater openness and accountability in government. Today, the media are widely recognised as the people's "eyes and ears,"

³⁵“(PDF) Media, the Fourth Pillar of Democracy: A Critical Analysis,” available at: https://www.researchgate.net/publication/362291654_Media_the_Fourth_Pillar_of_Democracy_A_Critical_Analysis (last visited Dec 13, 2022).

³⁶Altaf Shah, *Fourth pillar of democracy*, Herald Goa (Aug 2022). Available at <https://www.heraldgoa.in/Edit/Fourth-pillar-of-democracy/193092>. (last visited on 12 Dec, 2022)

demonstrating the crucial role they play in society. The years have morphed it into their very thoughts and words.”³⁷

But somewhere along the line, the sacrosanct integrity and ethics of the media's expedition to question the systemic defects and raise voices against the powerful have been compromised. In an effort to boost their TRP ratings and advertising revenue, news outlets have been using increasingly sensationalist titles to draw in new readers. Because of this, the media is no longer able to provide objective, critical coverage, but instead displays bias and is influenced by politics. Such mental health has manifested as vigilante journalism in high-profile situations, often known as media trials.³⁸

For example, in some countries³⁹, the government regulates the broadcast spectrum and awards licenses to television and radio stations. In others, independent regulatory bodies are established to oversee the media industry and ensure that content is in line with community standards.

The regulatory framework for media is important for a number of reasons. It helps to ensure that media content is appropriate and respectful, protecting individuals and communities from harm. It also helps to ensure that media content is accurate and trustworthy, promoting informed decision-making and protecting the public from misinformation.

However, it is important to balance the need for regulation with the right to “freedom of speech and expression”. In some cases, strict regulations can stifle creative expression and limit the diversity of voices in the media. As such, it is important to strike a balance between ensuring appropriate regulation and protecting the right to free speech and expression.

The Indian media has seen significant growth in the past few decades because near to zero restrictions and regulations. The country has approximately 330 million newspapers circulating

³⁷ *Ibid.*

³⁸ Shalushravan Singh, “*Media Trial And Its Impact On Evidence*”, Legal Services India, E Journal, available at <https://www.legalserviceindia.com/legal/article-4005-media-trial-and-its-impact-on-evidence.html>. (last visited on 12 Dec, 2022)

³⁹ The decision grants the European Commission authority over the general allocation of spectrum, but it does not grant this authority over the assignment or licencing proceedings carried out by member states. (last visited on 23 Dec, 2022)

daily.⁴⁰The Indian media plays a vital role in the nation's social and political fabric, reaching a vast audience across the country. Its historical significance cannot be understated. The media actively supported movements like Satyagraha during India's struggle for independence. This crucial role likely influenced the Constituent Assembly's decision to enshrine freedom of the press in the Constitution.

The media often referred to as the fourth pillar of democracy alongside the judiciary, legislature, and executive, plays a crucial role in informing citizens and shaping public opinion. A free press acts as a watchdog, raising awareness about social issues and holding those in power accountable. However, recent trends raise concerns about media overreach. In some instances, media outlets have engaged in "media trials," conducting their own investigations and pronouncements of guilt or innocence, potentially undermining the presumption of innocence and due process guaranteed by the justice system.⁴¹

Media trials usually commence even before the courts can try the matter, wherein the media investigates the matter on its own and broadcasts it in such a manner that the public forms an opinion against or for the accused before the actual trial. These activities have a prejudicial impact on the actual trial leading to infringement of "right to fair trial" of the accused. Over the past decade, although the media has been praised for raising awareness, they have been criticized more often than not about the obsessively intrusive coverage of certain matters especially those involving public personalities.

In this age and time of electronic media, regulating the media is a complicated and difficult task. Unfortunately, or rather fortunately for the media, there are no regulations imposed by the government of India. The media has become the most potent part of mass communication due to this near to zero regulation and very frequently violates the basic media ethics to the dismay of everyone.

⁴⁰LANGUAGE PRESS IN INDIA, NIOS, Available at https://nios.ac.in/media/documents/srsec335new/335_Mass_Communication_Eng/335_Mass_Communication_Eng_L8.pdf. (Last visited on 23 Dec, 2022)

⁴¹"Trial by Media: An Overview - International Journal of Law Management & Humanities," *available at*: <https://ijlmh.com/paper/trial-by-media-an-overview/> (last visited Sept 23, 2021).

If unregulated, unrestricted power is given to the media with regards to publishing and broadcasting information about cases then it creates prejudices in the minds of the people and those who are responsible for adjudication of the accused guilt in the Court. This can have a serious impact on the trial of the accused. In fact, even if the accused is acquitted the acquittal might not help him/her because the media has changed the perception of people towards him by imposing prejudicial views.

Today the media plays a significant role in influencing trials of high-profile cases which includes gauging and commenting on the efficacy of the court in which the trial is going on. Various studies have successfully shown the influence and effect of media trials on the justice system either directly or indirectly. Media trials have emerged as a major issue in India which needs to be addressed as soon as possible because of its harmful effect on society at large. Media has risen as a superpower overnight and is now challenging the authority of the judiciary or court of law.

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It has reduced the judiciary to a mere silent bystander being scape goated by the unchecked and uninhibited power of freedom of press. Media has come to a position where it's now controlling the minds of the citizens through rule of law with the support of the Constitution and technological advancements.

3.1 CONSTITUTIONAL FRAMEWORK

There was no statutory or constitutional protection for press freedom or subject freedom of speech until the adoption of the current Constitution.

Queen Victoria's Proclamation of 1858, issued after the consolidation of British rule in India, promised equal and impartial application of the law for all, regardless of religious beliefs or practices. Notably absent from the Proclamation, however, were any guarantees of freedom of speech or freedom of the press.

In *Arnold v. King Emperor*⁴³ which was a case of an appeal by the editor of a newspaper against his conviction for criminal libel under section 499 of IPC⁴⁴, In his ruling for the Privy Council,

⁴²Ibid.

⁴³*Arnold v. Emperor* AIR 1914 PC 116, (1914) 16 BOMLR 544

Lord Shaw of Dunfermline addressed the concept of press freedom. He argued that a journalist's freedom of expression is fundamentally linked to the general right of citizens to free speech. Journalists, he asserted, enjoy the same latitude for expression and criticism as any other individual, but this freedom is not boundless. It ceases to apply when actions fall outside the legal boundaries. Lord Shaw further noted that responsible journalists, aware of the power of the printed word, may exercise greater caution. However, the legal scope of their permissible commentary and criticism remains equivalent to that of any citizen.

The very foundation of the Indian Constitution, enshrined in the Preamble's lofty ideals, recognizes the significance of freedom of thought and expression alongside other fundamental liberties. This foundational principle is further elaborated in Article 19(1)(a), which guarantees the fundamental right to "freedom of speech and expression." This right encompasses the freedom of the media, acting as the cornerstone for a free press in India. In *Romesh Thapar v. State of Madras*⁴⁵, The landmark case of *Romesh Thapar v. State of Madras* recognized that freedom of speech and expression encompasses the freedom to form and share ideas, as well as the right to publish and circulate them". In *Hamdard Dawakhana v. UOI*⁴⁶ it was noted that "The *Hamdard Dawakhana v. UOI* case established that the right to freedom of speech and expression includes the right to acquire and share ideas and information on matters of public interest."

The Apex Court of India, in *Life Insurance Corporation of India v. Manubhai D Shah*⁴⁷ The Supreme Court of India, in the landmark case of *Life Insurance Corporation of India v. Manubhai D Shah*, clarified the scope of Article 19(1)(a) – "freedom of speech and expression." The court held that this right encompasses the freedom to publicly express one's beliefs and opinions through various mediums, including spoken word, written text, images, electronic media, and more. Importantly, the court emphasized that the press does not hold a special privilege regarding free speech. Rather, the freedom of the press is derived from the fundamental

⁴⁴Section 499, Chapter XXI, IPC, Act No 45 of 1860

⁴⁵"*Romesh Thappar v. State of Madras (1950) S.C.R. 594: Detailed Case Analysis*," *available at*: <https://lawctopus.com/clatalogue/clat-pg/romesh-thappar-v-state-of-madras/> (last visited April 12, 2022).

⁴⁶"*The Hamdard Dawakhana Case 1965 AIR 1167, Summary - Jyoti Judiciary Coaching*," *available at*: <https://www.jyotijudiciary.com/the-hamdard-dawakhana-case-summary/> (last visited April 12, 2022).

⁴⁷"*Life Insurance Corporation Ltd. v. Professor Manubhai D. Shah 1993 AIR 171 - Indian Law Portal*," *available at*: <https://indianlawportal.co.in/life-insurance-corporation-ltd-v-professor-manubhai-d-shah/> (last visited April 12, 2022).

right of every citizen to free speech and expression. This decision underscores the principle that the media enjoys the same level of free speech protection as any individual in India .

Art. 11 of the French Declaration of 1789⁴⁸ says: “Freedom of expression, the right to freely express one's ideas and beliefs, ranks among the most cherished human rights. This right allows citizens to speak, write, and publish without undue restriction. However, it is not absolute. The law establishes reasonable limitations to hold individuals accountable for any misuse of this freedom.”

The Indian Supreme Court has expressed concern about the potential for media to undermine the presumption of innocence. The court recognizes the media's significant influence and its ability to shape public opinion. In high-profile cases, the court has observed a tendency for media coverage to create a perception of guilt, even before a legal verdict is reached. This intense media scrutiny can prejudice the accused and jeopardize their future, regardless of the eventual court decision. The potential for lifelong social stigma due to such pre-trial media portrayals is a significant concern.

The initial use of attention-grabbing tactics to boost viewership has evolved into a long-term issue, potentially undermining the democratic principles upon which it relies.

Article 19(1)(a) of the Indian Constitution guarantees the fundamental right to "freedom of speech and expression." This right encompasses press freedom, recognizing that ideas can be conveyed through various media platforms. However, it's important to understand that this freedom is not absolute. The Constitution itself acknowledges reasonable restrictions on this right, and the legislature has the authority to enact laws that impose such limitations.

One key distinction to note: the right to free speech and expression focuses on the communication of ideas, not necessarily the platform used. This differentiates it from the concept of "trial by media," which is not a constitutional right. Trial by media involves prejudging an accused person through relentless media coverage before a proper legal verdict is reached .

⁴⁸“1. The Declaration of the Rights of Man and the Citizen, 1789 from *Tolerance: The Beacon of the Enlightenment* on JSTOR,” *available at*: <https://www.jstor.org/stable/j.ctt19b9jvh.6> (last visited Jan 15, 2022).

Throughout the course of the discussion on this topic, the Indian Press Commission came to the conclusion that the press is, without a shadow of a doubt, the most effective medium through which the public's view may be made plain. It is possible for democracy to thrive not just under the vigilant watch of its legislature but also under the care and direction of the general public. The freedom enjoyed by the nation's citizens is neither elevated to a higher priority, nor is it accorded a higher status than the freedom enjoyed by the press.

Dr. B. R. Ambedkar argued that the press does not possess any special rights or privileges beyond those enjoyed by individual citizens. In other words, the freedom of the press is ultimately an extension of the fundamental right to freedom of speech and expression guaranteed to all citizens.”⁴⁹ It is not required to make a specific reference to the freedom of the press because the editor or manager of a publication is merely expressing their right to freedom of expression when they publish something.⁵⁰ By a number of case laws, the Hon’ble Apex Court has frequently emphasized the value of a free press in a democracy. In *Romesh Thapar v. State of Madras*⁵¹ the Court held that “freedom of press is inclusive of freedom of speech and expression and is a very important part of the Art.”

One way to think of the media is as an organization that acts in the public interest by communicating information to the people about their own democratically elected government. Because the media constantly criticizes the government and reveals problems in the policies it enacts, one of the primary reasons why the government is so willing to restrict the freedom that they have been granted is because of the media. As a result, it is the responsibility of the judicial system to defend the rights of journalists and to invalidate any legislation that violates the Constitution in an effort to restrict those rights.

India recognizes press freedom as a vital component of a healthy democracy. However, this right is not absolute. The Constitution allows for "reasonable restrictions" to be placed on freedom of speech and expression, including press freedom. These restrictions can be invoked when the media's actions become excessive and potentially interfere with the functioning of other

⁴⁹Constituent Assembly Debates On 1 December, 1948 Part II

⁵⁰Aditee Dash, *Media Trials: Misuse of Freedom of Speech and Deterrent in the path of Justice*, 2021 Manupatra, <https://articles.manupatra.com/article-details/Media-Trials-Misuse-of-Freedom-of-Speech-and-Deterrent-in-the-path-of-Justice>. (last visited on 15 Jan, 2022)

⁵¹Supra Note at 9

democratic institutions. In essence, press freedom enjoys strong protection, but it comes with the responsibility to operate within legal and ethical boundaries.

In *Sakal Papers Ltd. v. UOI*⁵², The petitioner argued that the Newspaper (Price and Page) Act of 1956 and The Daily Newspaper (Price and Control) Order of 1960 violated the constitution because they imposed arbitrary limitations on the number of pages that may be published and the minimum price at which newspapers could be sold. The problem was that the government had urged the petitioners to raise the newspaper's price while maintaining the same page count. It decreased circulation as a result. the Supreme Court of India weighed in on the delicate balance between press freedom and economic pressures. The court acknowledged that the freedom of speech and expression, enshrined in Article 19(1)(a) of the Constitution, encompasses the right to publish and distribute information. This right, however, is not absolute. The court recognized that the government can impose reasonable restrictions under specific circumstances outlined in Article 19(2).

The specific case centered on the potential for increased costs to cripple the operations of some newspapers, leading to a decline in readership. The court ruled that such a scenario would be a violation of press freedom .

Even liberals, who are unsure of the controls that ought to be in place to prevent the misuse, believe that free speech and expression rights to media without any limitations or disclaimers may result in damage.⁵ The constraints that are established in Art. 19 (2) were a step that was well thought out to control the media and ensure that a viable democracy is maintained. These restrictions start with the laws that deal with “contempt of court”, the right to reputation, and other similar topics.⁵³ When the media or press disparages someone or something by using libel or slander, they are accountable. The media cannot violate someone's right to privacy by exercising their freedom.

The term “freedom of speech” in Art. 19 (1) (a) refers to the right to express one's own opinions as well as those of others, as well as to propagate and refute them using any media, including

⁵²“*Sakal Papers vs Union of India- Freedom of Speech and Expression & restrictions on the business activities of citizens - iPleaders*,”*available at*: <https://blog.ipleaders.in/sakal-papers-vs-union-india-freedom-speech-expression-restrictions-business-activities-citizens/> (last visited April 12, 2022).

⁵³ *Supra* note 46

print. It is not absolute and is subject to clause (2), so laws limiting press freedom may be passed to protect national security, sovereignty, and integrity, friendly relations with other countries, public order, morality, or to stop slander, defamation, or incitement to commit a crime.

The Constitution grants a number of positive rights in an effort to support the preamble's description of liberty as the ultimate goal. The six fundamental freedoms guaranteed to citizens by Art. 19 of the Constitution are of utmost importance.⁵⁴ One of them is the "freedom of speech and expression". Since the Constitution seeks to strike a balance between individual freedom and societal authority, absolute individual rights cannot be guaranteed. As a result, the Constitution limits his right by allowing the state to enact laws that reasonably restrict his freedom in the interests of the community as a whole.

The media in India is legally free to report even if it damages a public figure's reputation because ministers are not given any special protections when it comes to corruption or any other criminal offence and are treated equally before the law as any other citizen (subject to the laws of defamation). India takes pride in having one of the developing world's most independent, vibrant, and courageous media systems. The corruption of top officials in the government, including ministers and top bureaucrats, has periodically come to light in media exposés. No one is exempt.

The media has examined prime ministers like Rajiv Gandhi and Narasimha Rao. Investigative reporting has frequently shook the foundation of government, even causing ministers to resign, and has also prompted courts to take suo motu notice of cases that the media has drawn attention to. The Constitution does not contain any provisions that expressly forbid press censorship. However, the test of reasonableness (both substantive and procedural) within the meaning of clause (2) of Art. 19 must be used to determine its constitutionality.

After the Constitution was adopted, the Apex Court examined the legality of censorship and determined that imposing pre-censorship on a publication was an obvious restriction on the freedom of speech guaranteed by clause (1) of Art. 19. Shortly after these rulings, clause (2) was modified by the Constitution (First Amendment) Act of 1951, which added the words "public order" in their place. (2). The word reasonable was also added to clause (2) in the same

⁵⁴ Durga Das Basu, *Law of the Press*, (page no. 38) India: Prentice-Hall of India, 1986.

amendment, so if censorship is implemented for reasons of public order, it cannot immediately be deemed unlawful as a restriction on freedom of expression; rather, its reasonableness must be assessed in light of the circumstances surrounding its application.

Even in times of peace, temporary censorship may be permitted if it is subject to the proper substantive and procedural safeguards. Nonetheless, it must be regarded as inappropriate if the executive authority is granted total discretion. The Apex Court 's refusal to impose rules on media trials, the legislature's inability to enact an effective statute, and the uncertainty surrounding the implementation of Law Commission recommendations have prevented the government and courts in India from taking action to restrain the unchecked media that is undermining the country's system of legality. The media plays a significant part in forming and swaying public opinion as well as influencing the overall lens through which people view particular events.

The reason that Art. 19(1) protects freedom of the press is because the drafters of the constitution understood the importance of a free and healthy press to the operation of a democracy. Indian citizens have a right to information on current political, social, economic, and cultural developments as well as hot themes and significant issues so they can form educated opinions about how they are being governed, dealt with, and managed by the government and its employees.

The situation has altered as a result of the tremendous development of digital media and the widespread use of social media by billions of people worldwide. Even Divine has been influenced by the media, which has developed into a powerful force.⁵⁵ Legal-minded people should be extremely concerned about media interference in the judicial administration, which is the only domain of the courts. These examples are increasing daily. Such information has a big impact on how businesses feel and how the legal system functions. A traditional media trial, a digital media trial, or public agitation are the total opposite of the rule of law.

⁵⁵“Media Law and Policy in the Internet Age : Doreen Weisenhaus: Hart Publishing,”*available at*: <https://www.bloomsbury.com/uk/media-law-and-policy-in-the-internet-age-9781782257400/> (last visited June 12, 2022).

Is the Apex Court debating whether or not to establish media guidelines? If this is the case, shouldn't we expect them to be under control? or if this judiciary should reiterate or declare the provision u/a 141⁵⁶ about the balance of the Art. 19(1)(a power relationship)'s with Art. 21; the scope of Art. 19(2) within the context of the law governing judicial contempt; and the scope of Art. 129/Art. 215 of the Constitution are the topics that will be discussed in this section. As a result of the fact that the Constitution of the US recognizes the freedom of the press as a fundamental right, any restriction placed on the ability of the media to observe, report on, and make commentary on ongoing trials is inherently illegal. The judicial system in the US has implemented a number of practical countermeasures, such as switching the location of a trial or reversing a conviction after it has been upheld on appeal, in order to mitigate the damaging effects of adverse publicity.

In *Naveen Jindal v. M/S Zee Media Corporation Ltd & Anr*⁵⁷ it was noted because it is a constitutional provision, Art. 19(1)(a) has the force of law and establishes the constitutional protection in Art. 21 that safeguards a person's right to a fair trial and legal restraints. Both of these provisions are essential to the protection of a person's constitutionally protected rights. If an accused person or any other aggrieved party believes that any type of publication will violate their right to a fair trial, they have the right to file a writ petition with the court to ask for an order preventing that publication. The court has the discretion to grant this preventive relief depending on how heavily it values the right to a fair trial in comparison to other factors.

The English legal system, guided by the principle of upholding justice, strives for a balance between the right to a fair trial and the freedom of the press. This balance is reflected in Section 4 of the Contempt of Court Act. This section empowers the court to delay the publication of any reports or details related to ongoing proceedings if there's a substantial risk that such publication could prejudice the "administration of justice".⁵⁸ Furthermore, the Act incorporates a strict liability rule. Under this rule, any conduct or act, regardless of intent, can be considered

⁵⁶“Article 141: Law declared by Supreme Court to be binding on all courts - Constitution of India,” *available at*: <https://www.constitutionofindia.net/articles/article-141-law-declared-by-supreme-court-to-be-binding-on-all-courts/> (last visited April 12, 2022).

⁵⁷CS(OS) 143/2015

⁵⁸*Id.* at 105

"contempt of court" if it has the potential to obstruct the fair administration of justice in a specific legal case.

Freedom of expression, including press freedom, stands as a cornerstone of Indian democracy. This fundamental right ensures access to diverse information and ideas, empowering citizens to participate actively in society. However, the concept of free speech operates within a framework of other crucial values. In the context of the Indian constitutional system, freedom of expression must be balanced with the right to a fair trial. Unfettered media coverage, for instance, could potentially prejudice a legal case, jeopardizing the fair administration of justice.

Pre-censorship is not necessarily illegal because the Constitution's Art. 19(2) already has restrictions. Because pre-censorship imposition measures did not provide a deadline or a right to object, they were noted to be unconstitutional. The court may order a press injunction to prevent news coverage of claims that could jeopardise proper judicial administration, but such an injunction must be justified to guarantee that the "administration of justice" is not hampered.

The adjudicatory bodies have the fundamental authority to keep court proceedings secret and to forbid the media from publishing legal arguments or witness evidence outside of the courtroom. The requirement for impartial justice is not a given; if it is required by the "administration of justice", a court's inherent power may limit it. HCs have the authority to stop dissemination temporarily u/as 129 and 215 of the Constitution, with the exception of Section 151 of the Code of Civil Procedure. All courts have inherent authority, which does not conflict with Art. 19(1), to impose prior restraint orders or take other steps (a). The HC and Apex Court are given the authority to ensure that the "administration of justice" is not distorted, prejudicially biased, hindered, or interfered with.

"The right includes the right to acquire and communicate ideas and information about matters of common interest", as per to *Hamdard Dawakhana v. UOI*⁵⁹. Both the right to transmit and the right to receive education, information, and entertainment are included in the right to transmit. Whereas the latter is the viewers' right, the former is the telecaster's right (*Secretary. Cricket*

⁵⁹1960(2)SCR 671

Association of West Bengal v. Ministry of Information and Broadcasting⁶⁰. The right to information and the right to communicate through any type of media, including print, electronic, and audio-visual, are both included in Art. 19(1)(a).

Articles 129 and 215 of the Contempt of Courts Act, 1971 define criminal contempt under Section 2(c) as any act that interferes with, obstructs, or corrupts the administration of justice. However, the courts have recognized the tension between this concept and the fundamental right to freedom of expression enshrined in Article 19(1)(a) of the Constitution.

To navigate this potential conflict, the judiciary has developed the doctrine of "neutralizing device." This doctrine essentially allows for fair criticism of the judiciary without obstructing the administration of justice. When considering potential contempt charges arising from speech, courts will assess whether the speech itself constitutes a "neutralizing device," meaning it provides sufficient context and avoids creating a real risk of prejudice in ongoing legal proceedings.

The presumption of innocent is a component of human rights. The courts may delay publication if they find that the newspaper breached this human right by publishing unfairly disparaging information.⁶¹ The Apex Court of India established a notion of deferring publication or dissemination; however such decisions are only made in Part III of constitutions to balance competing public interests or rights.

Such publication must pose a severe and justifiable risk of undermining the impartiality of the court or the "administration of justice" (whether intended or not). When granting delay orders, courts should evaluate the content and effects of the allegedly infringing material (as alleged). The publication date is impacted by these delayed instructions. According to these guidelines, the publishing must be delayed for a specific amount of time.⁶² The Postponement Doctrine is a protective measure rather than a corrective one. Orders for postponement must be directly related

⁶⁰1995(2) SCC 161

⁶¹"Trager's The Law of Journalism and Mass Communication | SAGE Publications Inc," *available at*: <https://us.sagepub.com/en-us/nam/tragers-the-law-of-journalism-and-mass-communication/book275194> (last visited May 12, 2022).

⁶² Media and Law: Between Free Speech and Censorship, United Kingdom: Emerald Publishing Limited, 2021

to how the matter is resolved, including whether the accuser is guilty or innocent, which will depend on the specifics of each case.

3.2 LEGISLATIVE FRAMEWORK

3.2.1 The Indian Penal Code, 1860

There are various laws relating to media trials and the control of media content in the Indian Penal Code (IPC) of 1860. Among the important clauses are:

1. Section 499⁶³: Defamation: “occurs when someone publishes a false statement that damages another person's reputation. This statement can be communicated in various ways, including spoken words, written text, signs, or even visual gestures. Crucially, for defamation to occur, the person making the statement must either know it's false or have a reckless disregard for the truth.” This section offers a legal recourse for people and organisations who have been falsely accused in the media, including print and broadcast media. This was developed in a few instances. For instance, in the case of S.N.M. Abdi v. Prafulla Kumar Mohanta⁶⁴, the Orissa HC noted that a newspaper item that purportedly defamed the plaintiff was libellous and that the plaintiff was entitled to compensation from the defendant. Moreover, in the case of Parwati v. Mannar⁶⁵ it has been decided that in India, showing unique injury is not necessary in slander cases.
2. Section 500⁶⁶: Punishment for Defamation: According to this provision, a person who is found guilty of the defamation offence under Section 499 may be sentenced to simple imprisonment for a time that may not exceed two years, a fine, or a combination of the two.
3. Section 505⁶⁷: criminalizes statements conducing to public mischief. This law applies to anyone who intentionally spreads rumors or reports, either written or spoken. These

⁶³Section 499, Chapter XXI, IPC, Act No 45 of 1860

⁶⁴ (A.I.R. 2002 Orissa 75) “Libel-An Estimation of Damages | YOUNG ARENA LITIGATORS,” *available at*: <https://youngarenalitigators.blogspot.com/2017/03/libel-estimation-of-damages.html> (last visited April 21, 2022).

⁶⁵Parwati v. Mannar ILR(1884)8 Madras 175

⁶⁶Section 500, Chapter XXI, IPC, Act No 45 of 1860

⁶⁷*Id.* Section 505

statements can be punishable if they have the potential to cause harm in various ways. The law encompasses actions that could incite soldiers or officers to rebel or disobey orders, spread fear or alarm among the public, or encourage people to commit crimes against the state or public peace.” This clause can be used to media content that supports media trials that could generate public unrest or cause fear or worry in the general population. This has also been seen in a number of instances. For instance, in the case of *Ritnand Balved Education Foundation v. Alok Kumar Delhi*⁶⁸, the defendant made malicious and untrue accusations against the board members and covertly told some others what he had done. The lawsuit was rejected because it could not be established that any harm had resulted from the executive board of the plaintiff society being the target of any of the defamatory remarks and none of the statements were intended at the plaintiff society as a whole.

4. Section 153A⁶⁹: Fostering hostility between various groups due to factors such as religion, race, place of birth, residency, language, etc., and taking actions that impair the maintenance of harmony: According to this law, it is a violation to spread information that could incite hatred or violence among various groups of people. This section can be used to media content that encourages trials that are likely to incite animosity or hostility among various communities. This has been reiterated in the case of *Campaign against Hate Speech v. State Of Karnataka*.⁷⁰

These IPC clauses offer a framework for controlling media trials and defending the rights of people and organisations impacted by media material. The application and enforcement of these regulations, meanwhile, can be difficult, especially in light of the media landscape's rapid change and the proliferation of digital media outlets.

In situations when publications violate Section 124A of the IPC, committing the crime of sedition, and Section 499, committing the crime of criminal defamation through its publications, the media trials may be regulated. The fourth and fifth exceptions under this Section, however, exempt any publication of court reports, opinions on the merits of cases adjudicated in court, or

⁶⁸*Ritnand Balved Education Foundation v. Alok Kumar Delhi*, AIR 2007 Delhi 9, 131 (2006) DLT 563

⁶⁹Section 153A, Chapter XXI, IPC, Act No 45 of 1860

⁷⁰*Campaign Against Hate Speech v. State Of Karnataka*, WRIT PETITION NO.6749 OF 2020

witness behaviour from the definition of defamation. When a publication is made with the intention of making an armed forces member fail in their duties, inspiring fear in others to conduct crimes against the state or disturb the peace in the community, or inciting hatred and violence among communities, Section 505 can be used to punish the media.

3.2.2 The Bharatiya Nyaya Sanhita, 2023

The realm of law in India has undergone major shifts, shifting decisively away from its colonial origins and toward a more progressive and indigenous framework. The Bharatiya Nyaya Sanhita Act represents a watershed moment in this history, representing a break from colonial traditions and a bold embrace of new possibilities in legal government. This act represents a concerted effort to rebalance the legal system by instilling it with concepts inherent in India's rich cultural and legal history. The Act aims to promote a more equal and just judicial environment by reorienting legal norms and processes to better reflect current community demands and ideals. Furthermore, it represents an evolution toward a more independent and self-assured legal identity, demonstrating India's ability to determine its own legal destiny free of the legacy of colonialism. As such, the Bharatiya Nyaya Sanhita Act exemplifies India's continued journey toward a more inclusive and robust legal system, ready to meet the challenges and expectations of an evolving culture in the twenty-first century.

Section 354 of the new defamation laws in India represents a pivotal legislative framework designed to address issues of reputation and freedom of expression within the legal system. Defamation under this section is defined broadly to include any statement or representation—whether spoken, written, through signs, or other visible means—that harms the reputation of another person. Crucially, this harm must either be intended by the person making the statement or they must have reasonable grounds to believe that it will harm the reputation of the person concerned.

The legislation also incorporates several exceptions that mitigate liability for defamation:

Firstly, truthful statements made in the public interest are exempted, emphasizing the importance of transparency and accountability in public discourse. This exception protects individuals or

entities disclosing factual information that serves the greater good, such as exposing corruption or malpractice affecting public welfare.

Secondly, expressing opinions in good faith about public servants or public figures based on their conduct is not considered defamatory. This provision acknowledges the right to critique and evaluate the actions of those in positions of authority, provided such opinions are sincerely held and based on observable conduct.

Additionally, statements made in good faith regarding the conduct of any person on matters of public concern, or expressing opinions about the merits of a court case after its conclusion, are exempt from defamation claims. These exceptions promote informed discussions on significant societal issues and ensure accountability without fear of legal repercussions for responsible commentary.

Penalties for defamation under Section 354 include simple imprisonment for up to two years, a fine, or both, underscoring the seriousness with which reputational harm is addressed under the law. The section also extends liability to those involved in producing, selling, or distributing materials containing defamatory content, ensuring comprehensive coverage to deter the dissemination of damaging statements.

In summary, Section 354 of the new defamation laws aims to strike a balance between protecting individual reputation and upholding freedom of expression. By delineating clear exceptions and imposing appropriate penalties, the legislation aims to maintain social harmony, uphold personal integrity, and facilitate robust public discourse while safeguarding against unwarranted harm to reputations. This framework reflects India's commitment to a fair and equitable legal environment that adapts to contemporary challenges while preserving fundamental principles of justice and individual rights.

3.2.3 The Indian Telegraph Act 1885

A legislative foundation for telegraph regulation, including the transmission of news and other types of media material, is provided by the Indian Telegraph Act of 1885. The Act includes a number of provisions relating to media trials and the control of media content, such as:

1. Section 5⁷¹: Power to make rules: According to this clause, the Central Government has the authority to enact laws governing telegraphs, including those governing the transmission of news and other types of media information.
2. Section 5A⁷²: Power to prohibit transmission of messages: According to this section, the Central Government has the authority to forbid the broadcast of any communication if it believes that doing so will harm India's sovereignty and integrity, the State's security, its cordial relations with other countries, public order, morality, or decency. This section can be used to control media trials that are likely to upset the peace or hurt the interests of the general public.
3. Section 7⁷³: Penalty for unauthorized publication of certain messages: According to this provision, anybody who publishes or transmits a message that is forbidden by Section 5A without the prior consent of the Central Government is guilty of an offence and may be punished with up to three years in prison, a fine, or both.
4. Section 8⁷⁴: Penalty for false messages: Any person who is found guilty of sending a false message over the telegraph with the intention to harm another person, the general public, or to deceive another person is subject to the penalties outlined in this clause, which include up to three years in prison, a fine, or any combination of the three.

The Indian Telegraph Act's stipulations offer a legal framework for managing media trials and defending the rights of people and organisations impacted by media content sent via telegraph. The Act gives the Central Government the authority to control the dissemination of media content, including the control of media trials, to make sure that they are in line with the interests of the public and do not hurt people or the general public. This law has been reiterated by the court in cases such as *Ratan N. Tata v. UOI*⁷⁵ and *Amar Singh v. UOI*.⁷⁶

⁷¹Section 5, The Indian Telegraph Act, Act No. 13 of 1885

⁷²*Id.* Section 5A.

⁷³*Id.* Section 7.

⁷⁴*Id.* Section 8.

⁷⁵*Ratan N. Tata v. UOI*, (2015) 5 SCC 639

⁷⁶*Amar Singh v. UOI*, (2011) 7 SCC 91

3.2.4 The Indian Press Council Act 1978

For the regulation of the press in India, including the regulation of media trials, the Indian Press Council Act of 1978 establishes a framework. The Act's main guidelines for media trials include the following:

1. Section 4⁷⁷: Composition of the Council: This section provides an overview of the “Press Council of India”, which is widely regarded as the most important controlling body for the Indian press. The Council is comprised of a Chairman and a total of 28 members, who come from a variety of backgrounds and include civilians, journalists, and government officials.
2. Section 5⁷⁸: Functions of the Council: According to this section, the principal responsibilities of the Council include promoting freedom of the press and expression as well as preserving and elevating the standards of Indian newspapers and news organisations. The Council is also vested with the jurisdiction to investigate complaints of ethical norms being violated by newspapers and other news organisations. These complaints can include instances in which the rights of individuals or organisations have been violated by media trials.
3. Section 7⁷⁹: Power to take action in respect of news items, etc.: According to this clause, the Council has the authority to take legal action in response to news stories, Articles, cartoons, photos, advertising, and other content that appears in newspapers and news agencies and is harmful to the public interest or likely to harm people or organisations. Instances of media trials that harm the public interest or violate the rights of people or organisations may be brought under this section's protection.
4. Section 14⁸⁰: Advisory Opinion: In accordance with the provisions of this Art., the Council is authorised to provide guidance to publications and news organisations on matters relating to the ethics and standards of journalistic work. This can involve

⁷⁷ Section 4, The Indian Press Council Act, 1978

⁷⁸*Id.* Section 5.

⁷⁹*Id.* Section 7.

⁸⁰*Id.* Section 14.

providing guidance on the standards and processes that should be adhered to in order to ensure that media trials are carried out in a manner that is fair, accurate, and impartial.

The Indian Press Council Act's aforementioned provisions offer a legal framework for the control of media trials and the defence of the rights of people and organisations impacted by media content. The Act establishes the "Press Council of India", which will be in charge of upholding and enhancing the standards of Indian newspapers and news organisations as well as promoting the freedom of the press and of expression. The Council has the authority to look into complaints of ethical standards violations by publications and news organisations, including media trials that violate the rights of people or organisations.⁸¹

3.2.5 Information Technology Act 2000

A legislative foundation for the control of electronic commerce and the use of digital technologies in India, including the control of media trials held on digital platforms, is provided under the IT Act, 2000. The Act's main guidelines for media trials include the following:

1. Section 69A⁸²: Section 69A of the Information Technology Act, 2000 empowers the Indian government to restrict public access to information through computer resources. This authority extends to the central government and its designated officers. The government can issue orders to block information if it is deemed "necessary or expedient" for reasons including:
 - Maintaining India's sovereignty and integrity
 - Defending the nation
 - Ensuring national security
 - Preserving friendly relations with foreign countries
 - Upholding public order

⁸¹Ratan N. Tata v. UOI, (2015) 5 SCC 639

⁸²Section 69A, The Information Technology Act, Act No. 21 of 2000

It is possible to seek protection under this section for instances of media trials that are detrimental to the general public interest or that breach the rights of individuals or organizations.

2. Section 79⁸³: Intermediary not to be liable in certain cases: Providers of intermediary services (such as the internet) are shielded from liability for the content of any information, data, or communication link provided by a third party as long as they exercise reasonable care in performing their obligations under the Act and conform to any related regulations.
3. Section 66A⁸⁴: “Punishment for sending false messages, etc.: Any person who repeatedly uses a computer resource or a communication device to send information that is grossly offensive, threatening, false, insulting, harmful, criminally intimidating, inciting enmity, hatred, or ill will is subject to the penalties” outlined in this section. These penalties include possible incarceration.

The Information Technology Act of 2000's provisions offer a framework for the control of media trials conducted on digital platforms and the defence of the legal rights of people and organisations impacted by digital media content. The Act also grants intermediaries like internet service providers immunity and gives the central government the authority to obstruct access to material that is harmful to the public interest or violates the rights of people or organisations. The Act also lays out penalties for people who exploit digital platforms, particularly those used for media trials, to distribute offensive or inaccurate information.

3.2.6 Information Technology (Amendment) 2021⁸⁵

The Information Technology Act (IT Act) offers a shield to online platforms like social media sites, search engines, and internet service providers. These platforms, known as intermediaries, are generally not held liable for content generated by their users, as long as they follow specific procedures. The IT Rules outline these due diligence requirements, which include:

⁸³*Id.* Section 79.

⁸⁴*Id.* Section 66A.

⁸⁵“Ministry of Electronics and Information Technology, Government of India | Home Page,” *available at*: <https://www.meity.gov.in/> (last visited July 6, 2022).

1. Transparency: Informing users about the platform's rules, privacy policy, and terms of service. This includes highlighting prohibited content types.
2. Prompt Takedown: Quickly removing content upon receiving a legal order from the government or courts.
3. Grievance Redressal: Establishing a system to address user complaints regarding rule violations.
4. Identification Mechanism: Enabling the identification of the original source of information under certain conditions.

The Information Technology Act offers legal protections to online platforms like social media and search engines, as long as they follow specific procedures.

1. Expanding Intermediary Responsibility:

- The current requirement for intermediaries to simply "publish" rules and inform users about prohibited content is proposed to be expanded.
- The new rules would require intermediaries to take a more active role in:
 - Ensuring compliance: Platforms would need to implement mechanisms to promote adherence to their rules, privacy policy, and user agreements.
 - Preventing prohibited content: Platforms would be obligated to take "all reasonable measures" to prevent users from creating or uploading banned content.

2. Accessibility, Privacy, and Transparency:

- The amendments emphasize that intermediaries should take reasonable steps to ensure:
 - Accessibility: All users can access platform services with proper regard for due diligence, privacy, and transparency.
 - Respect for User Rights: Platforms must act in accordance with the constitutional rights of their users. The Ministry noted instances where platforms have allegedly violated these rights.

3. Grievance Redressal System:

- The current system relies on grievance officers designated by each platform. The Ministry observed shortcomings in this approach, with users potentially not receiving fair resolutions.
- The proposed changes introduce a Grievance Appellate Committee formed by the central government. This committee will:
 - Hear appeals from users dissatisfied with the decisions of platform grievance officers.
 - Consist of a chairperson and other members appointed by the government.
 - Be required to resolve appeals within 30 days.
 - Have its decisions binding on the concerned platform.

4. Faster Content Takedown:

- The current timeframe for acknowledging and resolving content violation complaints is proposed to be tightened.
- Complaints regarding the removal of prohibited content would have a stricter deadline of 72 hours for resolution, acknowledging the potential for rapid spread of harmful content online.

3.2.7 Right to Information Act 2019

The enactment of the Right to Information Act (RTI Act) in 2005 stands as a landmark achievement in Indian democracy. This legislation empowers citizens with the fundamental right to access information held by public authorities. The underlying principle is clear: knowledge is power. By granting citizens access to government-held information, the RTI Act fosters transparency and accountability in governance. Effective implementation of the Act, both in letter and spirit, is crucial to realizing this transformative potential.

The Right to Information Act necessitates a robust legal and institutional infrastructure to function effectively. This framework ensures that every citizen can exercise their right to access information controlled by public bodies”⁸⁶.

⁸⁶The Right To Information (Amendment) Act, 2019 (NO. 24 of 2019), Published By Ministry Of Law And Justice

The Act mandates the proactive disclosure of specific information by public bodies. Additionally, it establishes a designated officer structure within these bodies. Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs) are responsible for responding to citizen requests for information within set timeframes. The Act also recognizes the right to appeal against a PIO's decision. This appeal process involves approaching officers at a higher level, known as Appellate Officers (AOs), for a review of the initial decision”⁸⁷. Additionally, “it requires the creation of a Central Information Commission (CIC) and State Information Commissions (SICs) to oversee the Act's implementation, investigate complaints, and consider second appeals.”

Sections 3 and 4 of the provisions are those that apply to the law. In judgements like *Hindustan Times v. HC of Allahabad*, the court has emphasised the effects of these rules⁸⁸.

The rights to information, the ability of citizens to be informed, and the effectiveness of governance are all directly related. Citizens have a right to information, which enables them to find out what the government does for them, why it does it, and how it does it. In other words, they can discover how the government serves them. On top of the platform that is provided by good governance, government officials have the ability to successfully work in a transparent and effective manner, and the general public has the ability to hold them accountable for their actions. It works towards putting a stop to incoherent government acts and contributes to the formation of a receptive state. The Right to Information Act (RTI Act) serves as a cornerstone of good governance in India. It upholds the principle of transparency, empowering citizens with the right to access information held by public authorities. This access fosters public engagement in government and ensures adherence to the rule of law. The free flow of information allows for open and accountable governance, strengthening its legitimacy in the eyes of the people. In essence, the RTI Act acts as a key instrument in realizing the core principles of good governance.

Art. 19 of the UDHR adopted by the UN states: “Everyone has the right to freedom of expression, which includes the ability to hold opinions without interference and the freedom to seek out, receive, and share ideas across all boundaries and media.”

⁸⁷ *Ibid.*

⁸⁸ *Hindustan Times v. HC of Allahabad*, (2011) 13 SCC 155

The Plan highlights the media's crucial contribution to the development of the Information Society, particularly in its role as a champion of free speech and a guarantor of a plurality of information sources.

Conventional information access systems in India have rendered journalists dependent on cultivable sources. Much is based on the privilege and favouritism of the specific source, whether they be politicians or bureaucrats. In addition to forcing journalists to rely on intensely feudal ties, these patronage arrangements frequently force them to use information regardless of its accuracy.

Credible, factual, and evidence-based reporting on important public interest topics can be made possible by an RTI framework. The Right to Information Act (RTI Act) empowers the media to act as a vital watchdog. By utilizing the Act, journalists can uncover instances of mismanagement, corruption, and inefficiency within the public administration. This fosters transparency and accountability by exposing such issues to public scrutiny. The media can also leverage the RTI Act to showcase positive examples of good governance, efficient management, and transparency. By highlighting these success stories, they encourage best practices within public service delivery and hold authorities accountable for maintaining high standards.

According to the RTI Act, journalists and reporters, like regular people, can:

- i. “Request information from the government regarding any of its departments.
- ii. Request photocopies of all government contracts, payments, estimates, engineering work measures, etc.
- iii. Request certified samples of the materials that were used to create roads, sewers, buildings, etc. from the government.
- iv. Request the inspection of any ongoing or completed public development activity.
- v. Request the inspection of any government records, such as construction plans, logbooks, registers, quality control reports, etc.
- vi. Request information on the status of your requests or complaints, time delays in detail, and the actions the Information Commission has done.”

The media has an obligation to provide as a reliable source of information for its viewers, free from favouritism and bias that may have been inadvertent. The editorial, commercial, and moral independence of the media ought to be regarded as the industry's most valuable asset. If it maintains its independence by professional behaviour and the commitment of all journalists to a code of conduct, the media has the potential to be an effective user of the RTI Act and an agent for the empowerment of people through an information society. The purpose of the Act, which is to establish a meaningful right to information regime, cannot be accomplished unless the media step up and take the lead.

3.3 MEDIA TRIAL INFRINGING HUMAN RIGHTS

Freedom of expression stands as the bedrock of a healthy democracy. It empowers citizens to form informed opinions on critical social, political, and economic issues. This uninhibited exchange of ideas fosters public scrutiny and holds those in power accountable. Through this open discourse, authorities can effectively communicate their plans and programs to the public, fostering trust and participation in the democratic process.”⁸⁹

Keeping this view in mind Venkataramiah, J. of the Apex Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. UOI*⁹⁰ has said that “Justice Venkataramiah, in the landmark Indian case *Indian Express Newspapers v. UOI*, emphasized the vital role of a free press in fostering a vibrant social and political discourse. He recognized that, particularly in developing nations where access to other forms of media might be limited, the press assumes an even greater responsibility as a public educator. By disseminating information and diverse viewpoints, the press empowers the citizenry to participate actively in a democracy. However, this freedom often leads to the publication of content critical of governments and authorities, which may find such scrutiny inconvenient.”

The Supreme Court's observation in the landmark case *Indian Express Newspapers v. UOI* underscores the critical role of press freedom in the healthy functioning of Indian democracy. As the foundational principle of 'government of the people, by the people, for the people' suggests,

⁸⁹Mohd Aqib Aslam, *Media And Law: Constitutional Position Of Freedom Of Speech And Expression, Freedom Of Press, Reasonable Restrictions*, <https://www.legalserviceindia.com/legal/article-7084-media-and-law-constitutional-position-of-freedom-of-speech-and-expression-freedom-of-press-reasonable-restrictions.html>. (last visited 3/4/2022)

⁹⁰*Indian Express Newspapers (Bombay) (P) Ltd. v. UOI*, 1986 AIR 515

active and informed citizen participation is essential. Unfettered discussion of public issues through a free press empowers citizens to make informed choices, particularly during elections. This alignment between press freedom and democratic ideals reflects the implicit importance placed upon it by the Indian Constitution.

In *Printers (Mysore) Ltd. v. CTO*⁹¹ while not explicitly enshrined as a fundamental right, the Indian Supreme Court, in the landmark case *Printers (Mysore) Ltd. v. CTO*, recognized that freedom of the press is an essential implication of the fundamental right to freedom of speech and expression. This recognition aligns with the long-standing importance placed on press freedom in democratic societies. The media is often referred to as the "fourth pillar" or "fourth estate" of democracy, signifying its crucial role in holding the other branches of government accountable and fostering informed public discourse.

For this reason, it was embraced wholeheartedly by those who value open communication and citizen involvement in government. All national courts have an obligation to protect this liberty and to strike down any legislation or executive orders that run counter to the mission set forth in the constitution.

In *R. Rajagopal v. State of T.N*⁹² the Apex Court has noted that "it is permissible to debate public figures' involvement in unoccupied topics and events as part of press freedom. Yet, a correct balancing of press freedom, the right to privacy, and maintained defamation must be done in light of the democratic way of life outlined in the Constitution with relation to their private lives."

Consequently, it is abundantly obvious that the freedom of the press stems from the freedom of expression that is guaranteed to all citizens by Art.19 (1) in light of the observations made by the Apex Court in various judgements and the views voiced by many jurists. The press has no special standing relative to other citizens and is not entitled to any privileges in and of itself (unless expressly granted by law). No specific restrictions that could not be placed on any other country resident may be placed on the press.

⁹¹*Printers (Mysore) Ltd. v. CTO*, 1994 SCR (1) 682

⁹²*R. Rajagopal v. State of T.N*, 1995 AIR 264

3.3.1 The Conflict between Freedom of Press and Right To Privacy

The relative importance of privacy and public interest has always been a central consideration when media freedom and privacy are at odds with one another. The Personal Data Protection Bill was drafted in 2019, despite the fact that India does not presently have a codified law on the right to privacy. This is because the right has gained constitutional recognition.

One thing to consider is whether or not the PDPB, which will soon become India's privacy law, contains a provision to protect individuals from media intrusion into their personal space.

The short response is no, because the PDPB has exemptions for processing personal data for journalistic purposes under Article 36(e). Journalists have been given carte blanche to share their thoughts and feelings on any topic they, in their role as data custodian, believe the general public would benefit from knowing.

The Indian government claims this sweeping freedom is essential to ensure that the press and media are free to report the news without interference. While journalists are exempted from the PDPB's requirement to safeguard personal information, Article 36(e) suggests the government could have done more to justify this exemption.

The government has not only been indifferent to these invasions of privacy by the media, but it has actively encouraged and empowered the media through this law. As a first point, the data fiduciary's discretionary duty to decide which data they believe the public has an interest in does not strike an ideal equilibrium with the individual's right to privacy.

Instead of presenting 'what the public is interested in,' media sources should be obligated to show 'what is in the public interest.' Second, the PDPB does not require journalists to demonstrate a need for and proportion to any invasion of private. To add insult to injury, it absolves the media of their responsibility to restrict data collection for unintended purposes and to retain personal information for no more than the legally required period. Privacy invasion from the media is not addressed in the data privacy law.

To qualify for this exemption, the media need only follow the guidelines set forth by media self-regulatory organizations and their own code of conduct.

3.3.2 The Law Commission Reports

In its 42nd Report, the Forty Second Law Commission undertook a comprehensive analysis of the right to privacy under Chapter 23. Recognizing the evolving nature of privacy concerns, the Commission recommended a significant change. They proposed the insertion of a new chapter titled "Offences Against Privacy" within the Indian Penal Code. This new chapter would replace the existing Chapter XIX, which focuses on offenses related to eavesdropping.

The Commission's proposed chapter would specifically criminalize unauthorized photography and the use of artificial listening or recording devices. Furthermore, it would make the publication of information obtained through these unauthorized means an offense⁹³. According to the Law Commission's 156th report, the right to privacy is a broad concept whose scope has been greatly expanded under Article 21 of the Constitution thanks to the different decisions of the Supreme Court⁹⁴. After researching the issue of privacy as outlined in Article 21 and in the various reports of foreign law commissions, the Law Commission acknowledged that it would suggest that these offences cannot properly be incorporated in the IPC. As a result, it recommended that the phrase "Offense against privacy" be removed from the 42nd Report, stating that distinct legislation be in place to deal with such crimes.⁹⁵ Justice M. Jagannadha Rao, in the Law Commission's 200th⁹⁶ report, highlighted a potential loophole within the Contempt of Courts Act, 1971 (Section 3(2)77 with explanation). This provision appears to grant immunity to publications that could prejudice a criminal case, as long as a charge sheet, challan (court document initiating proceedings), summons, or warrant hasn't been issued at the time of publication. Only ongoing criminal proceedings would trigger potential contempt charges under this interpretation⁹⁷. There was a lot of uproar over the disagreement over the definition of 'pending' in court cases. There was a story that said the Indian Supreme Court considers publishing anything harmful after someone's

⁹³“Law Commission of India- Forty-Second Report Indian Penal Code | INDIAN CULTURE,”*available at*: <https://indianculture.gov.in/reports-proceedings/law-commission-india-forty-second-report-indian-penal-code> , Chapter 23, pp.336-340. (last visited July 16, 2022).

⁹⁴“Details for: One hundred fifty-sixth report on the indian penal code Vol. I › Koha online catalog,”*available at*: <https://opac.nls.ac.in/cgi-bin/koha/opac-detail.pl?biblionumber=19347> (last visited July 17, 2022).

⁹⁵*Id.* at p. 341.

⁹⁶“Trial by Media free speech and fair trial under Criminal Procedure Code | Law Commission of India Reports | Law Library | AdvocateKhoj,”*available at*: [https://www.advocatekhoj.com/library/lawreports/trialbymediafreespeech/1a.php?Title=Trial by Media free speech and fair trial under Criminal Procedure Code](https://www.advocatekhoj.com/library/lawreports/trialbymediafreespeech/1a.php?Title=Trial%20by%20Media%20free%20speech%20and%20fair%20trial%20under%20Criminal%20Procedure%20Code) (last visited July 19, 2022).

⁹⁷ R.v. Savundranayagan (1968) 3 All ER 439n.

‘arrest’ to be criminal contempt. The Supreme Court ruled in A.K. Gopalan⁹⁸ that the moment of detention marks the beginning of the contemptuous act. Additionally, this study endorses this conclusion. India is a member to the Madrid Principles on Media and Judicial Independence.1994⁹⁹, India adheres to the principles outlined in the 1994 Madrid Principles on Media and Judicial Independence. A core tenet of these principles is the delicate balance between the media's right and responsibility to inform the public about legal proceedings – including reporting on cases before, during, and after trials – and upholding the fundamental right to a fair trial. This balance hinges on the presumption of innocence, a cornerstone of Indian jurisprudence. The Madrid Principles emphasize that media coverage should not prejudice the outcome of a case by presuming a defendant's guilt.

3.3.3 The Right To Privacy – International Obligations

The Indian media landscape has undergone a significant transformation in recent years. Increased competition has arguably led to a decline in journalistic rigor, raising concerns about the media's ability to fulfill its vital role in society. It's worth remembering the critical role the press played in India's independence movement. By championing non-violent resistance ("Satyagraha") and advocating for the boycott of foreign goods, the media served as a powerful tool for social change.

The framers of the Indian Constitution recognized the immense power of the press and enshrined the right to freedom of speech and expression in Article 19(1)(a). This right finds its roots in Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

While the UDHR and ICCPR also guarantee the right to privacy (Articles 12 and 17 respectively), India's Constitution lacks a specific provision for this right. Although aspects of privacy are protected through other legal mechanisms, the absence of a standalone right raises concerns about potential infringements.

⁹⁸“Case Brief: A. K. Gopalan v. State of Madras,”*available at*: <https://lawbhoomi.com/case-brief-a-k-gopalan-v-state-of-madras/> (last visited July 12, 2022).

⁹⁹“The Madrid Principles on the Relationship between the Media and Judicial Independence on JSTOR,”*available at*: <https://www.jstor.org/stable/745614> (last visited July 21, 2022).

Finally, it's important to note that Article 3 of the UDHR guarantees the right to life, liberty, and security of person. Upholding press freedom and the right to privacy are crucial elements in ensuring these fundamental rights. This is recognized in Article 21 of the Indian Constitution. case of Nihal Chand v. Bhagwan Dei¹⁰⁰ Privacy was deemed to be a separate concept from Indian culture and practices by the High Court as early as 1935, during the colonial era. In the Kharak Singh case¹⁰¹, however, The right to privacy, though recognized in the Universal Declaration of Human Rights (UDHR) of 1948, hasn't been explicitly enshrined as a fundamental right on par with freedom of speech and life in the Indian Constitution. However, a landmark Supreme Court judgment in 2017 (Justice K.S. Puttaswamy v. Union of India) recognized privacy as an intrinsic part of the right to life and liberty under Article 21 of the Constitution. The Supreme Court case Sharada v. Dharampal¹⁰² established the concept of privacy as the absence of unauthorized observation or interference with one's personal sphere of activity.

3.3.4 Media And Fair Trial

Trial by media has resulted in a conundrum as a result of the tug-of-war that takes place between the two ideas of free press and free trial, both of which are topics that the general public is quite interested in. In a democracy, the right of the public to engage in current events that directly affect them is what gives rise to the freedom of the press. This provides a justification for investigative journalism as well as campaign journalism. At the same time, the Right to a Fair Trial, also known as an impartial trial or a trial that is free from influences from the outside, is recognised as an essential component of justice in India.

In *Zahira Habibullah Sheikh v. State of Gujarat*¹⁰³, it was held, “a fair trial ensures that neither the defendant, the witnesses, nor the issue itself are judged with preconceived notions or partiality. This level playing field is essential for ensuring a just and equitable legal process.”

Right to a fair trial is absolute right of every individual within the territorial limits of India vide Art's 14¹⁰⁴ and 20¹⁰⁵, 21¹⁰⁶ and 22¹⁰⁷ of the Constitution. It goes without saying that “the right to

¹⁰⁰ (1935) A.I.R. S.C. (1002).

¹⁰¹ (1997) S.C.R. 332.

¹⁰² (2004) 1L.J.R. 540

¹⁰³*Zahira Habibullah Sheikh v. State of Gujarat*, Appeal (crl.) 446-449 of 2004

¹⁰⁴Constitution of India, 1950 as on 2022

a fair trial, which derives from Art. 21 of the constitution when read in conjunction with Art. 14, is more crucial. Art. 19 of the constitution contains the right to freedom of speech and expression”.

3.3.5 Media Trial And Right To Be Presented

By conducting the trial in front of the media, we have started to put pressure on the lawyers themselves, urging them to forego the opportunity to represent the accused party. Is there a breach of natural justice going on here? Nobody has the right to stop someone from retaining the legal representation of their choice and arguing their case before the court that oversees the highest level of appeals.

After taking up the case of murder suspect Manu Sharma, famous attorney Ram Jethmalani was met with significant derision from the legal community. Sharma's stance was characterised as an attempt to defend the indefensible by the senior editor of CNN-senior IBN. This was only one instance of the media-led war that was being waged against the accused.

We assigned nobody to represent Manu, but we hired one of the most prominent attorneys in the country, Gopal Subramaniam, to represent the state. The presumption of guilt by the media is a clear breach of the right to legal counsel, which is a fundamental component of the right to a fair trial, and it may terrify attorneys to the point where they choose not to represent accused clients. In addition to the suspects and those who have been accused, witnesses and victims are also subjected to unwelcome attention and have their privacy violated.

The representation of law enforcement officials by the media is harmful to their morale. The media says that law enforcement officials are still in the dark the day after a crime report has been made public. The fact that the media gives such widespread attention to any rumours that it has heard on the direction in which official authorities are looking into the incident makes it much simpler for the actual culprit to flee to an area where they will be in less danger. The pressure that is being put on the police by the media is increasing on a daily basis, and eventually they will feel the need to defend themselves in public.

¹⁰⁵*Ibid.*

¹⁰⁶*Ibid.*

¹⁰⁷*Ibid.*

When police announce that they have apprehended a suspect and that he has confessed under such pressure, Breaking News stories frequently begin, and few media members appear to be aware that, legally speaking, a confession to police is not admissible in a criminal trial. The suspect's future is over if he retracts from the conflicted confession after it has been made public by the police and the media. Then, witness protection suffers a severe loss.

This raises the issue of “whether hostile witness testimony is admissible as evidence and whether the law should be changed to forbid witnesses from revising their testimony”. Once more, issues may develop during identification parades held in accordance with the Cr.P.C to identify the accused if the suspects' photos are published in the media. One of the main charges in the media trial is that the judges presided over a particular case are being negatively impacted subconsciously.

Because there's always a potential judges could be swayed by comments made about a particular incident. The way the media presents the case to the public makes it so that if the judge issues an order that differs from the media verdict, many people may perceive him or her as corrupt or prejudiced.

3.4 IMMUNITY UNDER CONTEMPT OF COURT

Trial by media, where the press extensively reports on a case in a way that could prejudice the outcome, is considered a form of contempt of court and can be punished. Criminal contempt itself has three categories: scandalizing the court, prejudicing the trial, and hindering the administration of justice.

The focus on preventing prejudice stems from the principle of natural justice. This principle ensures that everyone accused of a crime has the right to a fair trial, free from outside influences. Not only should justice be served, but it should also be perceived as being served. Extensive media coverage can taint public opinion and make it difficult for jurors to reach a verdict based solely on the evidence presented in court. By punishing trial by media, the justice system aims to protect the right to a fair trial . There are many different ways that attempts are made to sway a trial. If these trials are permitted to proceed, the people involved will be found guilty of crimes they did not commit. To stop such biased and unfair trials, “contempt of court” was established.

No publication intended to taint the minds of the jury, frighten witnesses or parties, or foster an environment where the “administration of justice” would be challenging or impossible does not constitute contempt.¹⁰⁸ Comments on ongoing cases or allegations of party abuse are only grounds for contempt if the topic is one that can be tried in court. No editor can assume the role of an investigator in order to prejudice a jury.¹⁰⁹

Insofar as The “contempt of courts Act”, 1971's historical viewpoint is concerned, the English legal system can be used to track the development of India's “contempt of court” laws. Superior courts of record in England have historically utilised this authority to imprison those who have offended the judges or the court. The “contempt of court” Act 1926 is the name of the country's first contempt law laws. In the event of judicial contempt, this Act stipulates the court's authority. During British India, the “contempt of court” Act of 1926 was in effect. The “contempt of court” Act 1956 was later passed when India gained independence, replacing the 1926 act. Yet, the “contempt of court” Act of 1952 later becomes ambiguous and inadequate. There is a need to carefully examine this Act as a result. A special committee known as the Joint Select Committee of Parliament has examined this Act. The scope and authority of the courts were examined and defined by this body. The Joint Select Committee then developed The contempt of court Bill, 1968. The administration has accepted the committee's proposal, and as a result, a resolution enacted by the parliament has turned the Bill into an Act. This led to The contempt of court Act, 1971 being approved by the Indian parliament in December 1971, and it taking effect on December 24. The “contempt of court’s (Amendment) Act, passed in 1976, further altered this law.

One of the important pieces of legislation passed by parliament is the “contempt of court” Act, which allows for the preservation of the principle of the independence of the judiciary, which is known as a constitutionally recognised principle of direction for state policy. Thus, the State should make the necessary efforts to preserve the independence of the judiciary. The independence of the judiciary is in danger whenever there is a media trial or other sort of meddling in the legal system. As a result, the State is relied upon to safeguard the independence

¹⁰⁸In re, Subrahmanyam, Editor Tribune, AIR 1943 Lah 329

¹⁰⁹“Global Freedom of Expression | Supreme Court of India v. Subhash Chandra Agarwal - Global Freedom of Expression,” *available at*: <https://globalfreedomofexpression.columbia.edu/cases/supreme-court-india-v-subhash-chandra-agarwal/> (last visited July 22, 2022).

of the judiciary. The “contempt of court” Act gives the court the authority to punish anyone who commits civil or criminal “contempt of court” on their behalf. The preamble of this Act defines and restricts the authority of particular courts to punish judicial contempt and to set rules for those courts' practises. This Act was applied to the entirety of India, but not to the State of Jammu and Kashmir. This Act makes it possible to safeguard both the integrity of the court and the smooth operation of justice.

The provisions of this Act may not apply in certain circumstances. Sometimes a person or a media outlet will distribute or publish something without any malice. If they had no cause to believe that the proceeding was still ongoing, they are not subject to punishment under this Act. If there is any fair and truthful reporting of a legal procedure on the part of the media, then defence is accessible for media, and they are not penalized.¹¹⁰ Fair criticism of a judicial decision is not, in addition, a violation of the law.

In *P.C. Sen v. Unknown*¹¹¹ in a SLP, it was claimed that “a broadcast on an All-India Radio station on the evening of November 25, 1965, had interfered with the administration of justice and amounted to contempt of court because it revealed the identity of the accused. Every legislation pertaining to contempt of court, according to Judge Shah, is well-established. Anything done or said in an attempt to undermine the authority of the court or to interfere with legal processes shall be considered an act of contempt of court”. This includes publishing anything with the intent to do so.

In the case of *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr*, the Andhra Pradesh HC provided a clear explanation of the law regarding interference with the “administration of justice”¹¹²:

“..... No one may speak on a case that is now in litigation before a court in a way that creates a genuine and significant risk of prejudicing the trial of the action, such as by influencing the judge or witnesses or by prejudicing a party to the case generally. If someone prejudices the truth before it is established in the procedures, it is a “contempt of court”, even if they really think

¹¹⁰Contempt of Courts Act, 1971, Section 5

¹¹¹AIR 1970 SC 1821

¹¹²AIR1975 AP 30

what they are saying to be accurate. A third rule that might be added to the general rule of a fair trial is that no one shall unfairly pressure one of the parties to a cause to withdraw his complaint or defence through misrepresentation or any other means. The preservation of the law we just stated in its entirety is always thought to be of the utmost importance. Yet, when expressing the legislation in this manner, we must keep in mind that there must appear to be a genuine and significant risk of discrimination.”

The right to a fair trial in court, before an unbiased jury free from press dictates or public clamour, is guaranteed by the constitution. What would happen to this right if the press was allowed to speak in a way that affected and controlled the legal system? Keep in mind that democracy involves honesty and openness; if these are restricted on even the thinnest of justifications, the fundamental idea of democracy is at risk.

The concept of a fair trial is a cornerstone of any just legal system. However, judicial rulings have established the concept of a "denial of a fair trial" to act as a safeguard against external influences that could compromise this principle. This denial can take several forms:

- Interference with the administration of justice: Actions that impede or obstruct the legal process in relation to a defendant can constitute a denial of fair trial.
- Prejudiced media publications: Extensive media coverage that sways public opinion or directly prejudices the accused can also be grounds for a denial of fair trial claim.
- Undue influence on the court: Publications that attempt to disparage the court or dictate its decisions can be seen as a denial of fair trial, as they undermine the court's impartiality.”

An unlawful Art.'s publication cannot hide behind the argument that the trial it refers to is not already underway or about to start, but rather must take place in the future. Yet, neither the commencement of the case nor its conclusion is prohibited by our statute of contempt. In re P.C.Sen Justice Shah¹¹³ who spoke for the court succinctly put the law as follows:

¹¹³“Leo Roy Frey v R.Prasad on 10 March 1958 - Judgement - LexTechSuite,”*available at*: <https://lextechsuite.com/Leo-Roy-Frey-Versus-RPrasad-1958-03-10> (last visited Aug 12, 2022).

“Contempt of court” is governed by well-established legal principles. “Contempt of court” is defined as any action taken or writing made public that is intended to undermine the authority of a judge, the “administration of justice”, or the authorized proceedings of the court: *R. v. Gray*¹¹⁴. Speaking or writing scandalously about the court, insulting the parties to an action, or prejudicing the public in favour of or against a party before the case is heard are all examples of contempt by speech or writing. The public should not be prejudiced against those involved as parties in cases before the case is finally heard, hence courts of justice have a duty to protect their procedures from being distorted. Contempt is demonstrated by speeches or writings that inaccurately describe the Court's proceedings, prejudice the public in favour of or against a party, or reflect on the parties to a proceeding. It is extreme contempt to speak in a way that might affect the outcome of a trial that is now underway, whether it be civil or criminal. Remarks on ongoing processes made by the parties or their attorneys usually constitute a more serious contempt than remarks made by outside sources. In all matters involving commentary on ongoing legal procedures, the key question is not whether the publication really impedes the “administration of justice”, but rather whether it has a tendency to do so. It is more important to determine if it is planned to obstruct the “administration of justice” than it is to determine the condemner’s intention. Speaking or writing scandalously about the court, insulting the parties to an action, or prejudicing the public in favour of or against a party before the case is heard are all examples of contempt by speech or writing. The public should not be prejudiced against those involved as parties in cases before the case is finally heard, hence courts of justice have a duty to protect their procedures from being distorted. It is extreme contempt to speak in a way that might affect the outcome of a trial that is now underway, whether it be civil or criminal. Remarks on ongoing processes made by the parties or their attorneys usually constitute a more serious contempt than remarks made by outside sources. In all matters involving commentary on ongoing legal procedures, the key question is not whether the publication really impedes the “administration of justice”, but rather whether it has a tendency to do so. It is more important to determine if it is planned to obstruct the “administration of justice” than it is to determine the contemnor’s intention.

¹¹⁴“2006 SCC 54 (CanLII) | *R. v. Sappier; R. v. Gray* | CanLII,” *available at*: <https://www.canlii.org/en/ca/scc/doc/2006/2006scc54/2006scc54.html> (last visited Aug 21, 2022).

In *Sushil Sharma v. The State (Delhi Administration) and Ors*¹¹⁵ The Delhi HC noted that if there is a conviction, it will not be based on what was reported in the media but rather on the evidence that was submitted to court. It is hoped that the judge hearing the case will be impartial. If the petitioner's claim that the judge was biased because of these news stories is accepted, a denial of a fair trial will have occurred. Regardless of whether there are press reports, the claim must be based on the documentation already in the system. The accusation cannot be founded on events or details that are not supported by the evidence. The Court will formulate the charge based on the material evidence in the file. The Court will formulate the charge based on the material evidence in the file. I believe the petitioner's worry that he wouldn't get a fair trial is unwarranted and purely hypothetical. When taken as a whole, none of the press reports suggest that there has been any interference with the “administration of justice” or that the Court's authority has been in any way compromised. The Trial Court properly noted that it does not constitute interference with the “administration of justice” if the Press publishes the charge sheet's contents after it has been submitted.

The courts of Sessions have conducted session trials without fear or favour, even in very sensitive matters. With almost little accountability, Indian courts have grown to be the most powerful in the entire globe. But, even the courts are subject to error. Every organisation, including the judicial system, contains some bad apples and dishonest judges. Judges make up the judicial system, and as they are also people, they can have motivations other than an objective view of the law and justice. It would be foolish to claim that none of them or at least some of them, at least occasionally are motivated by factors related to their individual ideologies, allegiances, preferences, biases, or even factors related to corruption and nepotism. In a democratic society, the judiciary itself is ultimately accountable for silencing all criticism by threatening to use the power of contempt.

In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr*,¹¹⁶ the Apex Court noted that “a newspaper conducting an unbiased inquiry into a crime for which a person has been arrested and publishing the findings of that investigation would unquestionably be ominous.” This is due to

¹¹⁵“SUSHIL SHARMA Vs. STATE OF N.C.T. OF DELHI,” *available at*: <https://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=003102098000> (last visited Aug 12, 2022).

¹¹⁶“Famous cases of media trials in India - iPleaders,” *available at*: <https://blog.iplayers.in/famous-cases-media-trials-india/> (last visited Aug 12, 2022).

the need to prevent a trial of journalists during a case before one of the nation's established tribunals. This point of view is supported by the idea that, regardless of whether the investigation tends to favour the accused or the prosecution, such action by a publication tends to obstruct the “administration of justice”. A newspaper trial and what transpired in this case have nothing in common.

In *Vijay S. Mallya v. Bennett Coleman And Company*¹¹⁷, the Times of India published the item on October 6, 2008, and this amounted to “contempt of court”, according to the case's facts. In this contempt petition, reporting is made in relation to the ongoing legal case involving respondent number 6 and petitioner Vijay S. Mallya. This item, titled “Sr. Citizen takes Bullying Builder Drags in to Court over Redetect Deal,” was published in the newspaper. A reference from the parties' ongoing case is used in this Article.

According to the court's decision, it is likely that the public will have either a favourable or negative opinion of the subject if careless and erroneous reporting is done. The court also stated that inaccurate media coverage may cause prejudice. The way a fair and proper trial is conducted will be impacted by media coverage. Hence, when covering judicial proceedings, the media must use control and discretion. As a result, it is asserted that press freedom is always considered to be a crucial component of a democratic system of governance.

3.5 GOVERNMENT POLICIES AND PROGRAMS ON MEDIA TRIALS IN INDIA

The Indian government has put in place a number of laws to control media trials and stop them from violating people's rights. Key government initiatives include the following:

1. The Press Council of India¹¹⁸ (PCI): The PCI is a statutory, independent organisation that regulates press behaviour and supports ethical reporting. It has the authority to retaliate against publications and journalists that violate moral norms by, for example, encouraging human rights violations in media prosecutions.

¹¹⁷ Criminal Contempt Petition No.2 Of 2009

¹¹⁸ Press Council of India, 1978. Available at <https://presscouncil.nic.in/> (last visited on 23 Jan, 2023)

2. The Cable Television Networks (Regulation) Act¹¹⁹: This law establishes guidelines for the portrayal of people and communities and controls what can be shown on cable television networks. The law also lays out sanctions for breaking these rules, such as fines and licence suspensions.
3. The Information Technology (Intermediary Guidelines) Rules¹²⁰: These regulations give intermediaries, like social media platforms, direction on the type of content they can host and the procedures they must follow to get rid of harmful or illegal content. In accordance with the regulations, intermediaries must take action against any content that supports media trials that violate human rights.
4. The Indecent Representation of Women (Prohibition) Act¹²¹: This law forbids the detrimental or disparaging portrayal of women, even through media trials. Infractions of this restriction are subject to fines and imprisonment under the terms of the statute.

The Indian judiciary has additionally actively defended people's and organisations' rights against media trials that violate those rights in addition to these policies. For instance, the Indian Apex Court has rendered several significant rulings on the rights to free speech and privacy, such as *Labour Liberation Front v. State of Andhra Pradesh*¹²², can have significant effects on how media trials are regulated in India.

The overall goal of government policy and legal actions is to support ethical journalism and defend people's and organisations' rights from unfair media trials.

The topic of media trials is not specifically addressed by any government programme in India. Yet, a number of government programmes have been put into effect that have an impact on media trials and the control of media content. Many of these efforts consist of:

¹¹⁹The Cable Television Networks (Regulation) Act, 1995

¹²⁰The Information Technology (Intermediary Guidelines) Rules 2021

¹²¹The Indecent Representation Of Women (Prohibition) Act, 1986, Act No. 60 OF 1986

¹²² *Labour Liberation Front v. State of Andhra Pradesh*, 2005 (1) ALT 740

1. The National Broadcasters Federation¹²³: The interests of Indian broadcasters are represented by this self-regulatory group. To encourage responsible and ethical journalism, the group has adopted a code of conduct for its members, which includes recommendations for reporting that upholds peoples' and organisations' rights.
2. The National Association of Television Program Executives¹²⁴: The interests of Indian television programme executives are represented by this group. The group has set standards for morally and ethically sound programming, including prohibitions on human rights-infringing media trials.
3. The Indian Institute of Mass Communication¹²⁵: This is a government-run organisation that educates and trains media workers and journalists in India. In addition to modules on people's and organisations' rights in the context of media trials, the Institute offers training on responsible and ethical journalism.
4. The Press Institute of India¹²⁶: This is a government-run organisation that educates and trains media workers and journalists in India. The Institute offers training in responsible and moral journalism, with modules on the civil and political rights of people and groups in the context of media trials.

These programmes seek to advance ethical and responsible journalism while safeguarding the rights of people and organisations against unfair media trials. It is crucial to remember that these efforts' execution and enforcement are what determine how effective they are.

3.6 CONCLUSION

In conclusion, no freedom can be regarded as total, hence even the freedom of the press and media is subject to limitations to protect the general welfare. Any democratic institution that is

¹²³“*News Broadcasters Federation elects Arnab Goswami as governing board president*” The Hindu, 2019. Available at <https://www.thehindu.com/news/national/news-broadcasters-federation-elects-arnab-goswami-as-governing-board-president/article30238835.ece> (last visited on 7 Aug, 2022)

¹²⁴See

<https://www.natpe.com/about/#:~:text=NATPE%20is%20a%20global%20content,curated%20for%20the%20content%20industry> (last visited on 2 Sept, 2022)

¹²⁵Indian Institute of Mass Communication. Available at <http://iimc.nic.in/> (last visited on 3 Nov, 2022)

¹²⁶Press Institute of India. Available at <https://www.pressinstitute.in/> (last visited 24 April, 2022)

allowed full freedom, whether it is the legislative branch, the judicial branch, or the executive branch, will always be abused. Although it is commendable that the media makes an attempt to closely monitor police investigations and carry out sting operations, it is advised that the media exercise some amount of self-regulation over its territory. The right to a fair trial should be respected by the media, and judicial proceedings shouldn't be interfered with.

The media wields immense power in shaping public opinion. This influence necessitates a strong commitment to ethical journalism and factual reporting. The public relies on the media to provide accurate information, allowing them to form informed judgments on critical issues.

However, concerns have arisen regarding the potential for unregulated electronic media to distort this ideal. While print media operates within a more established regulatory framework, electronic media may have greater latitude in its content. This lack of regulation can lead to the dissemination of misinformation or biased reporting, potentially creating confusion and hindering the public's ability to form well-informed opinions.

Due to the lack of regulation in the electronic media, it has been experimenting to find what works and what doesn't. In order to control its audience, media should refrain from releasing and publishing vulgar over sensationalized news that only presents one side of the topic. Because of the industry's extensive commercialization, it is now heavily affected by politicians and businesspeople who can offer them the right fun they need to climb the corporate ladder. More bad than beneficial impacts have resulted from this.

Many incidents, including the murder of Jessica Lal, might be considered to have been sparked by the media¹²⁷ in which the media was instrumental in identifying the guilty party through a number of sting operations. In the case of Priyadarshini Mattoo, the media also had a significant impact on the “administration of justice”¹²⁸ Nonetheless, there are exceptional situations in

¹²⁷Siddharth Vashish @ Manu Sharma V. State NCT Delhi, (2010) 6 SCC 1; (2010) 2 SCC (cri) 1385.

¹²⁸Richa Srivastav, Case Comment on Priyadarshini Mattoo case, Legal Services India, E Journal, <https://www.legalservicesindia.com/article/644/Case-Comment-on-Priyadarshini-Mattoo-case.html> (last visited on 6 Jul, 2022)

which media manipulation was helpful. Media almost compelled the court to execute the Nirbhaya Rape case defendants¹²⁹ inciting public hysteria through its reports.

Because of this, interfering often ends up causing more problems than it solves. As long as the media just acts as a catalyst and keeps out of the legal domain, meaning that they do not convict one of the parties before the trial, it will have a positive effect on them. The media ought to be aware of the difference between assisting the “administration of justice” by the court and hindering it by interfering and crossing lines in order to better understand this disparity. The facts and circumstances of the case are required to be reported on by the media, but the decision-making process ultimately rests with the judicial system.

In view of everything that has been discussed up until now, it is essential to acknowledge that the trial by media is proving to be an increasing menace to civilization. The ever-increasing pressure for higher TRP ratings and individuals to realise their economic potential have both contributed to a shift in perception within the media.

Now, rather than concentrating on issues of popular interest, the media are shifting their attention to themes of general interest. According to the norm of common law established in *R v Sussex Justices: Ex parte McCarthy*¹³⁰, justice should not only be done, but it should also be visible and unquestionably be seen to be done. In other words, justice should be done. The task of providing fair and balanced reporting on any topic lies with the media.

It should encourage individuals to hold their own thoughts about the subject matter and critically research it rather than inventing their own narratives and vocabulary to divide the public with conspiracy theories. This would be more effective. It is in the best interest of equity and justice for the media and the press to make advantage of the freedom of the press that is guaranteed to them by Art. 19(1) of the Constitution in order to ask the required questions of the relevant authorities and provide them with balanced reporting.

¹²⁹Arjun, Nirbhaya Case History And Present, Legal Service India, E Journal, <https://www.legalserviceindia.com/legal/article-1788-nirbhaya-case-history-and-present.html> (last visited on 6 Jul, 2022)

¹³⁰ *R v Sussex Justices, Ex parte McCarthy* [1924] 1 KB 256

CHAPTER-4

E- MEDIA AND ITS CONVERGENCE

In the 21st century, the term media encompasses a wide range of concepts, including but not limited to mass media, news media, traditional media, and the myriad types of digital media. You probably take in some form of media on a daily basis, and you may be able to think of a few distinct examples, but it may be difficult to define the word in a few words. The word's origin lies in the Latin word for middle, *medius*. The term media refers to any form of communication used to disseminate news and entertainment from one individual to another.¹³¹

Before the rise of digital technologies, people mostly consumed information through what we now term “analogue” or “conventional” media such as radio, television, print publications, outdoor advertising, and printed journals. Since then, the information technology revolution has given rise to numerous forms of media that play a pivotal role in the global dissemination of news, entertainment, and information. So, what exactly is digital media, what does it entail, how did it develop, and where is it headed.¹³² Transmission of digital media is accomplished through the use of digital cables or satellites to deliver digital data in the form of binary signals 0s and 1s to receiver devices that decode the data into the various forms of digital media. Digital media consumption entails the use of any electronic device to access the internet or a digitally stored work via a web-based system or programme. Some examples of digital media include videos, Articles, ads, music, podcasts, audio books, virtual reality (VR), and digital artworks.

Slowly but surely, computer technology made its way into various sectors of the economy and then into the general populace in the second half of the twentieth century, ushering in the era of digitalization. The use of analogue technology, however, persisted well into the 1990s. In the years that followed, print media like newspapers and periodicals as well as broadcast media like

¹³¹“Digital journalism : emerging media and the changing horizons of journalism | Semantic Scholar,”*available at*: <https://www.semanticscholar.org/paper/Digital-journalism-%3A-emerging-media-and-the-of/bd2c86464b3e8f08b5758e40d049e961db342611> (last visited Aug 19, 2022).

¹³²“The Impact of Digital Media on Current Newspaper Scenario in A Developing Country | by Phalgunn Maharishi | The Media Scholar | Medium,”*available at*: <https://medium.com/the-media-scholar/the-impact-of-digital-media-on-current-newspaper-scenario-in-a-developing-country-5fab33dc50f8> (last visited Aug 19, 2022).

radio and television remained popular, with most people's first experiences with digital technology being with fax machines and pagers.¹³³

4.1 DEFINING ELECTRONIC MEDIA

The advent of widespread internet access marked the beginning of the modern digital era. These days, it's rare to find someone who doesn't have some sort of digital media gadget with them at all times; people use digital communication everywhere, from the office to the subway to the restaurant to the store. When they get home, they might engage with digital media once again by playing a video game or watching a programme via live stream. People may inquire about the next day's weather with their smart house assistants before turning in for the night. Put simply, what do we mean when we talk about digital media? There is no easy solution to this problem. The fast pace at which technology and user behaviour are changing makes a clear definition of digital media elusive. Daily digital media consumption is only expected to rise in the future, especially with the advent of hologram and artificial intelligence (AI) technologies.¹³⁴

One of the ways in which humans are distinct from other species is through our refined modes of communication. Unlike any other animal, our language is both rich and complicated. From crude cave paintings to elaborate books and illuminated manuscripts to modern means of communication like Twitter, the telephone, and FaceTime, we have evolved increasingly sophisticated means of expressing ourselves.

In the 20th and 21st centuries, human communication has undergone a revolutionary transformation, speeding up a process that had previously taken hundreds of thousands of years. Only a few hundred years after the spread of books, everyone carries around a gadget that can instantly link them to anyone in the world.

In light of recent advances in communication technology, journalism and reporting around the world look very different from what they did a century ago. As the 21st century progresses,

¹³³ Phalgunn Maharishi, "The Impact of Digital Media on Current Newspaper Scenario in A Developing Country" published under International Research Journal of Engineering and Technology (IRJET) Volume: 08 Issue: 08 (Aug 2021). Available at <https://www.irjet.net/archives/V8/i8/IRJET-V8I8421.pdf> (last visited 6 Aug, 2022)

¹³⁴Dwivedi, Y.K., Ismagilova, E., Hughes, D.L., Carlson, J., Filieri, R., Jacobson, J., Jain, V., Karjaluoto, H., Kefi, H., Krishen, A.S. and Kumar, V., 2021. Setting the future of digital and social media marketing research: Perspectives and research propositions. *International Journal of Information Management*, 59, p.102168.

journalists and news organisations of all shades will adjust to the new realities of digital journalism.

4.1.1 Introduction To Electronic Media

Rapid transformations occurred in the field of journalism in the late 20th and early 21st centuries. Traditionally, journalistic sources were held to a higher standard of objectivity and objectivity. While this practise is still followed by certain news outlets, the rise of citizen and activist journalists who publish despite their biases or points of view by using methods such objective framing, editing, and reporting is threatening this long-standing norm.¹³⁵ Propagandists use these tools to spread their message by posing as journalists. More than that, the internet has made us all potential writers; anyone can start a blog and publish an opinion online, where it has the potential to go global without being subjected to any form of vetting or editing. In today's digital environment, journalists face an ever-accelerating news cycle. Therefore, it is often more challenging to strike equilibrium between timely and in-depth reporting. Websites, gadgets, and various digital media outlets are all included in this broad category. You might be familiar with a few applications of digital media, but the truth is that it has a profound impact on numerous sectors and has provided countless new opportunities for people to earn a livelihood and showcase their skills.

Surgeons and other medical workers previously relied on bulky simulators, videos, or cadavers to perfect certain operations before performing them on live patients, which led to increased complications. All kinds of new digital tools have been introduced into the operating room, enhancing the ability of surgeons to train for and carry out their operations, thereby boosting patient safety and decreasing error rates and costs. Modern surgeons practise using cutting-edge virtual reality (VR) systems, working through various scenarios with digital versions of the same tiny cameras and sensors they'll depend on during an actual operation.¹³⁶

New occupations have also emerged as a direct result of digital media. Sites like Twitch enable users to broadcast their everyday activities, and viewers can subscribe to specific feeds for a fee

¹³⁵Salmi, H., 2020. *What is Digital History?* published by John Wiley & Sons.

¹³⁶Banerjee, S. and Ghosh, D., 2022. Training and Certification in Surgery. In *Endometriosis* (pp. 261-272). CRC Press.

in order to watch content that piques their interest. Video gamers, musicians, social influencers, and even people who just stream their everyday routines like grocery shopping, meal preparation, and housekeeping are all represented among Twitch streamers. The vast diversity of its user base enriches the experience for everyone.¹³⁷ More people will have access to media because professionals in the digital realm can use cheap or free tools like mobile phones and open-source programming to make their own videos. Even though the demand for digital media is growing and new uses are being discovered every year, these are just a few instances.

4.1.2 Different Types Of Journalism Adjusted To The Digital Age

The advent of digital technology has resulted in profound changes for journalists of all types. In light of the advent of the digital era, what follows is an examination of the various facets of the news industry and how they have evolved to accommodate it.

4.1.2.1 Traditional Journalism

Reporters and writers in “old school” newspapers usually work for the “paper of record,” the dominant publication in their respective communities. It is the Los Angeles Times in the City of Angels and the Washington Post in the nation's capital. The publications are well-respected in their communities for their impartial reporting of news and comprehensive coverage of local events and issues, regardless of where they are located.¹³⁸

Unfortunately, most legacy media sources failed to adapt quickly enough to the digital era. The Bureau of Labor Statistics predicts a 40% drop in newspaper reporting and editing positions over the next decade, and local papers across the US seem to be closing down or scaling back on a daily basis. Many newspapers have been forced to lay off employees or sell to media conglomerates like Gannett and Advance Publications, which often downsize the publications anyway due to declining advertising income, the loss of the classifieds section to the internet, and rising costs.

¹³⁷“Journalism’s epistemic crisis and its solution: Disinformation, datafication and source criticism - Steen Steensen, 2019,” *available at*: <https://journals.sagepub.com/doi/full/10.1177/1464884918809271> (last visited Aug 12, 2022).

¹³⁸“Blogging and Other Social Media | Exploiting the Technology and Protec,” *available at*: <https://www.taylorfrancis.com/books/edit/10.4324/9781315261485/blogging-social-media-alex-newson-justin-patten> (last visited Aug 12, 2022).

4.1.2.2 Broadcast And Cable Journalism

Since the advent of radios in the early 20th century, American households have happily invited broadcasters into their living spaces. Millions of people have tuned in to hear the authoritative opinions of top television journalists like Edward R. Murrow, Walter Cronkite, Rachel Maddow, and Anderson Cooper. About 32% of the jobs for reporters and correspondents in 2019 were in broadcasting, where approximately 17,000 journalists were employed.¹³⁹

Leading anchors continue to attract millions of viewers to broadcast and cable news programmes like 60 Minutes and other afternoon political shows. But that doesn't mean television news hasn't been impacted by the shift to digital. The television news industry has adopted infotainment in order to attract viewers, prioritising sensational stories that elicit strong feelings over more sober, policy-driven reports that would have a greater impact on people's lives.

On the other hand, comedians like Stephen Colbert and Samantha Bee further blur the lines with their current events comedy programs, which, according to some, adhere to journalistic standards of research and fact-checking more strictly than networks like Fox News and MSNBC.

Broadcast news has been tested by the proliferation of alternative media. Facebook Live and Twitch are just two of the streaming apps that have made it possible for citizen journalists and enterprising journalists to rapidly disseminate riveting, high-definition video to large audiences in a matter of minutes. Citizen journalists documented events like the George Floyd marches in 2020 and the U.S. Capitol riot in January 2021 from the scene, providing unique perspectives on social unrest and commentary.¹⁴⁰

4.1.2.3 Sports Journalism

The American public has a deep and abiding passion for sports. Whether it's a professional league like the NFL or the WNBA or a fan-favourite local high school squad, sports fans are devoted to their teams and players. The best writers at many local papers are in the sports

¹³⁹“Build your own brand : Dvorak, Doug : Free Download, Borrow, and Streaming : Internet Archive,” *available at*: <https://archive.org/details/buildyourownbran0000dvor> (last visited Aug 19, 2022).

¹⁴⁰“Online News: Journalism And The Internet: Journalism and the Internet - Allan, Stuart - Google Books,” *available at*: https://books.google.co.in/books/about/Online_News_Journalism_And_The_Internet.html?id=Jiel57FrjaMC&redir_esc=y (last visited Aug 19, 2022).

column, highlighting the accomplishments of local athletes, a tradition that has been carried on by sportswriters from Grantland Rice to Michael Lewis.¹⁴¹

When it comes to covering sports, ESPN was the first big game-changer. The Connecticut-based business dominated American sports broadcasting in the late 20th century. There have been new entrants to the online sports media market, including the subscription sports site The Athletic, which has rapidly become the go-to digital news media site for sportswriters. This has hurt ESPN's networks, but they are still the biggest names in sports. Sports journalists have diversified into analytics and long-form journalism to remain pertinent as athletes increasingly reach out to fans directly via platforms like The Players Tribune and social media.

Online publications like The Athletic and Medium now host the kind of in-depth reporting that used to show only in print periodicals. Some have questioned the continued existence of periodicals as once dominant publications like Newsweek, Time, GQ, and Sports Illustrated have all been forced to downsize their staff and the size of their products and move towards an online format to survive.¹⁴²

4.1.2.4 Social Media News

As digital news has developed, so too has the profession of social media journalist. Social media correspondents first appeared on Facebook and Twitter, but now they're also active on Instagram and other photo-sharing sites, as well as niche platforms like Signal and VSCO.

Journalists working in social media are adapting to new realities. Journalists who work in social media regularly weigh the pros and cons of expanding their fan base to a newly popular platform. They've figured out how to make money off of it by using techniques like advertising, sponsored tweets, and pay walls that restrict access to their work to patrons on sites like Patreon.¹⁴³

¹⁴¹*The Growth of India's Newspaper Industry*. Prescient. Available at <https://www.prescientuk.com/blog/detail/the-growth-of-indias-newspaper-industry.html> (last visited 12 Aug, 2022)

¹⁴²*History of Indian Press*. benjaminbarber.org. 07 2019. Available at <https://benjaminbarber.org/history-of-indian-press/>. (last visited on 12 Aug, 2022)

¹⁴³ Zarabi, Siddharth. *The Future of India's Media is All-Digital*. *Business World*, 2021. Available at <https://www.businessworld.in/article/The-Future-Of-India-s-Media-Is-All-Digital/21-01-2021-367995> (last visited on 15 Aug, 2022)

4.2 IMPACT OF E-MEDIA ON SOCIETY

The media has caused a dramatic shift in how people perceive. Due to the media, they now have a chance to showcase their talents to the world and make their mark on the dynamic global stage. The media has contributed to making the globe more manageable. Blogging's recent rise in the media, along with other methods such as public opinion polls and citizen journalism, has helped bring about a measure of societal regulation.¹⁴⁴

These ideas have improved communication between the media and the general public, which has led to more informed discourse on national and social problems. The media has played an important part in spreading awareness about the importance of world peace and in the fight against racism, sexism, and global poverty.

Important character shifts have been prompted by avid television viewing. One of the issues is specific to females. Viewers of Indian cinema and television have noticed a change in recent years, one in which women are portrayed less as innocent and more as strong, sexually independent individuals.

4.2.1 Positive Effects of Digital Media

When it comes to education, having access to the internet via a smartphone or other digital device has been a gift since the internet's inception. Then, if you're curious and willing to put in the time and effort, you can learn anything, from how to cook to how to write computer code. The fact that it is self-directed and offers a wide variety of study options is especially valuable.¹⁴⁵ The use of digital media in classroom settings is crucial. With regards to the widespread adoption of collaborative learning strategies in today's educational institutions. To put it simply, a child's education benefits from exposure to digital media. Motor and application skills can be improved even with digital devices, thanks to the user interface and interactive apps available. Additionally, we all know that an interactive app is far superior to a book when it comes to user engagement and feedback. If the internet weren't available during the current

¹⁴⁴ A, Anooja and Munjal, Sourabh, *Phygital Technology Improves Education Standards of Digital India* (In Context of Academic Arena during COVID-19) (January 2021). BEST: International Journal of Humanities, Arts, Medicine and Sciences (BEST: IJHAMS), Vol. 9, Issue 1, Jan 2021, Pg. 45-50.

¹⁴⁵ "Understanding India's Next Billion Internet Users." *The Times of India news*. Share Chat Report 2020

coronavirus pandemic, picture the chaos that would follow. A lot of people were able to keep in touch with their loved ones even when they couldn't physically be together, and a lot of people were able to continue their education even though schools and universities.

4.2.2 Ability to Communicate

As a result of the Internet, anyone can share their thoughts and ideas with people all over the world. Bloggers can gain devoted followers who rely on their opinions. Social media and other online forums have made it possible for people from all walks of life to communicate with one another and establish new friendships around the world.

It gave people a platform from which to protest societal injustice, connecting them with the corporations and public figures at the root of the problem.¹⁴⁶

4.2.3 Opportunity to Do Business Digitally

A good selling point is something that improves people's lives in some way. Publish an online store and open up shop for customers all over the globe. Search engine optimization (SEO), social media marketing (SMM), and email marketing are just a few examples of Digital Marketing tactics that can be used to promote your product entirely online. Paid internet advertising presents a great opportunity for businesses to expand their reach.¹⁴⁷

4.2.4 Real-Time Information

Also, in the realm of news and public relations, the significance of digital media cannot be exaggerated. Gaining as much exposure as possible is crucial for news organisations and television networks in today's fast-paced global economy. Consumers (readers) can now take an active role in the media ecosystem by producing and sharing content (like Arts, videos, and podcasts) in real time, thanks to the rise of digital media. In turn, the proliferation of media like the Internet and cell phones has opened up numerous new opportunities for content communication. This has shifted power from newspaper editors to readers, who now determine

¹⁴⁶“A Typology to Explore the Blurring Boundaries | Semantic Scholar,” *available at*: <https://www.semanticscholar.org/paper/A-Typology-to-Explore-the-Blurring-Boundaries-Domingo-Heinonen/02d1f266c5d1f19473f7e5cad55215c36e9b659d> (last visited April 12, 2022).

¹⁴⁷“Modeling Student Perception of Web 2.0 Technologies Adoption in Kuwait - UNT Digital Library,” *available at*: <https://digital.library.unt.edu/ark:/67531/metadc67955/> (last visited April 12, 2022).

what and when their readers ingest. Although newspapers have both readers and marketers as customers, it is clear that advertisers provide the bulk of the paper's revenue.¹⁴⁸

The technological advancements of the 21st century are causing significant shifts in how we live. Imagine a world where people don't have access to cell phones and the internet. As part of its Digital India initiative, the Indian government is also working to increase the prevalence of technology in classrooms across the country. Online education is a new application of physical technology. The entire globe, including India, went into lockdown as a result of the COVID-19 pandemic, and curfews were imposed in some areas. Having the ability to connect to the internet from anywhere via a mobile device, laptop, tablet, or desktop computer will facilitate communication between students and instructors during the pandemic. This ensures they have fewer interruptions in their academic pursuits. The benefits of combining physical and digital environments for learning are discussed in this Art., along with the challenges that this transition presents for both students and educators.¹⁴⁹

4.3 NEW ELECTRONIC SYSTEMS AND THEIR IMPLICATION

The constant stream of technical advancement that has characterised our civilization in the United States has led to increased productivity, the elimination of many menial and dangerous employment, increased earnings and decreased working hours, and a steady stream of new products and services, all of which have contributed to a higher standard of living. The creation of new sectors that produce computers, electronic products, and energy and environmental control technologies has resulted in the employment of tens of thousands of people. Indeed, technological advancements in sectors like long shoring, agribusiness, and printing, to name a few, have resulted in the loss of employment opportunities and the need for workers to learn new, specialised skills. Some people are finding it difficult to readjust. However, most people would concur that the positive effects of technological innovation outweigh the negative ones, and that this has resulted in a more prosperous economy, more job openings, and a more secure and stable society. At this early stage in the 1980s decade, there is consensus that the rate of

¹⁴⁸ Ahrens, Joseph. *The Decline in Newspapers: A Closer Look*. (2016)

¹⁴⁹ "Indian digital media will grow at 20% to reach a market size of Rs 18,938 crore by 2021: dentsu Digital Report 2021" <https://www.businessinsider.in/advertising/ad-agencies/news/indian-digital-media-will-grow-at-20-to-reach-market-size-of-rs-18938-crore-by-2021-dentsu-digital-report-2021/articleshow/80688039.cms>. (last visited 1/2/2022)

dissemination of technologies that make use of cutting-edge electronics will quicken. In the US, the introduction of innovations with the potential for productivity increases has been found to be consistent with increasing employment levels. One of the most significant advances in electronics was the introduction of microprocessors and microcomputers in the early 1970s, and their general adoption in the following decade.¹⁵⁰ Miniaturized semiconductor integrated circuits, which offer more power and reliability in a considerably smaller package, have been developed over the past three decades, with the transistor replacing the bulky vacuum tube as the first step. Less than one centimetre square of silicon is home to thousands of electrical components and complicated circuits in a microprocessor unit. By adding on other components like memory and I/O, the device can be used to create a microcomputer.¹⁵¹

It is anticipated that fibre optic lines will play a significant role as a transmission medium for signals in the 1980s. The technology in question combines glass-fiber optic cables with semiconductor light sources to enable extremely fast data transfer rates. Fiber optic lines are small, secure against electrical interference, and compatible with digital switching and transmission methods. Growth in the use of digital transmission, computerised systems for upkeep and testing, and the automation of switching and invoicing are also expected to have a significant impact on the telecommunications sector. Electronic funds transfer in banking, electronic postal service functions, and data systems for the house are just some of the unorthodox uses of the communications network that experts predict will emerge in the near future.¹⁵² It's possible that this funding gap will narrow in the years to come. Increased spending on workplace technology is expected for the 1980s as business leaders adopt new data handling systems to save money on labour, supplies, and other overhead.¹⁵³ Costs associated with labour are estimated to account for the bulk of office expenses, providing significant motivation for increased mechanisation. Electronic computers with greater processing power, newer models of

¹⁵⁰ Teljas, Cecilia. The use of social media in the Swedish online newspaper *aftonbladet*- A case study Available at: <http://web.mit.edu/comm-forum/mit7/papers/> (last visited 7/6/2022)

¹⁵¹ Siddharth Zarabi "The future of India media is digital" (2021). Available at <http://www.businessworld.in/article/The-Future-Of-India-s-Media-Is-AllDigital/21-01-2021-367995/> (last visited 23/2/2023)

¹⁵² *Traditional v. Digital Advertising: Which Is Better?* Written by Erik J. Olson. (2022) Array Digital. Available at <https://thisisarray.com/traditional-vs-digital-advertising/> (last visited 23/2/2023)

¹⁵³ Eleven Indian Digital Media Publications Come Together to Build a Digital News Ecology <https://thewire.in/media/digipub-digital-media-publications> (last visited on 23 Oct, 2022)

word processors, tools and methods for storing, retrieving, and transmitting data on microfiche, and electronic mail networks are all examples of the sorts of technologies that could benefit from wider spread. Electronic images on a screen that can be shared via telecommunication methods are quickly replacing paper.

Applications such as remote services, colour management, and performance benchmarking all use the cloud terminology. IT professionals have paid extraordinary attention to it, and its importance in other parts of the company will only increase. With the advancement of technology, we can expect to see a continued shift away from conventional methods of operating machines, managing data, and implementing features, and towards cloud-based alternatives. With the cloud, you can distribute your content much more quickly than with an isolated system, and you can also take advantage of frequent updates, the most recent performance models, and a variety of other options.¹⁵⁴

Everything in the world is constantly generating big data. In the digital age, information is generated from every action and interaction. Those are transmitted by systems, sensors, and smart devices. The volume, velocity, and diversity of big data coming in from all directions is staggering. It takes top-notch processing capacity, analytics abilities, and information management know-how to derive actionable insights from big data. The world around us is full of disparate data sets. The implementation of data mining technology is crucial to making this environment smart, but without it, it seems unachievable. Data mining in the modern era can be supervised, unsupervised, or based on reinforcement learning thanks to mechanisation. The precision of computer-assisted learning improves when it is implemented in a hierarchical structure consisting of multiple levels. Automated feature extraction is the cornerstone of machine learning, which can be carried out in a nested, supervised or unsupervised manner.¹⁵⁵

There has been a dramatic change towards cloud solutions, which will continue to evolve and pose a major threat to more conventional data storage approaches. The simplest form of online storage, cloud computing provides practical ease via browser-based, app-based software that

¹⁵⁴Pereira AC, Romero F. A review of the meanings and the implications of the industry 4.0 concept. *Procedia Manufacturing*. 2017 volume 13: pg.1206-1214.

¹⁵⁵Oztemel E, Gursev S. Literature review of industry 4.0 and related technologies. *Journal of Intelligent Manufacturing*. 2020;31(1):127-182.

needs no local installation.¹⁵⁶The term "cloud computing" describes the method of keeping all data, software, and programmes on an external server. By ensuring that all relevant parties, including input suppliers, workers, and end users, have simultaneous access to the same data, efficiency is increased. Saving money, streamlining operations, increasing workspace, protecting data, and providing instantaneous access are just some of the benefits of cloud computing. There are essentially four distinct systems¹⁵⁷, mainly:

- i) "Public Cloud;
- ii) Private Cloud;
- iii) Hybrid Cloud (combination of public and private cloud);
- iv) Community Cloud (this refers to the co-operation of any service on the cloud with a few companies)."¹⁵⁸

Even though technological progress is happening in every sector, the pace differs greatly from one sector to the next and even within sectors themselves. Every sector has its own history, and it's not always tied to computers and fancy machinery. However, even commonplace innovations, like the mechanisation of material handling or the introduction of larger capacity equipment or machines with higher speeds, can be significant changes that necessitate employees acquiring new abilities. An economic governor, in the form of investment size, capacity usage, and institutional arrangements, controls the rate of technical change's spread and, in turn, its potential effects on the labour market.¹⁵⁹Increases in productivity tend to be bigger in sectors that are quick to adopt new technologies (like air travel and telecommunications), and smaller or even negative in sectors that are slow to adopt new technologies. (Examples, footwear and wood household furniture). As a result of technological advancements, both the nature and skills needed of workers are changing. Traditional craftsmanship, which required manual dexterity and physical power to move and position materials, is becoming increasingly outdated. In

¹⁵⁶Deloitte AG. Industry 4.0. Challenges and solutions for the digital transformation and use of exponential technologies. 2018, 1-30

¹⁵⁷Mhlanga D. Artificial intelligence in the industry 4.0, and its impact on poverty, innovation, infrastructure development, and the sustainable development goals: Lessons from emerging economies? Sustainability (Switzerland). 2021;13(11):1-16.

¹⁵⁸Tay SI, Lee TC, Hamid NZA, Ahmad ANA. An overview of industry 4.0: Definition, components, and government initiatives. Journal of Advanced Research in Dynamical and Control Systems. 2018;10(14):1379-1387

¹⁵⁹Nosalska K, Piątek ZM, Mazurek G, Rządca R. Industry 4.0: Coherent definition framework with technological and organizational interdependencies. Journal of Manufacturing Technology Management. 2020;31(5):837-862. DOI: 10.1108/JMTM-08-2018-0238 (last visited on 23/2/2023)

comparison, today's labour market places a premium on academic acumen, accuracy, and analytical skills. As more and more manual jobs are automated, unskilled employees are relegated to the role of equipment monitor.¹⁶⁰ Workers in the industrial sector may welcome a reduction in the monotony of their job, but the increased scrutiny and isolation that comes with new technologies should not be underestimated. Increased worker instruction is becoming increasingly important. A functional level of reading and writing is required for understanding the directions for complex machinery and for learning the new skills required by evolving technologies. Employees can be retrained for the many new jobs made possible by technological advancements. The vast majority of refresher training is conducted in-house and consists of both classroom and on-the-job teaching. Fewer people have lost their jobs as a result of technical advancements. Some of the credit for this goes to proactive measures taken by private companies to lessen the blow to their employees, like giving them ample warning and offering them the chance to update their skills.¹⁶¹

To perform the same functions, digital circuits can consume more energy than analogue circuits, leading to the need for additional components like heat sinks. This may restrict the applicability of digital systems in lightweight or battery-operated setups. In order to enhance and fine-tune the radio signals from the base station, battery-operated cellular phones, for instance, typically employ a low-power analogue front-end. However, a base station can use electricity from the grid to run software radios that are both resource-intensive and versatile. These base stations can be readily re-purposed to handle the signals employed by emerging cellular standards by simply being updated with new software.¹⁶²

In order to be effective, many digital systems must convert continuous analogue signals to discrete digital ones. Errors in encoding are produced as a result. By storing enough digital information to reflect the signal with the required degree of fidelity, the system can minimise quantization error. An essential rule of thumb for determining how much digital data is required

¹⁶⁰Bai C, Dallasega P, Orzes G, Sarkis J. Industry 4.0 technologies assessment: A sustainability perspective. *International Journal of Production Economics*. 2020;229.

¹⁶¹Culot G, Nassimbeni G, Orzes G, Sartor M. Behind the definition of industry 4.0: Analysis and open questions. *International Journal of Production Economics*.

¹⁶²Hittinger, William C. *Metal-Oxide-Semiconductor Technology*. *Scientific American*. Vol 229 (2) Aug 1973 48–59.

to faithfully represent a particular analogue signal is provided by the Nyquist-Shannon sampling theorem.

In some systems, the loss or misinterpretation of a single bit of digital information might cause only a minor setback, while in others, the entire meaning of extensive collections of connected information might be thrown off. Audio data recorded directly as linear pulse-code modulation, for instance, produces at most a single audible click if a single bit is corrupted. The use of audio compression to reduce file size and transfer time may, however, make even a single bit mistake audibly noticeable.¹⁶³

Growing from around 100 in 1990 to 209 in 1997, and from 84% to 91% of the land area, the number of radio stations has grown significantly. Radio has had the largest audience and offers the greatest chance at low-cost content for over two decades, but despite this, it has been treated like an unimportant relative. The number of people tuning in has either decreased or levelled off. There has been a very slight increase in listenership in some major cities as a result of the recent time allocation to private businesses on five FM stations. Commercial airtime and advertising revenues for such stations rose from Rs. 527 million in 1991–92 to Rs. 809 million in 1995–96, with the majority of the rise attributable to airings of film and other popular music.¹⁶⁴

There have been some attempts to use radio for societal transformation, such as state-funded radio rural forums for agricultural communication in the 1960s and 1980s. Recently, NGOs have contributed to the airing of shows that promote girls' education, emergency contraception, and women's rights. This is a platform that needs a boost, but it has the potential to succeed.

4.3.1 Television

From zero in 1990 to fifty or more this year, the number of private TV networks has skyrocketed. Although some networks, like Star Plus, have begun to offer hourly newscasts in the vein of CNN, entertainment still makes up about 51% of all programming. The news and educational programming only account for 13.3% and 9.6% of total airtime.¹⁶⁵

¹⁶³ See *The Chip that Jack Built*. Texas Instruments. 2008.

¹⁶⁴ *Through the Magic Window: Television and Change in India*, by Sevanti Ninan. 1995. Sage Publications

¹⁶⁵ Indian Readership Survey (IRS) 2006 (Round 16), available at <http://www.indiantelevision.com/special/y2k6/nrs-report06.htm> (last visited 3/3/2023)

Some television networks, however, air shows with a veneer of public interest in an attempt to enhance their image as socially conscious institutions. These shows include soap operas with socially relevant topics like women's education and empowerment, debates on whether or not smoking should be outlawed, and open forums where government representatives answer questions from viewers about human rights violations or consumer rights. In a cutthroat market, these programmes blend various levels of social worth with consumer appeal. The public's familiarisation with the political and legal systems, as well as the development of a desire for political accountability and transparency, have benefited greatly from the open forums in particular.¹⁶⁶

Serials like Tara, which followed the adventures of a determined woman, are also a part of the ongoing tradition of edutainment prosocial soap operas. While much of India (though not as much of the non-Hindi speaking south) was captivated by the first Indian edutainment soap, Hum Log (1985), audiences for later edutainment serials have been noticeably smaller. With multiple channels and soaps available, competition has increased and the once-captive viewership is no longer as reliable. Long-running tele serials from the late 1980s, such as the Ramayana and the Mahabharata, have gained legendary followings and are regularly rebroadcast¹⁶⁷

One growing practice, which represents the priorities of development agencies' programming right now, is narrowing in on specific demographics, most notably young adults. Particularly important to private channels are urban, middle-to-upper class teenagers. Most young people's top ten favourite networks are music channels like MTV and Channel V, where the VJs are widely regarded as positive role models. (One such popular VJ coos: Being fit is cool; not smoking is cool).

UNAIDS, India capitalised on this tendency in 1996 by teaming up with Channel V to launch an on-air and in-person campaign to raise awareness about HIV/AIDS. As part of their partnership, the groups will work to educate and empower VJs to speak out about HIV/AIDS. The Ford

¹⁶⁶ Jarvenpaa S L and Staples D S (2020), the Use of Collaborative Electronic Media for Information Sharing: An Exploratory Study of Determinants, *Journal of Strategic Information Systems*, Vol. 9, Nos. 2-3.

¹⁶⁷ Villani Susan M D (2018), Impact of Media on Children and Adolescents: A 10-Year Review of the Research, *Journal of the American Academy of Child & Adolescent Psychiatry*, Vol. 40, No. 4, pp. 392-401.

Foundation in India also supported a BBC workshop on sexual and reproductive health for media professionals. All six of the projects vying for extra money are comedic forms aimed at kids and teens, such as musicals, talk shows, and animation.¹⁶⁸

4.3.2 The Internet

In this country, groups of non-profit documentation centres have developed communications systems like India link and Dianet that are solely focused on development issues. This is in recognition of the fact that “access to information and information technologies” play an important role in development, particularly in light of the limitations imposed by the mass media. Through connecting grassroots nongovernmental organisations and bringing attention to documentation and information from within the country, these activities have fostered a larger participation from ordinary people in development and South-South discourse (see case description Democratisation of Information). The fact that just 90,000 individuals in the nation have access to the internet makes the density lower than a decimal point. This is one of the most significant challenges.

An effort for National Agricultural Technology that is financed by the World Bank intends to achieve a similar level of democratisation by installing information kiosks in rural areas. (for more information, see the interview with Kiran Karnik). The plan calls for transforming the widespread presence of public pay phone booths across the country, particularly in rural regions, into informational nodes that provide access to computers for the purpose of inputting and retrieving data that is relevant to rural populations.

4.3.3 Traditional Theatre /Media

Folk media, once the preferred method of spreading information, is in a vulnerable position today. The use of street theatre, magic, puppetry, traditional folk dances, and melas (fairs) by some agencies and NGOs is still common, particularly in rural areas. Some of these initiatives have had tremendous success in raising public consciousness, mobilising communities, and easing conversation between people. However, they have become almost relics in today's

¹⁶⁸ National Family Health Survey (NFHS), by International Institute of Population Sciences (IIPS), Mumbai, Ministry of Health and Family Welfare (MOHFW), Government of India, 2017.

environment due to “a lack of funding and technical assistance, their inherently fluid structure, and the difficulty in monitoring and evaluation. Even while employing such traditional folk forms, one Bangalore-based NGO feels obliged to address the basic survival needs of folk artistes, including the provision of basic wages, training, pensions, and other schemes.”¹⁶⁹

Development Organisations: Three major areas of communication need related to social change are highlighted by contemporary media trends:

- **Enhancing Development Content:** This involves increasing both the quantity and quality of media reporting and programming that focuses on development issues. Development organizations can play a crucial role in providing journalists and content creators with accurate information, compelling stories, and diverse perspectives on these critical topics.
- **Cultivating Audience Interest:** Creating a demand for development-focused programs is essential. Development organizations can use strategic communication strategies to raise awareness about these issues, highlight their relevance to the public, and encourage active engagement from viewers and listeners.
- **Securing Media Space:** Facilitating media space for development content requires collaboration with media outlets. Development organizations can build partnerships with media companies to ensure their content reaches the intended audience and has a platform for discussion and impact.

To raise the demand for quality, need-based programming, a Delhi-based NGO launched media Viewership Forums. The marketplace is defined by demand. Audiences from all socioeconomic backgrounds are learning media literacy and consumer rights in these spaces, leading to a growing movement for more socially pertinent content. (refer case description Media Education and Literacy). Public service broadcasting is a relatively new concept in this nation, so any such effort is vital.

In the mid-1980s, the Doordarshan-affiliated Lok Seva Sanchar Parishad (LSSP) was founded, marking a major step forward in the effort to create a public forum for social dialogue. The goal

¹⁶⁹ Douglas A, Ferguson and Elizabeth M Perse (2020), The World Wide Web as a Functional Alternative to Television, *Journal of Broadcasting & Electronic Media*, Vol. 44, No. 2, pp. 155-174.

of the LSSP-Doordarshan was to increase the number of socially conscious TV shows and commercials that were broadcast. Also, the position of women, legal rights, education, and the environment were all given increased attention thanks to a grant from the Ford Foundation to Doordarshan. The tight connection between LSSP and Doordarshan made this possible, at least temporarily. However, the LSSP's future is uncertain in light of the recent controversy over media liberalisation.¹⁷⁰

4.4 RECOMMENDATIONS

In light of the current media trend and the requirements of the developing community, the following suggestions can be made:

- Public service broadcasting" within the regulatory framework to encompass a wider range of media outlets. This could involve including not just state-sponsored media, but also non-profit media organizations. Such an expansion would allow charitable institutions, such as universities, religious organizations, and NGOs, to contribute to development reporting.
- Improved, needs-based media content can be prompted by initiatives aimed at increasing media awareness and education.
- Local broadcasting and community media can be made possible through decentralisation and the supply of training for communities. A necessary condition for community-driven communication is the distribution of communication tools.
- Professionals in the print, radio, and TV media (broadcast is often left out of these initiatives) should be sensitised and trained on social development problems.
- Increasing the significance of media patterns in guiding the communication spending of aid groups.

There's a growing concern that the current emphasis on market forces (often referred to as the 'LPG' mantra - Liberalization, Privatization, Globalization) could stifle public-interest media in India. Unless media analysts, NGOs, donor agencies, and the general public join forces to support media that addresses critical social issues, this essential voice may be drowned out.

¹⁷⁰ Arul Chelvan Sriram and Viswanathan Doraiswamy, (2017), Pattern of Usage of Various Electronic Media by Higher Education Students, International Journal of Education and Development, Vol. 2, No. 4, pp. 100-118.

Furthermore, comparisons between India's media landscape and that of the West are often unhelpful clichés. A more constructive approach would be to develop media models that suit India's specific social and economic context.¹⁷¹

There are three main hardware systems for media consumption: the television, wireless mobile devices, and the personal computer. Accessing the Internet is the primary function of computers, but they have also evolved into a platform for a wide variety of other activities, such as playing video games, buying music, watching movies and TV, reading periodicals, etc. These days, wireless phones are used for more than just making and receiving phone calls. Today, people use them to do everything from listening to music and playing games to viewing television and surfing the web. It's not unusual to put the television to more than one use. TVs have long been used for purposes other than just viewing broadcast television, such as watching movies that were bought or rented from a home video store or playing video games. A sizable chunk of the E&M industry's future revenue will come from content watched on convergent platforms like “TV networks, TV distribution, music downloads, mobile music, Internet advertising, and online gaming.”¹⁷²

Many of the algorithmic systems on which digital news sites rely are confidential trade secrets. However, the specifics of how these algorithmic systems customise news for consumers are kept hidden from the public eye in order to protect trade secrets. This makes me concerned about a dearth of openness and accountability. A key issue is whether or not customers have a firm grasp on the thought processes that go into algorithms and screening. “Public understanding of algorithmic personalization in news delivery remains limited. While concerns about “filter bubbles” and “echo chambers” have been raised, definitive evidence of their widespread impact is still being debated. Many consumers are unaware of the extent to which digital news platforms track user preferences and leverage this data to curate personalized news feeds. This lack of transparency can potentially limit exposure to diverse viewpoints and hinder informed decision-

¹⁷¹ Arlene Moscovitch (2017), *Electronic Media and the Family*, available in www.vifamily.ca/library/cft/media.html (last visited on 12/3/2023)

¹⁷² Galtung, J. & Ruge, M.H. 2016, The Structure of Foreign News: The Presentation of the Congo, Cuba and Cyprus Crises in Four Norwegian Newspapers, *Journal of Peace Research*, vol. 2, no. 1, pp. 167- 91.

making.”¹⁷³ An important reason for this is the lack of openness surrounding the creation and implementation of computational systems. However, there is little insight into how these algorithmic systems generate, curate, and spread news stories. (Rader & Gray 2015, p. 178). An new problem is the conflict that can arise between protecting proprietary information and sharing algorithmic methods. For businesses that don't consider themselves news organisations but increasingly host the publication of news material, this could pose a serious issue. The responsibility to deliver fair and timely news may be jeopardised by the shift to digital personalization.

The effects of modern tools are intricate. Certainly, with the radical and ongoing changes in the media environment, many lines are blurring. There are several key distinctions in the news industry, including those “between digital platforms and traditional media, between digital platforms and the internet in general, and between news consumers, distributors, and creators”. But there are definite effects that digital platforms have had on news readers, writers, and broadcasters, and these effects can often be traced back to the medium itself. There are both good and negative effects, as well as mixed results. To begin, while technology is not the sole factor in determining customer behaviour, it does play a significant role in shaping consumers' online habits and routines. Its affordances encourage some types of interaction while discouraging others. In this regard, the affordances of algorithms stand out. Algorithms are used extensively, and have substantial impact, on digital platforms and in the news media, but their inner workings are rarely made public. To be more specific, the algorithms of social media platforms, search engines, and publishers all play a role in deciding what users see. They have far-reaching impacts on news consumers and distributors, but they also have an impact on journalists.

Regular updates to social and search algorithms can increase or decrease the visibility of news material. The rise of algorithmic personalization presents a double-edged sword for news organizations. On the one hand, these algorithms can be powerful tools for reaching specific audiences and tailoring content to their interests. Social media platforms and search engines utilize these techniques to curate personalized news feeds and search results, while recommender systems suggest relevant news stories to users.

¹⁷³ Flaxman, Seth & Goel, Sharad & Rao, Justin. (2016). Filter Bubbles, Echo Chambers, and Online News Consumption. *Public Opinion Quarterly*, Volume 80, Issue S1, 2016, Pages 298–320. Available at <https://doi.org/10.1093/poq/nfw006> (last visited on 12/3/2023)

However, this algorithmic influence can also create vulnerabilities for news organizations. In their pursuit of wider reach and increased engagement, they might be tempted to prioritize content that aligns with the algorithms' preferences. This could lead to a homogenization of news content, with less emphasis on diverse perspectives or in-depth reporting that might not generate as many clicks.”¹⁷⁴ Fears of being trapped in a "filter bubble" or "echo chamber" have been sparked by the widespread adoption of automated methods. Some people are worried that as a result of using these algorithms, people are seeing less variety in the material available to them, that they are losing control over what they see online, and that there is a lack of accountability and transparency in the way these algorithms operate, all of which is unfair. Some research suggests that worries about filter bubbles and echo chambers are significantly overblown, but other studies find no proof for reduced diversity. However, there is often a lack of transparency and responsibility regarding the inner workings of personalization algorithms, which can have unintended consequences, including a reduction in individual freedom. These drawbacks must be weighed against the advantages, such as the way in which algorithmic methods aid consumers in making sense of a complex digital environment.

Although it is important to respect the intellectual property rights of the businesses that create algorithmic techniques, this does not appear to rule out providing broad descriptions of how algorithms work. The influence of AI is also growing. While automated journalism is still in its infancy, it holds great promise for the future of useful content creation on both traditional news outlets and digital platforms. There is great potential in automatic text summarization, which could make it simpler for digital platforms to reuse material from various locations. Such methods may have advantages for news users and distributors, but they also pose significant risks to the news organisations that employ them.¹⁷⁵ The vulnerability of AI to bias is a growing concern, and systems are required to address this.

At last, we turned our attention to the particular technologies and innovations adopted by digital platforms, and their effects on news consumers, distributors, and producers. We concentrated on Search Engine Optimization, Flexible Sampling, and Accelerated Mobile Pages on Google's end,

¹⁷⁴*Ibid.*

¹⁷⁵Lima, F., de Carvalho, C. N., Acardi, M. B. S., dos Santos, E. G., de Miranda, G. B., Maia, R. F. and Massote, A. A. (2019) “Digital Manufacturing Tools in the Simulation of Collaborative Robots: Towards Industry 4.0”, *Brazilian Journal of Operations & Production Management*, 16(2), pp. 261–280. Available at <https://doi.org/10.14488/BJOPM.2019.v16.n2.a8> (last visited on 22/2/2023)

and Instant Art's on Facebook's. There is the familiar pattern: while these technologies have had major positive effects on the consumption and distribution of news (and for digital platforms), the same cannot be said for news creation. Despite extensive, continuing technical innovation and experimentation, tension remains between digital platforms and news producers. Innovation is a hallmark of digital networks. They are quick to respond to novel situations and possibilities.¹⁷⁶ But these technologies need to be studied in depth and objectively because of their potentially large and opaque effects on how news is consumed, disseminated, and created.

4.5 LAWS REGULATING E-MEDIA ALONG WITH THE LATEST CASE LAWS

To define excellence Journalists and scholars have argued over how best to describe and assess the value of news coverage and other forms of journalism for quite some time. Rapid technological and commercial change in the news industry, marked by cost-cutting, redundancies, mergers, and a loss of confidence in the news media in most countries, including India, has brought new attention to the problem as well as new ways of approaching it.

Influence of media on society for the better Journalism's roots, which can be traced back centuries before it became a business and profession, lie in the production of factual accounts and explanations of current or recent events. Pamphlets, broadsides (large sheets printed only on one side), private messages, public statements, and word of mouth were the original forms of journalism. Those responsible for this material would not have considered themselves journalists. They would have preferred to do things like: earn money; argue politics; serve the community; and spread their faith. John Stuart Mill's progressivism signalled a turning point. A number of European monarchs previously imposed pre-publication censorship on authors and publishers, limiting the number of operational printing machines. Emerging capitalists pushed back against the regulations that had helped the powerful maintain their positions, and advocates for press freedom surfaced. The idea of the press as a monitor of the state was crystallised by an argument proposed by John Stuart Mill in the 19th century. Liberals held this view, which centred on making data available and easing restrictions on free speech.¹⁷⁷

¹⁷⁶Ministry of Information and Broadcasting, annual report 2020-2021, Government of India. Available at <https://mib.gov.in/sites/default/files/Annual%20Report%202020-21.pdf> (last visited on 22/2/2023)

¹⁷⁷ Tay SI, Lee TC, Hamid NZA, Ahmad ANA. An overview of industry 4.0: Definition, components, and government initiatives. *Journal of Advanced Research in Dynamical and Control Systems* 2018.

India's media landscape is characterized by a system of self-regulation, with organizations like the Press Council of India (PCI) issuing guidelines rather than strictly enforced regulations. However, concerns have been raised about the potential for this system to restrict the flow of news.

Justice M. Katju, the current Chairman of the PCI, recently advocated for extending the Council's oversight to television and radio broadcasting. While the PCI plays a crucial role in upholding press freedom and professional standards in print media (established in 1978 under the PCI Act), its functions primarily focus on promoting journalistic ethics and fostering a responsible media environment.

The potential expansion of the PCI's authority, coupled with the existing model of self-regulation, raises questions about how to ensure a balance between maintaining high journalistic standards and safeguarding the free flow of information.”

If an editor or writer is accused of unethical behaviour or breaking journalistic standards, the PCI can investigate the allegation. When concerns are filed, the PCI must investigate them. It can order the production of copies of public documents, subpoena witnesses to testify under oath, and even issue reprimands and censures to the publication, news organization, editor, or journalist in question. Newspapers of any kind may be compelled to publicize the findings of the investigation. All PCI rulings are binding and cannot be challenged in court.

Media cases have become increasingly important in India. There have been multiple instances where the media has prejudged an accused person without waiting for a proper trial to be held in court. There have also been infamous cases that have affected the Judiciary and outraged the public, such as the Jessica Lal case from 2010. At the time, the media celebrated their success in delivering justice to Jessica Lal, despite the fact that the accused had been acquitted of all charges by the trial court. Media Trial was accused of influencing the verdict in the 2006 rape and murder trial of law student Priyadarshini Mattoo. It is the media's fault that the perpetrators of the rape of Bijal Joshi and the murder of Nitish Katara were brought to justice instead of being allowed to walk free. On the flip side, the media has also misidentified suspects in high-profile cases like the Malegaon bombing and the Maria Susairaj case.

After reviewing a case on its own initiative, the Delhi HC concluded that the Indian justice system works at a snail's pace, and that if an innocent person is put on trial in the media, the person will have no real recourse. Therefore, it is unusual for a party in a trial by media to go to court to seek injunctive or monetary redress. The Court went on to say that all Courts have an important duty to safeguard people's rights and image against an unfair trial by media by being more watchful and proactive in their approach to cases. The system of law requires the Courts to act as a catalyst. Even though it puts more work on the criminal justice system, protecting a person from media abuse is essential. In the event that a person is detained on suspicion of criminal activity, it is not the responsibility of the media to determine whether or not that person is innocent. The judicial system is responsible for this duty. Therefore, the trial by media harms both the Court's ability to render a fair verdict and the accused, who should in most cases be considered innocent until proven guilty.

Not even the judicial system is perfect. Because of their humanity, judges and other members of the legal system are not exempt from making mistakes. They are also susceptible to the subtle but pervasive effects of media trials and exposure. As a result, legislation restricting media coverage of ongoing or upcoming trials is crucial.

4.6 STING OPERATIONS

A Scene from the Film the real-life events depicted in the film Spotlight revolved around an investigative team from the Boston Globe looking into a Catholic Church abuse crisis that rocked Boston at the turn of the millennium. It painted a compelling picture of the team's efforts to persuade dozens of abuse victims to come forward with their tales, as well as their hours spent poring over print and digital directories and microfiche records.¹⁷⁸

Modern investigative news relies heavily on technological advancements. The emergence of large data sets represents a significant change. To compile their stories, investigative journalists now have access to a seemingly infinite trove of data, including bank records, internet histories, phone records, and more.¹⁷⁹

¹⁷⁸ History of Mass Media in India, Media Ownership Monitor

¹⁷⁹R v. Loosely [2001] UKHL 53

In India, sting operations are usually positive and aim to keep public order and target anti-social behaviour, but they can also be negative. These stings also hold the government responsible. Democracy requires accountability, so citizens must be educated about government. As a democracy, India must not work behind the scenes. Citizens must understand everything. The largest communication channel, the media, informs people about government policies and actions and is the strongest fourth pillar in a democracy. The efficiency of democracy is checked on the lines of freedom its press enjoys. In India freedom of press is impliedly incorporated u/a 19(1).¹⁸⁰

The Indian Supreme Court has recognized the right to freedom of the press as an essential aspect of the broader right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution. This guarantee underscores the public's right to know about the activities of their government and those in power. Justice Mathews, in a landmark case, emphasized the importance of an informed citizenry and their right to access accurate information.

This interpretation of Article 19(1)(a) generally extends to the use of sting operations by the press in exposing wrongdoing. However, the Court has acknowledged the need for reasonable limitations in specific cases to protect other important interests.¹⁸¹

Sting operations, a journalistic practice where undercover methods expose wrongdoing, occupy a complex legal space in India. The absence of specific legislation governing them necessitates relying on various provisions scattered across different statutes.

This lack of a clear legal framework has resulted in conflicting judicial pronouncements on the legality of sting operations. A key concern centers on the potential violation of an individual's right to privacy, protected under Article 21 of the Constitution. Critics argue that sting operations can be intrusive and capture private moments not directly related to the alleged misconduct.¹⁸² Also they are seen violating public order and are a threat to decency and morality and thus are

¹⁸⁰R v. Sang [1980 SC 402]

¹⁸¹S.P. Gupta v. UOI, AIR 1982 SC 149

¹⁸²Vedangini Bisht, *Sting Operations Legal or Illegal*, LatestLaws.com, (July21.2018), https://www.latestlaws.com/articles/sting-operations-legal-or-illegal-by-vedangini-bisht/#_ftn1. (Last visited on 12/12/2022)

contrary to the provisions of Art. 19(2).¹⁸³ The Courts in many cases have dealt with the problems pertaining to the legality of Sting operations and have decided upon it in accordance with the facts of the case. The legal murkiness surrounding sting operations in India is exemplified by the case of Ms. Uma Khurana, a teacher. A sting operation by LIVE INDIA accused her of forcing girls into prostitution, sparking public outrage and even physical attacks. However, a court-ordered investigation revealed the allegations to be entirely false. This incident highlights the potential dangers of sting operations. While the Supreme Court recognizes the freedom of the press, it has also cautioned against practices like entrapment. The Khurana case underscores the need for a clear legal framework that balances the public's right to know with the protection of individual rights, including privacy and freedom from false accusations.¹⁸⁴

The precarious legal status of sting operations in India is vividly illustrated by the case of Ms. Uma Khurana, a teacher. A sting operation by LIVE INDIA made damning accusations, alleging she forced girls into prostitution. This sparked public outrage and even physical attacks on Ms. Khurana. However, a court-mandated investigation later revealed these accusations to be completely fabricated.

The Khurana case exemplifies the potential pitfalls of sting operations. While the Indian Supreme Court upholds press freedom, it has also expressed reservations about practices like entrapment. This incident underscores the urgent need for a well-defined legal framework that strives for a delicate balance between the public's right to information and the safeguarding of fundamental individual rights, including privacy and protection from false accusations.”¹⁸⁵

4.7 CONCLUSION

Press freedom is essential to the health of any democracy. The press's influence extends beyond the dissemination of news. The original goal of media sting operations was to expose crimes for which evidence could not be obtained through more traditional means of investigation in order to fulfil the public's right to know; however, in more recent years, the public's interest in

¹⁸³R K Anand v. Registrar, Delhi HC, 2009, 8 SCC 106

¹⁸⁴Time v. Hill 385 U.S. 374 (1967)

¹⁸⁵State of U.P. v. Raj Narain [AIR 1975 865]

sensationalising crime has trumped the original goal. They don't care whether their actions invade people's personal space.

Though press freedom is included in the concept of free speech, this privilege is not absolute. Furthermore, this privilege is not without its conditions. The Ministry of Information and Broadcasting must implement stringent regulations and harsher penalties for activities that violate the rights of others. Equally crucial is the requirement that undercover operations be conducted lawfully and with due regard for the other person's rights. Democracy thrives on a delicate balance: the right to privacy on one side, and an informed citizenry on the other. The media serves as a bridge between these two fundamental rights. However, tensions can arise when sting operations, used to expose wrongdoing, intrude on individual privacy.

To navigate this complex landscape, India requires a well-defined set of regulations or guidelines for media sting operations. These guidelines should clearly establish the legal boundaries and permissible scope of such practices.

One potential approach could involve adapting the American legal distinction between entrapment and sting operations. This distinction recognizes that undercover investigations designed to gather evidence of pre-existing criminal activity fall under a different category than operations that create situations to induce someone to commit a crime they wouldn't have otherwise.

Sting operations have been a powerful tool for exposing corruption and misconduct in the public sphere. Over the years, we've witnessed numerous instances where undercover operations played a crucial role in bringing perpetrators to justice. However, a distinction must be made between sting operations that invade personal space and those that expose dishonourable behaviour and similar activities, the goal of which is to protect India's Constitution from being corrupted at its very core. However, in the current political climate, where corruption is at an all-time high, it is difficult to tell which sting operations are politically motivated, which are intended to filter the social order, and which are the product of fabricated broadcast supported by various political parties and their corporate owners.

There must be a standard collection of rules and strict enforcement of those rules. A quasi-judicial, state-sovereign body with sanction and death penalty powers is therefore advocated for. Anti-media intrusion legislation is proposed to prevent the press from revealing private information. Broadcasting sting operations is addressed with a collection of rules. Since writers are not protected by any legal shield, they must follow the rules to avoid legal trouble. "Courts should give less weight to Factum of Entrapment and alluring the suspect into committing an offence when weighing the admissibility of evidences since there is no law that deals with the admissibility of evidence obtained by a sting operation"¹⁸⁶. The method by which the crime was done, which would have been carried out regardless of the presence or absence of inducement, should be given more weight. When law enforcement agencies are unable or reluctant to apprehend criminals, sting operations are sometimes protected on the grounds that the media has a responsibility to do so. These endeavours, however, can easily morph into a ratings-boosting arms race in the absence of a well-established framework of standards and laws.

¹⁸⁶Khan, Ahkam, and Parimal Kashyap. "Sting Operations: The Role of Media as a Vigilante." *Indian JL & Pub. Pol'y* 4 (2017): 61.

CHAPTER-5

INTERNATIONAL PERSPECTIVE OF MEDIA TRIAL

The description of international laws is very important in understanding the concept of independent media administration. In this chapter a brief media law facets on different countries are described and analysed. It also describes the provisions and its impact on the society and judicial system.¹⁸⁷

In the United Kingdom, there are some regulations for the media reporting such as; strict contempt of court rules prevent the media from reporting of legal proceedings as soon as the suspect has been formally arrested. These rules are designed to give defendants a right of fair trial before jury that has not been tainted by prior media interference.

It is also important to illustrate here the important legal and regulatory aspects of different commonwealth countries which have secured better rank than India in several index such as freedom of speech, democracy and literacy etc. The roles of various countries media during the media reporting have got different perspectives like critical perspective and sympathies perspective. This chapter is trying to highlight the connecting dots among the style and execution of national media attributes and international media law facets. It explains the legal provisions and significance of the various countries existing media law and its impact on the society at large. It is crucial to give attention on the role of different countries laws, rules, regulations and policies to deal with media. For this type of comparative studies whether existing laws in the country are sufficient or not and the test under the principles of natural justice are compulsive necessity.¹⁸⁸

The legal aspects follow by the Indian media whether in the self-interest of or public interest can only be identified through a comparative analysis. It is a matter of scientific comparative analysis and following the principles of natural justice. In the light of international concern some discussions are being presented in this chapter. This chapter is broadly describing legal

¹⁸⁷ Carol S Lomicky, de Goed, Trudy C, Handbook for research in media law, United States: Wiley, 2005.

¹⁸⁸ Alan Davidson, *Social Media And Electronic Commerce Law*, United States: Cambridge University Press, 2016.

and regulatory mechanisms existing on freedom of media in various countries like the UK, USA.

Comparative analysis will certainly make us understand the concept of media trial in broader sense. It would be easy to find out the strength and weakness of media laws and regulations prevailing in those countries by comparing it with India.

5.1 MEDIA LAW IN THE UK

In India, there is an ample gap remains in the administration of justice while a media coverage is being done. In simple, it won't get wrong to say that the difference between scandalizing the adjudicator and scandalizing the court have been misunderstood. Whereas, a liberal regime we could see in other countries.¹⁸⁹ When we talk about the UK, there is stringent criminal provisions are made to deal with this issue. In fact scandalizing court is considered as a serious offense in the UK. Hence, we could see a development of responsible journalism exist in the UK. The Crime and Courts Act 2013 has a provision to deal with such offence in the UK. The role of judiciary is praise worthy to keep the sanctity of "Justice must not only be done but must be seen to be done" and that keeps the public perception abreast on Courts.

National Commission to review the working of the Constitution (NCRWC)"had given many suggestions on Contempt of Court laws of India which are at par with the UK legislation. But in the UK press freedom is not guaranteed under the constitution whether written or unwritten so as the other countries. Though, a lot of emphasis have been put on press freedom but constitutional guarantee is still lagging behind. In the UK however, freedom of media is always promoted and protected but at the same time restricted too. 'Rule of Law' says "equality before law" I.e. no one is punished except breach of law concept is prevailing there. Hence, no special guarantee on media freedom has been provided for e.g., right to discussion or freedom of discussion is not embodied in the constitution rather solely based on the principles of rule of law.¹⁹⁰

¹⁸⁹Christian Delage, Peter Goodrich, Marco Wan "*Law and New Media: West of Everything United Kingdom*" Edinburgh University Press, 2019

¹⁹⁰ Durga Das Basu, *Commentary on the Constitution of India*, (Calcut a, S.C. Sarkar & Sons, Pvt. Ltd., 1965), p. 606.

As most of the English laws are based on Magna carta so still the doctrine of “what is not prohibited is permitted” prevails in the UK. Therefore, considering some permissible limits and furnishing some precise definition of the limitations or restrictions embodied by both civil and criminal laws on the freedom of individuals. Certainly, individual freedom is given priority but with conditions. For e.g. an individual can use press freedom and report or publish anything what he/she pleases but punished only when he/she misses the freedom.¹⁹¹ Then, it would be considered as violation or infringement of the liberty vested on the individuals. England law is very specific on the point that special privilege will not be provided to any specific profession such as media, corporate etc. In the quote given by A.V. Dicey, “The simplest way of setting forth broadly the position of writers in the press is to say that they stand in substantially the same position as letter writers”. The meaning is defined in *Arnold v. King Emperor*, 1945 by Privy Council. Free Press for journalists is an ordinary aspect and it may go to any extent. But keeping aside the statute law the matters related to free media are as ordinary as possible. The power is concentrated on judiciary in the dissemination of press freedom which leads to responsible journalism. Media professionals become more careful while reporting. Press criticisms are made with more consciousness in assertion. At the same time the wide range of healthy media criticism is at par with any other domain.¹⁹²

English Courts have followed the —presumed prejudice test to determine that pre-trial publicity has violated the right to fair trial. In *R. V. Lord Chancellor, ex parte Witham*¹⁹³ the Court stated: —Indeed, the right to a fair trial.... is as close to an absolute right as any which I can think of.¹⁹⁴

The United Kingdom's concept of press freedom has evolved into a right to publish nearly anything, with some limitations. These exceptions include areas like contempt of court, sedition, obscenity, blasphemy, and defamation. This development was heavily influenced by social contract theory, which emphasizes a balance between individual liberties and social order.

¹⁹¹ Furi-Perry, Ursula, *social media Law: A Handbook of Cases and Uses*, United States: Trade select Limited, 2017.

¹⁹² Vitins, Matt., Rolph, David, et.al., “Media Law: Cases, Materials and Commentary”, Oxford University Press, 2010.

¹⁹³ (1998) 2 WLR 849.

¹⁹⁴ *Ibid.*

Contempt of court laws play a vital role in ensuring a fair and efficient judicial system. They aim to protect the administration of justice, uphold the dignity of the court, and maintain public confidence in the legal process. Contempt can be categorized as either common law contempt or strict liability contempt. Common law contempt focuses on actions that directly interfere with court proceedings, while strict liability contempt applies to publications that pose a substantial risk of prejudicing a fair trial, even if unintentional.

The Contempt of Court Act 1981 introduced a specific provision (Section 1) addressing strict liability contempt. This section prohibits publications that create a significant risk of prejudice in ongoing legal proceedings. It's important to note that this rule only applies to publications with a high likelihood of causing prejudice, and only during active court proceedings. The Act broadly defines "publication" in Section 2(1) to encompass any form of communication aimed at the public or a segment of the public.¹⁹⁵

Common law contempt applies when someone intentionally interferes with the administration of justice. This could involve actions like threatening jurors or witnesses, or publishing information that could influence a trial.

Strict liability contempt, introduced by the Contempt of Court Act 1981 (Section 1), focuses on publications that create a substantial risk of prejudicing a fair trial, regardless of the publisher's intent. However, Section 3 offers immunity for "innocent publication or distribution," meaning unintentional dissemination is not punishable. Furthermore, Section 4(1) of the Act provides special protection for reporters who accurately and fairly report on ongoing legal proceedings.

Following the decision in *Sunday Times v. UK*¹⁹⁶, the United Kingdom passed the Contempt of Court Act in 1981. An injunction was going to be issued regarding the Sunday Time article that explained the reason of birth defects. The court elaborated on the contempt provisions and found that the restraints that had been applied were not in accordance with the law and that the UK contempt provision was ambiguous. The Supreme Court made the observation that laws include not only statutes but also unwritten law; citizens are required to have reasonable foresight of the

¹⁹⁵ Duncan Bloy & Sara Hadwin, *Law and The Media*, (Sweet & Maxwell 2nd Ed,2011)

¹⁹⁶ (1979-80) 2 E.H.R.R. 245 (26 April 1979)

repercussions of the case. Article 10(1) grants the right to access, as well as the right to communicate information and views. Article 6 of the European Convention on Human Rights protects the right to a fair prosecution and a public hearing. Article 10(2) of the same convention states that maintaining the authority and impartiality of the judiciary justifies interference with article 10. (1). As a result, competing interests, including freedom of expression and the right to a fair trial, were posited, and acceptable restrictions were justified in order to keep the administration of justice running smoothly.

The most serious form of contempt is the publication of pending matter in contempt of court, and the British legal system is unequivocally opposed to holding trials in locations other than courtrooms. Contempt provisions are a weapon to prevent interferences that are unreasonable. Publicity before a trial begins is seen as a greater risk to the integrity of the proceeding than notoriety either during or after the trial. The legislation in the UK places a greater emphasis on preventative measures, such as limiting publications and providing restrictions to publishers in order to mitigate the likelihood of publishers perpetrating criminal contempt. The purpose of the restrictions imposed by the UK Act of 1981 was not to stifle free expression or a free press. The UK Act of 1981, Schedule 1, sections 2(3) and 2(4) provide additional information regarding the definition of ongoing proceeding. Under section 2(3), what is considered to be an ongoing proceeding in the majority of legal systems is referred to as a pending proceeding.¹⁹⁷

Postponement orders are discussed in subsection 4(2) of this act. There must be a significant risk of prejudice to the administration of justice in ongoing or upcoming proceedings in order for postponement orders to be granted. This requirement is one of the three parts of a test that must be fulfilled. If there are other competing public interests at stake, then other alternative risk mitigation measures will not eradicate the risk. In *Goodwin v UK*¹⁹⁸ It was determined that there was a substantial danger. To begin, each individual case will be evaluated on its own merits, the potential for publication will be evaluated at the time of publication, and the effect that publication is likely to have on the minds of the jurors will also be considered.

¹⁹⁷ Law Commission reforming the law contempt of court-contempt by publication, Consultation paper 209. Available at www.lawcommission.gov.uk. (last visited on 12/1/2023)

¹⁹⁸ (1996) 2 EHRR 123

Matters that are considered to be sub judice in English law are exhaustive and include a list of precedents that are within the reasonable understanding of media organisations. If publications in violation of section 4(2) are made, there will be consequences under the strict statutory regulation.¹⁹⁹

The guidelines for reporting on judicial proceedings have been made more relaxed, and a set of guidelines on reporting restrictions has been supplied for the reference of the judiciary, the media, attorneys, and the general public. The principle of open justice, public hearings, and the reporting of judicial proceedings in a manner that is both fair and accurate are strengthened by these guidelines. In the absence of exceptional circumstances, it also acknowledges the free flow of information and the freedom of the press to disseminate information. These principles can be limited, however. It provides some direction on Articles 6 and 10 of the European Convention on Human Rights (ECHR), and it also makes it abundantly obvious that these rights are conditional and not absolute. Before establishing restrictions on the general rule of right to access information of the public and media, it is necessary to necessitate the proportionality test. This is because putting restrictions on the open justice principles would violate the general rule. It is the responsibility of the party requesting exceptions to provide evidence that is both clear and convincing. In the United Kingdom Act of 1981, Sections 3, 4, and 5 provide the media with a defence against the stringent liability rule in the context of reporting on judicial proceedings. Under its inherent authority, the court has the ability to issue section 4(2) postponement orders in order to prevent the reporting of proceedings that pose a significant risk and prejudice. On the other hand, these directives are not prohibitive but rather preventive and have been issued for a limited time. However, there are certain exceptions to this rule, such as when it is in the interest of justice, national security, or the prevention of disorder and crime. Section 10 of the Act safeguards the confidential sources of information that journalists use. In accordance with the provisions of Section 11 of the Act, a person who is accused of a crime may request that

¹⁹⁹*Ibid.*

any disclosure of confidential information concerning themselves be withheld from reporting and kept anonymous.²⁰⁰

In Canada, the traditional approach known as common law is utilised. Prior to the passing of the Canadian Act in 1982 that would later be known as the Charter of Rights and Freedoms, the principle of fair judgement and the administration of justice were given a higher priority than the freedom of the press. The conventional method of striking a balance between open press and fair trial, on the other hand, underwent a change that brought its interpretation closer to that of the legal system in the United States.²⁰¹ On the other hand, when issues concern two rights that are in direct opposition to one another, a more tolerant strategy is emphasised.

The British Courts are aware of the potential danger that a stifled media environment poses to the judicial system. Certain pieces of information, such as accounts of confessions made by criminal defendants and specifics regarding the antecedents of criminal defendants, are regarded as inherently prejudiced. In the event that malicious notoriety disrupts a criminal trial, the courts will typically put an end to the prosecution. If the rules of evidence prohibit the production of relatively specific facts during the trial, but the jury is already aware of those facts, the British courts merely believe that justice has been undermined and that they have no choice but to rule in favour of the defendant.²⁰²

In the case of *Attorney-General v. Guardian Newspapers Ltd*²⁰³ justice Collins established a key principle for evaluating potential prejudice from publications. Courts must weigh whether the risk of prejudice is both serious and imminent. This assessment considers several factors:

- The nature and presentation of the published material: Is it sensational or inflammatory?
- The timing of the publication: Does it coincide with a critical stage of the trial?
- The likelihood of jurors encountering the publication: Could it easily reach potential jurors and influence them?

²⁰⁰ Court and judicial tribunal report on “Reporting restrictions in the Criminal Courts”, Judicial (2022). Available at www.judiciary.gov.uk (last visited in 12/1/2023)

²⁰¹ *Dagenais v Canadian Broadcasting Corporation*, (1994) SCR 835.

²⁰² Justice R.S Chauhan, —Trial by Media: An International Perspective available at: <https://www.sconline.com/blog/?p=235735>. (last visited 12/1/2023)

²⁰³ [1988] UKHL J1013-1

- The potential impact on the jury's ability to follow instructions: Can they disregard the publication and base their verdict solely on the evidence presented in court?

By considering these factors, courts can determine if a publication poses a significant and immediate threat to a fair trial, potentially justifying limitations on press freedom.

Under the Contempt of Courts Act, 1981²⁰⁴The UK's Contempt of Courts Act 1981 grants courts the power to restrict the publication of information related to ongoing legal proceedings. This measure aims to prevent a "substantial risk of prejudice" to the administration of justice, potentially ensuring a fair trial. In essence, the Act allows English courts to temporarily limit the flow of information to protect the integrity of the legal process.

It is a notable point that from the very earlier stage of Press liberalization in England in almost 17th century its powers are vehemently restricted by the Monarchy. Hence, as a reaction opposite to this monarchy movements were raised by the intellectual's viz. John Stuart Mill, John Milton and others, they had received immense public support in the due course of action. The consequence we witnessed after this is a real progressive approach towards all the restraints put on free press. Gradually there is a shift took place from conservative ideology to free society empowering more this press freedom. And in the middle of the 19th century heralded a new era in the free media history so as to commence the role of independent media more fearlessly.

THE UNITED KINGDOM

i) Journalism standard	➤ “Striking a balance between promoting free expression through the press and ensuring the highest possible accuracy
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²⁰⁴ Contempt of Courts Act 1981, Sec.4(2) reads: In any proceedings the court may, where it appears to be necessary for avoiding substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

	<p>in news reporting .</p> <ul style="list-style-type: none"> ➤ Copyright law, moral rights, defamation law, data protection law, law of confidence etc.
<p>ii) Constitutional sources</p>	<ul style="list-style-type: none"> ➤ For freedom of speech and expression there is no constitutional guarantee in the United Kingdom.” However English and Scots laws are specifically meant for protection of free speech that extends to media freedom.
<p>iii)Legal-Regulatory orientation (moral authority v. statutory sanctions)</p>	<ul style="list-style-type: none"> ➤ “Human Rights Act of 1998” ➤ “Incorporates the European Convention on Human Rights (ECHR), including the right of an individual to respect for his or her private and family life and the right to freedom of expression.” ➤ Article 10 of the European Convention: freedom of speech and expression ➤ Under Article 10 (2), restrictions were permissible if they were “necessary in a democratic society, for the prevention of disorder or crime, for the

protection of health and morals, for the protection of the reputation of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of judiciary”.

- U.K. Contempt of Court Act, 1981
- Section 4(2) of the U.K. Contempt of Court Act, 1981, a restraint order may be passed by a Court if there is ‘substantial risk’ of prejudice to the administration of justice”
- British Press Council, 1953
- Served as a model and provided an impetus for the setting up of councils in many countries in the sixties.
- The General Council of the Press, 1963
- Brought many amendments in the newspaper industry.
- The Press Complaints Commission
- Dealing with complaints against the press.
- Defamation Act 1996 in Scotland
- Section 5 dealing with the time

	limits for actions for defamation or malicious falsehood
iv)Implementation orientation	<ul style="list-style-type: none"> ➤ The Leveson Committee ➤ Independent Press Standards Organization ➤ The office of communications (OFCOM) ➤ Advertising Standards Authority (the ASA)
v)Redress mechanism	<ul style="list-style-type: none"> ➤ Complaint against the media ➤ Complaint by the media ➤ Suo-motu Cognizance taken in the matters(by and against the media)
vi)Judicial pronouncements	<ul style="list-style-type: none"> ➤ Common law system of legal precedent ➤ “Mosley v. News Group Newspapers[2008]EWHC1777(QB)” ➤ “Murray v. Express Newspapers Plc [2008] EWCACiv446” ➤ Attorney General v. Times Newspapers, 1973 (3) A11E.R. 54(HL) ➤ Sunday Times v. United Kingdom, (1979) (2) E.H.R.R.

	245
vi) Recommendations	<ul style="list-style-type: none"> ➤ “To preserve the established freedom of the British press.” ➤ “To maintain the character of British Press in accordance with the highest professional and commercial standards.” ➤ “To consider complaints about the conduct of the press or the conduct of persons and organizations towards the press; to deal with the complaints in whatever manner might seem practical and appropriate and record resultant action.” ➤ “To keep under review developments likely to restrict the supply of information of public interest and importance.” ➤ “To report publicly on developments that may tend towards greater concentration or monopoly in the press(including changes in ownership, control and growth of press undertakings) and to publish statistical information relating to them.” ➤ “To make representations on

	<p>appropriate occasions to the government, organs of the United Nations and to press organizations abroad.”</p> <p>➤ “To publish periodical reports recording the Council’s work and to review time to time developments in the press and the factors affecting them.</p>
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5.2 MEDIA LAWS IN USA

Judiciary in USA is vested with the task of restricting freedom of speech in turn freedom of press as the First amendment of US Constitution bars Congress from making law abridging freedom of speech and freedom press. Therefore, the judiciary in US developed certain principles through its judicial interpretations restricting the said rights. Limitations as developed on freedom of speech and that of the press can be assessed by analysing some of the landmark judgements decided by the US Supreme Court. Hence, the following cases gives some ideas as to the principles and limitations developed by the judiciary over a period of time.

The First Amendment to the US Constitution guarantees a very high level of protection for free speech and press freedom. It prohibits Congress from passing any laws that restrict these rights. This near-absolute protection comes with some exceptions, however, such as incitement to violence, false statements of fact, obscenity, child pornography, threats, fighting words (words that are likely to provoke a violent response), and certain categories of commercial speech.

In contrast, India's Constitution (Article 19(1)(a)) grants freedom of speech and expression, but with more qualifications. Article 19(2) allows the government to impose "reasonable restrictions" on these freedoms in specific contexts, such as public order, morality, and defamation. So, while both countries value free expression, the US takes a more absolutist approach, while India allows for some limitations under specific circumstances.

According to Blackstone, having the right to freely communicate oneself entails not being restricted in any way, shape, or form, including but not limited to prior restraint, ownership, licensing, and protection from punitive measures following the publication of anti-government sentiments. Over the course of American history, freedom of expression has come to mean not only the absolute right of individuals to communicate, write, and express feelings, opinions, and beliefs but also the protection of the right of the community as a whole to be informed. On the other hand, the meaning of freedom of expression has evolved to imply, for the most part, what the Supreme Court of the United States interprets the first amendment to be.²⁰⁵

The seemingly absolute guarantee of free speech and press freedom in some countries, like the United States, faces challenges due to competing interests. National security concerns and the potential to disrupt fair trials, especially in high-profile cases, can create tension. The judiciary, in such instances, has sometimes exercised its power to punish contempt of court. “In *New York Times v Sullivan*²⁰⁶ The landmark Supreme Court case *New York Times Co. v. Sullivan* highlighted a crucial role of a free press: acting as a watchdog over the other branches of government (executive, legislative, and judicial). The Court recognized the importance of a neutral public forum where citizens can exchange ideas and hold their elected representatives accountable. In *New York Times v US*²⁰⁷ (The Pentagon Papers case), It was held that prior restraint can be placed by government and press is no exclusion.”

5.2.1 Prior Restraint

In *Near v Minnesota*²⁰⁸ The Supreme Court has noted that there are situations in which previous restraint is acceptable, but that doing so is difficult to define. When it comes to matters of national security, public safety, and public order, the government has the right to limit the press under the First Amendment. In *Austin v Keefe*²⁰⁹ Court reinforced near ruling.

²⁰⁵ Wayne Overbeck, *Major Principles of Media Law*, (Thomson Wadsworth Ed 2004).

²⁰⁶ 376 US 254 (1964).

²⁰⁷ 403 US 703.

²⁰⁸ 283 US 697 (1931)

²⁰⁹ 402 US 495 (1971)

The government has the burden of proof to show that a restraint order is necessary (as the court noted in the Pentagon Papers case), but such orders can only be issued in limited situations. The government lost this case because it did not provide sufficient evidence that a restraining order was necessary. Therefore, the First Amendment guarantees a completely free press and expression. Due to its relevance to many different areas of law, prior restraint is not universally deemed illegal.²¹⁰

- i. Any behaviour that brings shame, disobedience, or disrespect to the court or the authority of the court is considered to be contemptuous. Contempt for the law should be shown for any action that disrupts the proper operation of the legal system. There are two different forms of contempt in the US.
- ii. The authority to punish contempt for the purpose of protecting the rights of litigants in a legal dispute – Reporters who ignore subpoenas, reporters who decline to testify in court, reporters who put another person's right to a fair trial in jeopardy by their actions The media's refusal to pay libel damages, as well as its invasion of private and questionable judgment, etc.
- iii. The power to punish contempt can be exercised in order to uphold law, the authority of the court, or the power of the judge. Controversial judge, defense attorney who disobeys a judicial caution not to discuss the merits of the case with the media, and defendant who disrupts the proceedings of the trial.²¹¹

Those who are interested in obtaining information have access to the information provided by a free press, which is important in order to encourage participation in a free society. A free press provides its members with the confidence to pursue the truth, to question authority, and even to question those in positions of the highest authority. The meticulous gathering of sources results in the accumulation of essential confidential information, which may result in the information being withheld from the press or kept as a record with them. However, any individual who has an interest in the case, including government agents, attorneys for parties, judges, legislative committees, and jurors, has the ability to seek subpoenas, which forces

²¹⁰ Sonja R. West, The Stealth Press Clause, 48 Ga. L. Review 729 (2014), available at <http://digitalcommons.law.uga.edu> (last visited on 23/1/2023)

²¹¹ The Sub-judice Rule and Contempt of Court, (Sept.1,2011), Pinset Mosons LLP, <http://www.Outlaw.com/pg9742> ,(last visited on 16/3/2023)

journalists to reveal their sources or disclose confidential information. Reporters are frequently required to witness in court about the legitimacy of the source of their news, the authorities' top priority when doing so being in a criminal trial investigation due to the fact that this source of information assists the police, followed by other reasons. In the event that reporters do not comply, government authorities will be forced to comply with judicial orders in order to get their way in these disagreements by invoking their contempt power.

However, a court in the United States decided that a constitutional privilege should be granted to journalists who were subpoenaed. The court determined that a privilege would be qualified if it stated that journalists could not testify in legal proceedings under any of the following three conditions:²¹²

- i. The person who requests information from the reporter is responsible for proving that the reporter possesses information that is pertinent to the meeting.
- ii. The requirement to disclose information.
- iii. There is not another source of information available.

The general rule is that journalists are ordinary citizens; they have the same rights guaranteed by the First Amendment as all other citizens, except that they do not have the privilege granted by the First Amendment to decline to testify in legal proceedings. It is important to realise that the legislation only protects a news source if the source tells a reporter about it, and not news that the reporter personally witnessed or heard. In addition to the three-part test, there are certain grounds for successfully challenging a subpoena. These grounds, known as the shield law, are intended to safeguard journalists who hold confidential information. The rules that pertain to subpoenas are governed by the Department of Justice. The free movement of information, the protection of the public interest, and the upholding of law and order are all goals of these regulations.²¹³

²¹²*Id.* note 199

²¹³*Id.*

5.2.2 Contempt and Press

Conflicts between the press and the court can include citations for contempt, refusal to comply with court orders, critical commentary on the court system, and juror tampering. To balance press freedom with legal due process, contempt rules have been kept alive in recent years. To the extent that it does not seriously disrupt the administration of justice, the press is free to comment on the court or judicial proceedings. “In *Bridges v California & Times*²¹⁴ , *Mirror v Superior Court*²¹⁵ , Court observed that to consider an publication to prejudice due course of justice whether imminent or pending.” The first step is to determine whether the risk posed or imminence is significant enough that such public expression poses an immediate and serious threat to the integrity of the judicial process. “In *Pennekamp v Florida*²¹⁶ Court observed that danger posed must have direct nexus to due course of justice and must be clear & imminent hindering fairness of trial.”

In subsequent decisions, the US Supreme Court emphasised the importance of striking a balance between competing principles of legal procedure. Contempt clauses may be an impediment to press freedom due to the need for a fair trial and administration of justice. At the same time, judges are subject to an obvious and present danger test before they can take punitive action for contempt, which places some limits on their contempt powers.

5.2.3 Free Press and Fair Trial

It has become increasingly common to enthral readers with amazing tales, particularly when reporting on crimes. Major broadcast time is frequently given to reporting on criminal stories around the globe, and the American system is no exception. Reporting on illegal activity is not inherently problematic; in fact, it is the press' responsibility to gather and disseminate information to the public. The issue occurs when such media coverage causes ongoing legal

²¹⁴ 314 US 252 (1941).

²¹⁵ 3 Cal. 2d 309

²¹⁶ 328 US 331 (1946).

issues that contrast constitutional rights, particularly the First Amendment and the Sixth Amendment.²¹⁷

The OJ Simpson case brought to light how media misinformation, aggressive trial advertising, and publications that sway public opinion against the accused undermine the legal system, cloud jurors' perceptions of the case, and endanger the accuser's right to a fair trial.

It is challenging to disprove the theory that judges' prejudicial publicity may have an adverse effect on juries, impairing their ability to render fair judgements. The conventional method being any judge who has been affected by such a proceeding is unfit to serve as a judge. However, according to the Anglo-Saxian Approach, which emphasizes Cardozo's words, judges are also human and there may be a potential effect on their thinking. By doing so, the US Court expressed its opinion that the traditional method does not result in pre-trial publicity having an effect on the minds of jurors or judges. However, two key presumptions were established to guarantee an impartial juror.

- i. The justice system is closed off by knowledge or an impression that is not directly related to testimony.
- ii. The pre-trial publicity's scope is unlikely to impair a fair prosecution.

It is impossible to ignore the propensity for pre-trial publicity to result in an unfair trial and an impartial jury.

5.2.4 Reporting Of Court Proceedings

In an effort to lessen the impact of pre-trial publicity on issues under consideration, the American legal system turns to judicial remedies.

- i. Voir Dire is nothing more than challenging a jury, or testing a juror to see if they are biased.

²¹⁷ Elliot W. Atkinson Jr., *Free Press v Fair Trial: Insulation Against Injustice*, Vol 33Iss 4 La.L.Rev.(1973), Available at: <http://digitalcommonlaw.lsu.edu/lalrev/vol33/iss4/6>. (last visited on 16/3/2023)

- ii. Change of Location - A trial with a high likelihood of prejudice or pre-trial publicity may be shifted from one location to another. A trial's continuation is merely its brief postponement in the hopes that the majority of opinions will eventually disappear.
- iii. Admonition and sequestration of the jury - The admonition states that the jury is not permitted to debate the case's merits, particularly with the press. Until the trial is finished, the jurors must be sequestered from the general public and media.

Publicity before trials poses grave risks to the criminal justice system as a whole. The OJ Simpson murder trial, the Jon Benet Ramsey murder trial, and the Casey Antony trial are the three most famous legal cases in history that raised issues regarding the dangers of media coverage during a trial. These cases gave rise to the idea of wrongful conviction and exoneration brought on by media coverage.²¹⁸

5.2.5 Restrictive Orders to Control Publicity

Restrictive orders, also known as gag orders, are court-issued directives that limit what the press can report on in certain legal cases. These orders aim to protect the right to a fair trial by preventing prejudicial pre-trial publicity. However, they raise concerns about infringing on First Amendment freedoms.

The landmark case *Maxwell v. Sheppard*²¹⁹ established a precedent where courts were encouraged to use restrictive orders instead of prior restraint (direct censorship) to manage press coverage. However, *Nebraska Press Association v. Stuart* highlighted the potential dangers of pre-trial gag orders and the need for stricter guidelines.²²⁰

The current standard for imposing restrictive orders involves a three-part test:

1. Serious and Imminent Threat: The pre-trial publicity must pose a significant and lasting risk of influencing the jury pool.

²¹⁸ Nicholas A Battaglia, Comment: The Case Antony Trial And Wrongful Exoneration: How “Trial By Media Cases Diminish Public Confidence In The Criminal Justice System, *Albany Law Review*, (2011).

²¹⁹ 384 US 333 1966.

²²⁰ 427 US 593 (1976).

2. No Less Restrictive Alternatives: The court must explore all other options, such as jury selection procedures or change of venue, before resorting to a gag order.
3. Likelihood of Effectiveness: The restrictive order must be demonstrably effective in preventing juror bias.

The United States Judicial Conference has issued guidelines for both the media and the judiciary to address concerns about restrictive orders.²²¹ However, critics argue that these limitations can have a chilling effect on free speech and information flow. They emphasize that restrictive orders should only be used in very specific circumstances and only when the three-part test is met.²²²

The landmark case of John Peter Zenger,²²³ a journalist and publisher of the New York Weekly Journal, stands as a pivotal moment in the fight for press freedom in the United States. In 1735, Zenger was sued for libel after publishing articles critical of colonial governor William Cosby. Significantly, his defense argued that truth should be a valid defense against libel charges – a concept that was ultimately upheld. While the Zenger case predates the US Constitution, it is widely seen as paving the way for the First Amendment's guarantee of a free press, ratified in 1791.²²⁴

The landmark case *New York Times Co. v. Sullivan*²²⁵ stands as a cornerstone of press freedom in the United States. This 1964 Supreme Court decision established a key principle: the First Amendment

²²¹ Oregon State Bar-Press-Broadcasters Joint Statement of Principles, School of Journalism and Communication, available at www.journalism.uoregon.edu/guide. (last visited on 16/3/2023)

²²² Bench-Bar-Press Committee of Washington, available at www.courts.wa.gov/prog. (last visited on 16/3/2023)

²²³ It must be noted that the Zenger trial itself did little to change the legal landscape of libel or the liberty of the press. FREDERICK SEATON SIEBERT, *THE RIGHTS AND PRIVILEGES OF THE PRESS* (1934). Chief Justice James DeLancey, who presided over the court proceedings, informed the jury multiple times that truth could not serve as a defense to seditious libel and that the jury could only decide matters of fact, not law. Despite these legal affirmations, the jury returned a verdict of not guilty. Thus, the common law rules respecting libel remained intact, but the story of the Zenger trial and the popular print culture surrounding it would forever alter American political discourse on a free press. For an excellent historical discussion on this point, see *Paul Finkelman, Politics, the Press, and the Law: The Trial of John Peter Zenger*, in *AMERICAN POLITICAL TRIALS* 25 (Michal R. Belknap ed., rev. & expanded ed. 1994).

²²⁴ Patrick J. Charles & Kevin Francis O'Neill "Saving The Press Clause From Ruin: The Customary Origins Of A "Free Press" As Interface To The Present And Future" Cleveland State University, 2012. Available at https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1312&context=fac_articles (last visited on 18/3/2023)

²²⁵ *New York Times Co. v. United States*, 1971

protects criticism of public officials, even if that criticism is false, as long as it's not made with "actual malice" (intent to harm or reckless disregard for the truth).

This decision marked a turning point. Prior to *Sullivan*, the legal landscape regarding press freedom was less defined. While the First Amendment was adopted in 1791, it wasn't until the mid-20th century that the Supreme Court began to systematically flesh out the specific protections it offered to the press. In the decades following *Sullivan*, the Court issued numerous rulings in over 40 press-related cases (including *Cohen v. Cowles Media Co.*), further solidifying the boundaries of press freedom in the US legal system²²⁶.

In contrast, the Court's prior approach to First Amendment claims for political dissidents had been more consistent. Even in the early 20th century, the Court had addressed such cases with some regularity. However, press freedom specifically took a much longer path to full recognition.

In *Near v. Minnesota* and the —*Pentagon Papers* case and *New York Times Co. v. United States*²²⁷ Landmark cases like *Near v. Minnesota*, the *Pentagon Papers* case (*New York Times Co. v. United States*), and others have established a strong legal precedent in the US. These cases emphasize that the First Amendment guarantees near-absolute freedom of the press, even when publishing information the government deems detrimental to national security. This protection extends to sensitive topics, though wartime troop movements might be a limited exception.

In *Miami Herald Publishing Co. v. Tornillo*²²⁸ the concept of press freedom in the United States. The Court ruled that the government has almost no authority to force a newspaper to publish something it doesn't want to. In simpler terms, the press cannot be compelled to act as a mouthpiece for the government or publish information they choose to withhold.

The Court ruled that Congress and the Federal Communications Commission (FCC) have the power to regulate broadcasters using public airwaves. In this case, the Court upheld the "fairness doctrine" and the "personal attack rule," which required broadcasters to present contrasting

²²⁶ 395 U.S. 367 (1969)

²²⁷ 443 U.S. 97 (1979)

²²⁸ 436 U.S. 547

viewpoints on controversial issues and give individuals a chance to respond to personal attacks made on air *Red Lion Broadcasting v. FCC*²²⁹.

In *Smith v. Daily Mail Publishing Co.*²³⁰ The Court ruled that a newspaper couldn't be held responsible for publishing the name of a juvenile offender, even though a state law prohibited it. This case, often referred to as the "Daily Mail principle," establishes a high bar for government attempts to punish the press for truthful reporting. However, it's important to note that these protections aren't absolute.

In *Zurcher v. Stanford Daily*²³¹ n *Zurcher v. Stanford Daily*, the Court ruled that the First Amendment doesn't shield news organizations from valid search warrants. This means the police can obtain warrants to search newsrooms under certain circumstances, such as for evidence of a crime. *Herbert v. Landon*²³² addressed lawsuits against the press for defamation (damaging someone's reputation with false statements). The Court ruled that plaintiffs (people suing for defamation) can inquire into a news organization's editorial process if such information is critical to their case. This means the press can't hide behind the First Amendment to avoid scrutiny if they're accused of publishing falsehoods.

In *Cohen v. Cowles Media Co.*²³³ this case followed the landmark *New York Times Co. v. Sullivan* decision, which expanded protections for the press. However, *Cohen v. Cowles Media Co.* established that the press isn't entirely immune from legal consequences. The Court ruled that newspapers can be held liable for breaking promises, even if those promises involve keeping a source confidential, especially if they made the promise to report newsworthy information.

The key question surrounding press freedom in the 21st century revolves around the balance between freedom of the press and "generally applicable" laws. Can these laws, such as the federal wiretap statute,

²²⁹ 395 U.S. 367 (1969)

²³⁰ 443 U.S. 97 (1979), *United States Supreme Court, Herbert V. Lando*, 441 U.S. 153 (1979). Available at <http://caselaw.findlaw.com/us-supreme-court/441/153.html> (last visited on 21/2/2023)

²³¹ 436 U.S. 547 (1978)

²³² 617 F. Supp. 592 (E.D. Va. 1985)

²³³ 501 U.S. 663 *what is Freedom of the press? Definition, history and example*. 2021. Available at <http://study.com/academy/lesson/what-is-freedom-of-the-press-definition-historyexamples.html> (last visited on 16/7/2022)

be used to punish the press for publishing truthful information obtained illegally (e.g., through phone tapping), even if that information is a matter of public concern? This remains an ongoing debate.

In *Bartnicki v. Vopper*²³⁴ the case involved the dissemination of a secretly recorded conversation. The Court ruled that even if a law aims to prevent illegal activity (like wiretapping), it cannot be used to punish the press for reporting truthful information obtained illegally. This decision echoed the precedent set in the earlier *Smith v. Daily Mail Publishing Co.* case ("Daily Mail principle"), which protected the press from being held liable for publishing truthful information, even if that information violated another law.

In *New York Times v. United States*²³⁵ In this pivotal case, the government attempted to prevent the publication of classified documents related to the Vietnam War (known as the Pentagon Papers). The Supreme Court sided with the New York Times, upholding the First Amendment right to publish information, even if it's classified. This case established a strong precedent against government censorship of the press. In *Near v. Minnesota*²³⁶ The Court ruled that the First Amendment prohibits "prior restraint," meaning the government cannot prevent something from being published beforehand. This decision was crucial in protecting the free flow of information by the press.

In *Grosjean v. American Press Co*²³⁷ struck down a tax that targeted only newspapers with high circulation. This decision protected press freedom by preventing the government from using financial burdens as a way to control what the press reports. The Court recognized that such taxes act as a hidden form of "prior restraint," making it harder for newspapers to operate and publish freely.

In *Richmond Newspapers, Inc. v. Virginia*²³⁸, The Court ruled that the First Amendment guarantees not only protection from "prior restraints" (government stopping publication beforehand) but also the right of the press and public to attend criminal trials. This right,

²³⁴ 532 U.S. 514 (2001)

²³⁵ 403 U.S. 713

²³⁶ 283 U.S. 697

²³⁷ 297 U.S. 233

²³⁸ 448 U.S. 555 (1980)

however, is not absolute. Judges can restrict access in certain situations, but they must weigh these restrictions against the public's right to know and ensure a fair trial.

In *Branzburg v. Hayes*²³⁹ In this case, reporters who promised confidentiality to their sources (drug users and gang members) refused to reveal those identities to a grand jury investigating crimes. The reporters argued that a "reporter's privilege" existed, allowing them to withhold confidential information to protect sources and maintain trust. This, they claimed, was essential for investigative journalism. The Supreme Court disagreed. The court ruled that journalists, like any other citizen, must cooperate with grand juries if they have knowledge of criminal activity. This case highlights the ongoing tension between the First Amendment's guarantee of a free press and the Sixth Amendment's right to a fair trial. While the press has the right to report on trials, excessive media coverage can prejudice potential jurors, jeopardizing a fair trial .

In *Nebraska Press Association v. Stuart*²⁴⁰ to ensure a fair trial for the defendant, a judge issued a gag order preventing the press from reporting on the case. The press challenged this order, and the Supreme Court sided with them. The Court ruled that "gag orders" constitute "prior restraint," a form of censorship that violates the First Amendment's protection of a free press. The Court acknowledged the importance of fair trials, but it also emphasized that other methods could be used to achieve this goal without infringing on press freedom. These methods include changing the trial location, delaying the trial until media frenzy subsides, and carefully selecting jurors who haven't been influenced by pre-trial press coverage.

The presence of television cameras in courtrooms raises a new question: does the right to attend trials, established in *Richmond Newspapers, Inc. v. Virginia*, extend to broadcasting them? While the Supreme Court hasn't definitively addressed this issue, the debate centers on balancing the public's right to know with the potential for cameras to disrupt court proceedings or prejudice jurors. In *Richmond Newspapers, Inc. v. Virginia*²⁴¹

²³⁹ 408 U.S. 665

²⁴⁰ 427 U.S. 539

²⁴¹ 76 U.S. 254 (1964)

In *Chandler v. Florida*²⁴² addressed the use of television cameras in courtrooms. The Supreme Court didn't grant an absolute right to broadcast trials, but it did give the green light to trial judges. The Court ruled that judges can permit televised proceedings as long as they ensure it doesn't compromise the defendant's right to a fair trial. This decision has allowed some high-profile trials to be televised, giving the public a chance to witness the judicial process firsthand.

In *Cox Broadcasting Corp. v. Cohn*²⁴³ stands as a significant example of the press's role in a democracy. The Court recognized the press as a "surrogate" for the public, acting as a watchdog that gathers and shares information on our behalf. This case highlights the importance of a free press in holding powerful institutions accountable.

In a leading American case, *Terminiello v. Chicago*²⁴⁴ The Court emphasized that free speech is not about comfort or popularity; it's about encouraging debate and challenging the status quo.²⁴⁵

In Lord Shaw in *Scott v. Scott*²⁴⁶ quoted Bentham, —Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the judge himself while trying under trail. *De Haes and Gijssel v. Belgium*²⁴⁷ , the European Court, while reiterating that the press plays an essential role in a democratic society, remarked Courts must be protected from replying to criticism²⁴⁸ . Critics must be sensitive to the helplessness of judges to respond to criticism and realise that it is often this helplessness that provokes the invocation of contempt jurisdiction, no matter how unjustifiably.

²⁴² 449 U.S. 560 (1981)

²⁴³ 420 U.S. 469 (1975)

²⁴⁴ 93 LED 1131: 337 US I (1949)

²⁴⁵ *Terminiello v. Chicago*, 93 LED 1131, 1134:337 US I (1949); quoted with approval by Jeevan Reddy J in *printers (Mysore)Ltd. v. CTO*, (1994)2 SCC 434, 441-42 para.13; also referred to in *Ministry of information and Broadcasting, Govt. of India v. Cricket Assn. of Bengal*. (1995)2 SCC 161: AIR 1995 1236

²⁴⁶ 1913 AC 417: (1911-13) All ER Rep I (HL) 30; quoted with approval in *Naresh Shridhar Mirajkar Vs State of Maharashtra*, AIR 1967 SC I: *Samarias Trading Co. (P) Ltd v. S. Samuel*, (1984)4 SCC 666: AIR 1985 SC 61. Also See, *Vineet Narain v. Union of India*, (1998) I SCC 226: AIR 1998 SC 889

²⁴⁷ (1998) 25 EHRR 1

²⁴⁸ *Ibid*

The Supreme Court of US in *Bridges*²⁴⁹ said: —The Supreme Court case *Bridges v. California* established a high bar for punishing speech critical of courts. The Court ruled that strong language alone isn't enough to hold someone in contempt of court. There must be a clear and imminent threat that the speech will disrupt the administration of justice.

The Court emphasized the importance of maintaining an impartial and trustworthy justice system. Just as a clean stream is essential, the court system needs an unpolluted atmosphere to function effectively and deliver fair justice for all.²⁵⁰

The court strongly condemned the practice of "judge bashing," which involves using offensive language to criticize judges. They expressed concern that this had become a common tactic for some. The court emphasized the importance of a respectful judiciary, stating that judges shouldn't be subjected to such treatment. They made it clear that constructive criticism is a valuable tool, but personal attacks are not.²⁵¹ The court observed, —Judiciary should not be reduced to a position of files in the hands of wanton boys. Judge bashing is not and cannot be a substitute for constructive criticism.²⁵²

In *United States v. Playboy Entertainment Group, Inc.*, the Supreme Court did apply strict scrutiny a content bases speech restriction on Cable Television.²⁵³ . involved a challenge to a law restricting sexually oriented content on cable television. The law aimed to protect children from exposure to such programming, even through unintended signal bleed (blurred images or sounds).

The law required cable companies to either scramble or block these channels entirely, or only broadcast them late at night. However, the Supreme Court struck down the law. While acknowledging the importance of protecting children, the Court ruled that the law was too

²⁴⁹ 86 L Ed 192: 314 US 252 (1941)

²⁵⁰ (2007) 14 SCC I, 8-9, paras.12, 13

²⁵¹ *Ibid*

²⁵² *Leila David v. State of Maharashtra*, (2009) 4 SCC 578: AIR 2009 SC 3272; *Leila David v. state of Maharashtra*, (2009) 10 SCC 337; AIR 2010 SC 862; *Leila David (I) v. State of Maharashtra*, (2009) i0 SCC 347: (2010) I SCC (Cri) 320

²⁵³ 529 U.S. 803 (2000)

restrictive. There were less restrictive ways, such as allowing parents to block channels themselves, to achieve the same goal.

Outside of the context of public schools, children have greater First Amendment rights. For example, in *Brown v. Entertainment Merchants Assn.*²⁵⁴ the Supreme Court case *Brown v. Entertainment Merchants Assn.* highlights the difference in First Amendment rights for children outside of public schools. The Court struck down a California law that banned the sale of certain violent video games to minors.

In this case, the Court applied a very high standard (strict scrutiny) to the law, similar to how it evaluates restrictions on adult speech. The Court disagreed that violent content automatically harms children in the same way as sexual content. Additionally, the Court found California lacked sufficient evidence that the video games caused actual harm to children. This case suggests that children, outside of public schools and issues of sexual content, may have First Amendment protections approaching those of adults.

In *Morse v. Frederick*²⁵⁵ the Supreme Court case *Morse v. Frederick* centered on a student suspended for displaying a banner that said "BONG HiTS 4 JESUS." The Court ruled that schools could punish students for speech that promotes illegal drug use, like this banner could be interpreted as doing.

However, the Court hinted at a possible exception for speech that criticizes drug laws or policies. Justice Alito, joined by Justice Kennedy, further clarified that the majority opinion shouldn't be used to restrict speech on social or political issues related to drugs, such as the war on drugs or marijuana legalization.²⁵⁶

In *Glickman v. Wileman Brothers & Elliott, Inc.*²⁵⁷ dealt with government regulations on advertising for agricultural products. In this case, fruit growers challenged a program that

²⁵⁴ 131 S. Ct. 2729 (2011)

²⁵⁵ 127 S. Ct. 2618, 2624 (2007)

²⁵⁶ Supra note

²⁵⁷ 521 U.S. 457 (1997)

required them to contribute money for generic fruit advertising (promoting all fruits, not specific brands).

The growers argued that this violated their First Amendment rights because they were forced to fund advertising they might not agree with. However, the Supreme Court disagreed. The Court ruled that the First Amendment doesn't prevent the government from requiring financial contributions for advertising, as long as the ads aren't promoting specific political or ideological views. In this case, the generic fruit ads were promoting the entire fruit industry, not a particular viewpoint.²⁵⁸

*Zauderer v. Office of Disciplinary Counsel*²⁵⁹ the Court ruled that advertisers have minimal protection against mandatory disclosures. The government can require truthful information in advertising to protect consumers from deception. In *Hurley v. Irish-American Gay Group of Boston*, The Court ruled that a parade organizer cannot be forced to include a message they don't support, even if it violates an anti-discrimination law. Parades are a form of expression, and the government cannot compel someone to include a message they oppose.²⁶⁰

In *McIntyre v. Ohio Elections Commission*²⁶¹ the Court, protected the right to anonymously distribute campaign flyers. The Court applied a strict standard (strict scrutiny) and struck down a law requiring all campaign literature to include the author's name and address.

The Court reasoned that the government can directly punish fraud, but it cannot silence a whole category of speech (anonymous speech) simply because it might be used for fraud. The law didn't effectively target fraud and instead restricted people's ability to express themselves anonymously about political issues.²⁶²

²⁵⁸ The Court found that the marketing orders did not raise a First Amendment issue, but simply a question of economic policy for Congress and the Executive to resolve

²⁵⁹ 471 U.S. 626, 651, 652 n.14 (1985)

²⁶⁰ 515 U.S. 557, 581 (1995)

²⁶¹ 514 U.S. 334 (1995)

²⁶² 514 U.S. 334, 357 (1995)

In *Wooley v. Maynard*, the Court struck down a New Hampshire statute requiring motorists to leave visible on their license plates the motto —Live Free or Die.²⁶³ In *West Virginia State Board of Education v. Barnette*, the Court held that a state may not require children to pledge allegiance to the United States.²⁶⁴ In *Miami Herald Publishing Co. v. Tornillo*, the Court struck down a Florida statute that required newspapers to grant political candidates equal space to reply to the newspapers' criticism and attacks on their record.²⁶⁵

In *44 Liquormart, Inc. v. Rhode Island*, the Court struck down a state statute that prohibited disclosure of retail prices in advertisements for alcoholic beverages.²⁶⁶ The First Amendment protects truthful advertising, especially when the government's goal isn't to prevent misleading information or unfair business practices.

In this case, the Court argued that the Rhode Island law wasn't protecting consumers; it was restricting information for seemingly paternalistic reasons. The Court emphasized that the First Amendment makes us wary of laws that limit information, even if the government has good intentions.

²⁶³ 430 U.S. 705 (1977)

²⁶⁴ 319 U.S. 624 (1943)

²⁶⁵ 418 U.S. 241 (1974). In *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986), the Court held that a state may not require a privately owned utility company to include in its billing envelopes views of a consumer group with which it disagrees. While a plurality opinion adhered to by four justices relied heavily on *Tornillo*, there was not a Court majority consensus as to rationale.

²⁶⁶ *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 510 (1993) (striking down a Cincinnati regulation that banned news racks on public property if they distributed commercial publications); *Edenfield v. Fane*, 507 U.S. 761 (1993) (striking down a Florida law banning solicitation by certified public accountants); *Edge Broadcasting*, 509 U.S. at 418 (upholding federal statutes that prohibit the broadcast of lottery advertising by a broadcaster licensed to a State that does not allow lotteries, while allowing such broadcasting by a broadcaster licensed to a State that sponsors a lottery); *Ibanez v. Florida Board of Accountancy*, 512 U.S. 136 (1994) (holding that the Florida Board of accountancy could not prohibit a Certified Public Accountant from stating that she was a certified public accountant in her advertisements); *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995) (striking down 27 U.S.C. § 205(e), which prohibited beer labels from displaying alcohol content unless state law required the disclosure, because the regulatory scheme was irrational); *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995) (upholding a rule that prohibited personal injury lawyers from sending targeted direct-mail solicitations to victims and their relatives for 30 days following an accident or disaster)"

5.3 CONCLUSION

In a world where white-collar crime is becoming more widespread and where the number of cases involving concurrent proceedings in the United States and the United Kingdom is growing, these various reporting standards could contribute to unfairness. When a defendant is being tried in the UK while a previous or ongoing trial in the US involving the same or related facts is receiving substantial media coverage, the likelihood of this happening is significantly increased. Although it's possible that such reporting is prohibited by England law, doing so is in no way against the law in the United States.

In the increasingly globalised environment of criminal prosecution, it won't be long before a defendant in an English court will have to contend with the negative effects of American reporting from a previous criminal trial in the United States.

CHAPTER-6

JUDICIAL RESPONSE ON MEDIA AND MEDIA TRIAL

Judiciary is characterised as backbone of legal system in providing social justice. Multiple responsibilities is bestowed with the Judiciary apart from delivery of justice to the individual. Judges and Judicial officers are having special privileges so that they should discharge its justice delivery function in proper and an impartial manner without favour or fear. Independence of Judiciary²⁶⁷ is recognised under the Constitution. In India, free Press and fair trial both are debatable issue.

Freedom of Press and right to have fair trial of an accused person recognized fundamental right. It is legal expectation that when such fundamental rights are exercised in limited manner, then it would possible to maintain the principle of “administration of justice”, rule of law and other democratic principle etc., it is required to analyses how the Judiciary is tackling the problem of Media trial by way of protecting freedom of fair trial and to keep the freedom of Press within the legal and constitutional mandate. Hence, Media trial coverage and its effect on the various fundamental rights enshrined under the Constitution needs to be analyses and solution thereon it. So Judiciary should have a fair and unbiased look towards discharging the “administration of justice”.

Due to intervention on the part of Media into Judicial process, Judiciary should not be suppressed due to such activities. Judiciary should discharge its justice delivery function by giving a fair shake to the affected person in an impartial and fairness manner. Cases filed in the court of law should be adjudicated on his own merit so that interest of people in the society will be preserved. The question Do the Media influence the Judges?²⁶⁸ Positively it is evident that Media's prejudicial activities are increasing day by day and it creates problem that really Media is influencing in the mind of the Judges. Impartial, neutral and unbiased approach of the Judiciary is the essential aspect of fair trial.

²⁶⁷ Article 50 of the Indian Constitution provides that the State shall take steps to separate the Judiciary from the executive in the public services of the State.

²⁶⁸ Media Trial is toll on Fair Trial. Available at <https://www.legalserviceindia.com/legal/article-4165-media-trial-is-toll-on-fair-trial.html> (last visited on 12 Feb,2023)

The Independence of Judiciary is one of the recognized pillars of the rule of law. Judiciary should not be affected by the Media's intervention into the judicial process. Media's unnecessary and unreasonable intervention in judicial proceeding is treated as Media Trial and Media trial activities are inconsistent with the Constitutional mandate.

In this connection, Judiciary is facing problem relating balancing interest between right to freedom of expression and “right to fair trial”. “Freedom of speech and expression” included freedom of press exercised by Media. Whenever freedom of Press exceeds its boundaries, then it needs to analysis the scope, extent and ambit of freedom of speech enshrined u/a 19(1) of the Constitution²⁶⁹ by keeping in mind reasonable restrictions laid down as per Art. 19 (2)²⁷⁰. Therefore, Judiciary have to reconcile the two right i.e. “right to fair trial” and freedom of press.

“Right to fair trial” and freedom of press both rights are important for the true and proper functioning of democratic nation like India. It is the responsibility on the part of Judiciary that freedom of press and “right to fair trial” should be regulated within the mandate of law.

Judiciary is the fundamental and essential organ of the Government. It is acting as the guardian and protector²⁷¹ of the fundamental right of the people in India. Today every judicial process is covered by media wherein judicial process is affected. The Judiciary have not left from scrutiny of media. Many of the time, there is arbitrarily criticism on the part of Media regarding any Judgment delivered on behalf of Judiciary. Today’s, activities by media if it exceeded beyond laws then it can be stated that it is very antithesis to the rule of law.

On one hand, media reporting is indispensable for healthy functioning of democracy and on the other hand, there should be some controlling norms so as to prevent unnecessary. Unlawful and immoral role of media in the society. In this way role of media in the society will result into violation of fair trial. In so far as freedom of press exercised by media is concerned, it is not absolute freedom. Such unfettered role of media in any nation is not admissible in the eyes of

²⁶⁹ Constitution of India, 1950, Art. 19(1)(a).

²⁷⁰ *Id.*

²⁷¹ Judiciary is performing its pro-active role vis-a-vis protecting freedom of press and right to fair trial by prohibiting media trial in the society. In this way, Judicial Activisms is increasing day by day from multifarious cases.

law. By keeping in mind such perspective, it is evident that unnecessary criticism and reporting of media affecting the adjudication power of judiciary.

Independent and impartial aspect of Judiciary is an important aspect of any fair trial. The independence of the judiciary is one of the important pillars of the rule of law. The principle of Independence of Judiciary is essential and inevitable principle for the protection for the protection of fair trial standards. The principle of independence of Judiciary demands that Judges and Judicial officers should discharge their decision-making function in a fair and equal manner without the intervention of the Media.

Courts at all levels, from lower to higher, must adhere to the guiding principles of competence, independence, and impartiality. If the right to a fair trial is to be strictly enforced, the principle of judicial independence is essential.

Many of the time, activity of the media can be challenged on the ground of exceeding freedom of press. Even when the case was still pending in the HC, different stories were published in the print media about it, giving rise to needless conflicts and, it appears, having an effect on the administration of criminal justice.²⁷²

Court have observed that One of the most fundamental foundations of rule of law in a free democratic nation is that there must be safeguards in place to prevent criticism or reporting, in particular about matters that are currently before the courts, from interfering with the fair and impartial “administration of justice”.

In so far as this present chapter ‘Judicial Response on Media and Media Trial’ is concerned, the judicial impartiality should be maintained so that it will possible for controlling on Media Trial activities. It is to be analysed whether Media's functioning are justifiable in the interest of accused person? Whether Media are respecting the Constitutional provisions? In simple words, it is the Constitutional and moral responsibility on the part of the Judiciary to supervise on the Media's functioning.

²⁷² Anukul Chandra Pradhan v. UOI (1996) 6 SCC 354

Whenever there is violation of “right to fair trial” of an accused person due to activities performed by the Media, then Judiciary can act as the protector and guardian of fundamental right of affected person. Hence, with reference to various principles and case laws, the present chapter of 'Judicial Approaches in India' is to be analysed. Principles are having significant at the time of discharging decision making function by the Judiciary. These various principles are helpful for the Judiciary to protect the interest of an affected person as well as it will able to supervise and control on the unlawful activities of Media.

6.1 TRIAL BY MEDIA: IS IT A FAIR TRIAL

To litigate is not always to seek the truth. Charles Taylor²⁷³, a prominent scholar, argues that there can be no middle ground because the law can definitively declare only one side to be correct. Trials covered by the media have always presented a unique set of challenges due to the inherent tension between two ideals deeply held by the general public: the right to a fair trial and the right to a free press. Press freedom is a cornerstone of any functional government. Investigative writing is often justified in this way.

However, it is also acknowledged as a central tenet of justice that everyone, whether they are the accused or the victim, has the right to a hearing that is free from bias and external influences.²⁷⁴

It disregards the complicated nature of events, problems, and people. Terry Eagleton, a British Marxist, provided some context: There is often a fine line between truth and fiction in courtrooms, much like there often is in novels. The juror makes its decision not on the facts, but on the basis of competing accounts of them. A media trial has added complications beyond those of a court trial because of the adversarial nature of the justice system.

The legal system is profoundly affected by campaigns of hatred, allegations, and witch hunts. Furthermore, they harm the country's academic and cultural ecosystem. Since the media only operates according to this concept, the trial by media might be as fair in their eyes as everything

²⁷³ Raj, Kaleeswaram (2020) *What can be done about trial by media?*, *The New Indian Express*. The New Indian Express. Available at: <https://www.newindianexpress.com/opinions/2020/sep/30/what-can-bedone-abouttrial-by-media-2203715.html> (last visited 12 Feb, 2023)

²⁷⁴Media Trial is toll on Fair Trial, <https://www.legalserviceindia.com/legal/article-4165-media-trial-is-toll-on-fair-trial.html> (last visited Feb 12, 2023).

is fair in love and war. For the same reason that people trust the media as a source of knowledge, the English court found that a trial could be influenced by the media.²⁷⁵ Therefore, the media functions as a Janta court, where the public decides the guilty party well before the official procedures begin.

By repeatedly reporting on a person who is found guilty in a trial, the media conditions the public to view that person as an accused, leading to an automatic assumption of culpability. Since the media cannot physically restrain the public from forming an opinion in favour of an accused person, their trial is not as impartial. By covering cases before they go to trial, the media is illegally interfering with the judicial system's process and mechanism.²⁷⁶

6.2 INDIAN CASE LAWS

As of yet, there is no system of law that gives the media the authority to act as a judge in a case. Just as there are two sides to every story, there are two sides to every trial by the media. Sometimes, journalists paint a false picture of an accused person, damaging his or her character in a way that can impact the trial and the verdict. Media cases have become increasingly important in India. There have been multiple instances where the media has prejudged an accused person without waiting for a proper trial to be held in court. Anyone's way of thinking can be swayed by the media.

When a disease like COVID-19 becomes a global pandemic, the media and news channels will broadcast the daily death toll and new case count, instilling terror in the minds of the public. However, if they instead broadcast the daily recovery toll, it may inspire people to take action against the disease. The media has both positive and bad effects on public opinion.

The recent sensational case involving the investigation and alleged mishandling of the unnatural death of actor Sushant Singh Rajput has caused widespread outrage and grave concern in the nation²⁷⁷.

²⁷⁵Johnson, K., 2016. Trial by media: The framing of Oscar Pistorius as the media spectacle. *Journal of African media studies*, 8(3), pp.379-395.

²⁷⁶*Id.*

²⁷⁷ Nilesh Navalakha and Ors. v. UOI, Public Interest Litigation (ST) No. 92252 / 2020

These reports have placed undue stress on an impartial inquiry and trial. In this way, the media is conducting its own investigation and prosecution, pre-empting the official investigation agencies by announcing its own verdict beforehand. The court questioned whether the electronic media's self-regulation method was sufficient to reconcile free speech and expression with the accused's rights to a fair trial and reputation.

Eight retired senior Maharashtra police officials, along with activists, lawyers, and NGOs, submitted a PIL, asking for a restraining order against the Media Trial in the death case of actor Sushant Singh Rajput²⁷⁸. The court noted that “substantial damage has been caused to the reputations of the persons so called involved here”. Reputations are like mountains: they take years to climb to the summit, and can be wiped out in an instant if you strike the wrong chord. The judge noted that until the case is resolved, they will carry the stigma of having committed a crime even if they are ultimately found not guilty.

The court made its observations after “the lawyer for one of the defendant channels provided a 1947 report written by a European institute that compared and contrasted the benefits and drawbacks of self-regulation and legislative regulation of the media and decided that the latter was unnecessary.”²⁷⁹

Advocate Ankit Lohia standing for Zee News clarified that “the channel was innocent of the claims made by the petitioners because it was not named in any of the petitions, but he added that he wanted to make submissions in support of the contentions of other channels that there was no need for government interference in the functioning of channels.” When asked about the media's need for self-regulation rather than statutory regulation, he cited a 1947 study by a European institute.

Publicity prior to judgement is harmful to the “administration of justice”. Lawyers have been discouraged from taking on cases where the public views a particular person as guilty without sufficient evidence of guilt having been presented, and this has resulted in the accused giving up his right to have an advocate. But it also discourages lawyers from taking on such matters in the first place. When it comes to the prosecution of the Jessica Lal murder case, the media has once

²⁷⁸*Id.*

²⁷⁹ *Id.*

again become the centre of attention²⁸⁰. The idea of a prosecution by the media is not novel. Many high-profile cases, including the Priyadarsini Mattoo case²⁸¹, sparked discussions about the media's position.

When the media reports on a case, they are often accused of acting as if they are the judge and jury, deciding the fate of the accused long before the court does. For instance, when senior lawyer Ram Jethmalani defended accused Manu Sharma in the Jessica Lal case, a senior editor at a TV news channel said that Jethmalani was defending the indefensible, thereby stating that Sharma was guilty of the crime even though he had not yet been proven innocent. When the media assumes guilt, it undermines defendants' rights to a fair trial and a lawyer who can effectively represent their interests.

Journalists have the right to do their jobs, but they have no place passing judgement on the case or naming any potential defendants. The purpose of every trial ought to be to provide the accused with the best possible chance to demonstrate his innocence. A fair trial is good for the accused and for society as a whole. The very idea of justice is at odds with a verdict reached after an unfair trial.

In the case of *Zahira Habibullah Sheikh v. State of Gujarat, 2006*²⁸², A fair trial, as the Apex Court has declared and as reflected in a number of procedures and laws, would presumably be one in which the accused is tried by an impartial judge and a fair prosecutor in a judicially calm atmosphere. A fair trial is one in which there is no evidence of favouritism or hatred towards any of the parties involved in the proceedings.

In the case of *Sahara India Real Estate Corporation Ltd. and Ors. v. SEBI and Anr.*,²⁸³ 2012, SC observed, media sources should be allowed access to court proceedings and encouraged to report on them so as to increase public trust in the justice system. Accurate and fair trial reporting, especially in high-profile cases like a murder trial, might nonetheless pose a significant danger of prejudice, but this bias might not arise during the current trials but in future ones that are tied to

²⁸⁰Manu Sharma v State NCT of Delhi, AIR 2010 6 SCC 1.

²⁸¹Santosh Kumar v State, AIR 2010(9) SCC 747.

²⁸²AIR 2002(2 SCC (Jour) 75.

²⁸³ C.A. No. 9813 of 2011

the ones in the news. The postponement not only helps minimise probable media scorn, but it also protects the fairness of subsequent or related trials.

In numerous rulings, both the Apex Court and the HC have criticised the trial by media on the sub-judice topic for influencing the judge's or jury's opinion on the case at hand and, in certain situations, on similar cases in the future. The “Press Council of India”, in its Norm of Journalism Conduct 2010 edition, likewise urges a journalist to avoid sensationalism.

6.3 EFFECT OF INVESTIGATIVE MEDIA ON JUDICIAL TRIAL

The media plays multiple crucial roles in modern life. It's to the media's credit that they've begun a pattern of actively assisting in the capture of the guilty.

When the public has access to accurate information on issues affecting society as a whole, everyone benefits. So, it should go without saying that a free and robust press are crucial to the success of any democracy. People in a democracy need to be involved in every aspect of local and national government. They have a right to know what's going on in the world politically, economically, and culturally, and what the big concerns and subjects of the day are so they may form an informed opinion about how their government is handling those matters. To accomplish this goal, people need a transparent and honest explanation of events from which they can draw their own conclusions, make their own contributions, and choose their next steps. Art. 19 protect the right to free expression²⁸⁴. This liberty, however, is not unrestricted, as it is limited by paragraph two of the same Art. But, the freedom to express one does not include the liberty to act in “contempt of court”.

The media received backlash for its coverage of Aarushi Talwar's murder²⁸⁵, particularly when it accused Aarushi's own father, and potentially her mother, of being complicit in her death before the court had even noted on the matter. The media's role in the Arushi murder investigation has once again been a focal point. The idea of a trial by the media is not unique. A number of high-profile instances, like the murder of Priyadarshini Mattoo²⁸⁶ and the disappearance of Jessica

²⁸⁴ Constitution of India, 1950, Art. 19(1)(a).

²⁸⁵ Nupur Talwar v. CBI & Anr (Criminal Appeal No. 68 Of 2012)

²⁸⁶ Supra note 24

Lal²⁸⁷, prompted discussions on the media's responsibility in spreading information about the crimes. Media has been criticised number of times for 'trying' the accused and announcing a 'verdict' before of the court's decision. It is the job of the courts to conduct the trial. It's undeniable that a trial broadcast live on television is an inappropriate intrusion on the "administration of justice". It's important to settle the meaning of the term "trial by media" before discussing whether or not it's appropriate to use it. The word "trial" connotes the administration of law and order. For any justice system to function properly, it is crucial that those who stand accused are having the opportunity for a fair trial.

The media has reinvented itself as a Janta Adalat (public court) and has begun to interfere with judicial procedures. The fundamental distinction between an accused and a convict is ignored, putting at risk the tenets of guilt beyond a reasonable doubt and presumption of innocence. These days, however, it seems as though the media is conducting its own investigation and swaying public opinion against the accused well before the court hears the case. This leads to unfair treatment of the accused, which should be believed innocent but instead has his rights and freedoms unrestricted because of public and sometimes even judicial bias. The media may be held in "contempt of court" if their coverage of a suspect or accused before to trial tarnishes the outcome of the case or paints him as a perpetrator of the crime. Regrettably, journalistic ethics codes are not strong enough to prevent the erosion of civil liberties.

6.4 MEDIA TRIAL AFFECTS RIGHT TO FAIR TRIAL

The media keeps an eye on things and reports the news as it happens. It reflects the values and ideals of the culture at large. Only current events are reported, holding lawmakers and government accountable for their actions. In such instances, the media simply presents the information gathered by investigating authorities to the public so that people are aware of what's going on in the world. Media only provides a forum for people to share their opinions and gain a better understanding of the situation.

The media trial affects the "right to fair trial" as following:

²⁸⁷ Supra note 15

6.4.1 Pressure on Lawyers

Because of the pressure from the media trial, counsel often decline to take on a case, leaving the accused unrepresented. An attitude like that violates the rules of natural justice. No one has the authority to prevent an individual from retaining legal counsel of his or her choosing and presenting their case in a court of law. The public mocked renowned lawyer Ram Jethmalani after he took on the case of Jessica Lal²⁸⁸ murder suspect Manu Sharma.

The choice to represent Sharma has been criticised as an attempt to “defend the indefensible”²⁸⁹ by a senior editor at television news network CNN-IBN. When Mr. Jethmalani took on the case, the media portrayed him in a negative light and went into frenzy. Former CJI K.G. Balakrishnan's opinion that Ajmal Kasab, the lone person to be taken into police custody in the Mumbai terror attack case, should be provided legal aid and must face prosecution sent it into frenzy once again. The eminent jurist deemed such a move to be consistent with well-established democratic standards. Another case in point is the murder of Bombay attorney Farhan Azmi, who was representing his clients in court despite receiving death threats.

6.4.2 Pressure on Police Administration

Police comes under immense media pressure in high profile case and they in order to save their reputation come up with some theory hastily cooked up²⁹⁰, as it happened in Aarushi murder case²⁹¹ which was constantly focused by media. It cannot be forgotten that process of investigation is sacrosanct and unnecessary meddling by media complicates the case. On the other hand, it cannot be denied that at times timely intervention by media rescues a dying cause. The role of media in Jessica Lal case²⁹² has been much applauded.

²⁸⁸*Id.*

²⁸⁹*Constitutionality of Media Trials in India* by Bench and Brothers, Attorneys at Law, Published May 28, 2019. Available at <https://www.linkedin.com/pulse/constitutionality-media-trials-india-bench-and-brothers> (last visited on 14 Feb, 2023)

²⁹⁰ Such stories may sometimes be called as character assassination

²⁹¹ However the much maligned parents of the girl are now, being tried by the order of the court despite C.B.'s assertion that not much evidence is available against the Talwar couple

²⁹² *Supra* note 15

6.4.3 Subconscious Effect on The Judge

Another issue about trials that have gained a lot of media attention is that the judges sitting over the case may be biased because of what they've seen in the media. For instance, Justice Cardozo of the US Apex Court once made the observation that the enormous tides and currents that engulf the rest of men do not turn aside in their course and pass the Judges by when talking about the influences that enter into the decisions of Judges.²⁹³ The House of Lords did not agree with Lord Denning's opinion that judges would be unaffected by the media coverage.

6.5 SOME CASES RELATING TO INVESTIGATIVE JOURNALISM

Justice Gubbay noted in *State v. Beahan*²⁹⁴ while it is expected that the prosecution of an accused person would be handled openly, fairly, and justly, the prosecution is not obligated to summon witnesses considered important to the case of the defence, only to provide the defence the opportunity of cross-examination. A defendant who argues his right to a fair trial was violated because he was unable to call witnesses in his defence must present convincing evidence that such witnesses' testimony would have been crucial to clearing his name.

Even if our legal system is dependent on the expertise, impartiality, and fearlessness of the trial judge, it is impossible to maintain that unrestrained media coverage will not have an effect on the verdict.. There have been differing viewpoints even in England. An impartial judge, in Lord Denning's opinion, will not be misled by news reports that only effect the general public.

*Attorney General v. British Broadcasting Corporation*²⁹⁵, Lord Dilhorne rejected this idea of judicial supremacy. That the Court cannot work effectively if a reporting is meant to disrupt the judicial mind is shared even by members of the American judiciary. A competent judge will not allow himself to be influenced by anything other than the evidence presented to him in court and the rules of law that govern his deliberations, as stated in *John D. Pennekamp v. State of*

²⁹³ Benjamin M. Cardozo, *The Nature of Judicial Process*, 168 (8th Indian Reprint, Universal Law Publishing Pvt. Co. Ltd).

²⁹⁴*State v Beahan* 1990 (3) SA 18.

²⁹⁵ *Attorney General v. British Broadcasting Corporation*, 1981 AC 303 (HL)

Florida²⁹⁶. Judges, no matter how unwavering, are human, and the task of dispensing justice is already difficult enough without irresponsible print adding additional obstacles.

The Apex Court in *M.P. Lohia v. State of West Bengal*²⁹⁷ criticised the media for “interfering with the administration of justice by broadcasting biased coverage of the merits of cases still pending in the Courts.”

An item of this nature emerging in the media would surely interfere with the “administration of justice”, as stated by Judge N. Santosh Hedge. The facts detailed therein are materials that may be utilised in the next trial in this matter. He emphasised that we disapprove of this method of settling legal disputes through the media and warned the publisher, editor, and journalists responsible for the offending pieces to stop. We hope that by expressing our disapproval of interference with the judicial process, other concerned journalists would take heed.

A fair trial, as defined by the Apex Court in *Zahira Habibullah Sheikh v. State of Gujarat*²⁹⁸, entails a trial before an impartial judge, a fair prosecutor, and a legal claim atmosphere. A fair trial is one in which there is no favouritism or animosity shown towards the defendant, the witnesses, or the cause itself.

Last but not least, the media trial itself has started pressuring attorneys to drop cases of the accused, leaving those charged without legal representation. The rules of natural fairness forbid this. When renowned attorney Ram Jethmalani took on the case of murder suspect Manu Sharma, he was widely mocked. Quotes like ‘defend the indefensible’ were thrown around by the media. Manu's case was given to an inexperienced lawyer at the same time as Gopal Subramaniam was representing the state.

The media does not just portray the suspects and the accused in a negative way; they also portray the police in a negative light. Indeed, self-censored norms for the electronic media to maintain free press are long overdue.

²⁹⁶ *John D. Pennekamp v. State of Florida*, 1946 328 US 331

²⁹⁷ *M.P. Lohia v. State of West Bengal*, 2005 2 SCC 686

²⁹⁸ *Zahira Habibullah Sheikh v. State of Gujarat*, 2004 4 SCC 158

6.6 JUDICIAL REMARKS ON MEDIA TRIAL

According to Justice Pathanjali Sasthri, Art.19 (1) (a) is the bedrock upon which all democratic institutions are built. It is impossible to provide a quality public education without open political discourse. A free press is crucial to the health of any democracy. In his speech Dr. Ambedkar²⁹⁹ argues that citizens, in their individual capacities, have no unique privileges that should be withheld from the press. There is no need to make a specific reference to the freedom of the press because the editor of the press or the manager is only expressing their right to freedom of speech.

Yet, the freedom of the press is not explicitly guaranteed by the Constitution. Yet, the freedom of expression includes broadcasting rights. The verdict in the case of Maneka Gandhi³⁰⁰ gives credibility to this point of view. In this case, it is decided that the opinion that a right cannot be a fundamental right just because it isn't mentioned by name, or that the exercise of such a right is in reality and substance nothing but an instance of the exercise of the listed fundamental right, is not accurate. The day this clearinghouse shuts down, the court said, will be the day democracy dies.

Especially in a free and open society, the media plays a crucial role. It is essential for the various democratic institutions to perform their duties separately from one another. In high-profile criminal cases like the ones involving Indrani Mukerjee and Jessica Lal³⁰¹, the media had overstepped their bounds. Because of media pressure, some of the accused were released from jail.

A three-judge bench led by India's Chief Justice R. M. Lodha called the situation “extremely severe” and said that the Court would explore a few guidelines to strike a balance between the interests and rights of the various parties involved.

There has been a rise in media trials, which often result in public condemnation of the accused based on information provided by prosecutors and police even before a formal trial has begun in court. The Apex Court should investigate this trend.

²⁹⁹ Constituent Assembly Debates (Vol. VII 980)

³⁰⁰ AIR 1978 SC 597

³⁰¹ Santosh Kumar v State, AIR 2010(9) SCC 747.

The reports of a media briefing by the police and other investigating agencies have been taken seriously by the Courts. Nothing must be done to compromise the investigation's confidentiality or its ability to uncover the truth. Because they are all under the jurisdiction of Art. 21, there must be checks on all of them.

It is inappropriate to have a trial by media while a trial is already underway in court. In light of this, the Apex Court is likely to consider creating standards for the media regarding their coverage of criminal cases and briefings by investigating authorities.

The Apex Court noted in *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr.*, 1961³⁰² that “it would be malicious for a newspaper to conduct its own investigation into a crime after the accused or suspect has been apprehended and then publish the results of that inquiry. This is malicious because trial by newspapers should be banned whenever a case is being heard in one of the country's regular tribunals.” This is due to the belief that every investigation conducted by a newspaper has the potential to obstruct justice, regardless of whether it favours the accused or the prosecution.

The Delhi HC noted in 1996 in *Sushil Sharma v. The State (Delhi Administration) and Ors*³⁰³ that a person cannot be found guilty solely on what they read in the media but rather on the evidence in the case file. The presiding judge is expected to handle the matter with impartiality. The petitioner will argue that he or she was denied a fair trial because the judge looked biased based on what was reported in the media. The charge should be crafted in accordance with the evidence already in the file, regardless of how much or how little information is actually accessible.

With the passage of time, media's function has morphed. Instead of just reporting the facts of a case, the media often attempts to play a part in the role of the judiciary. The termite of corruption has eaten away at the judicial system's core base in the largest democratic nation. The lawyers take unethical measures, such as bribing public officials to falsify the evidence or pressuring the defence to drop the case, in an effort to prevent the accused from being convicted. Before of criminal proceedings, the media has been reporting on the case because of the massive

³⁰² 1961 AIR 633

³⁰³ *Sushil Sharma V. The State (Delhi Administration) And Ors*, Criminal Appeal No.693 Of 20

institutional inequality. The media's sensationalist coverage has successfully entrenched bias in the minds of the general population.

In *Naveen Jindal v. M/S Zee Media Corporation Ltd & Anr*³⁰⁴

The Art.21 which protects “the rights of the person for a fair trial and valid restrictions” has been laid down u/a 19(1) (a), by virtue of force of it being a constitutional provision. An accused person or any other aggrieved person whose is having apprehension regarding any type of publication which will result into violation of fair trial right, then such person are entitled to approach to the court for filing writ petition and he can seek an order for preventing such type of publication and that the court may grant such preventive relief, on a balancing of the right to a fair trial.

In *Narendra Kumar v. UOI*³⁰⁵

Media at the time of exercising freedom of press, it is the constitutional right that they should enjoy such freedom by following provisions of reasonable restrictions. However, the Apex Court, in the aforementioned case, understood the term ‘reasonable restriction’ to mean ‘complete prohibition,’ suggesting that the word ‘restrictions’ has a wider gamut than originally thought. It is important to remember that it is not the right itself that is limited, but rather its exercise. When deciding whether or not a restriction meets the threshold of a total constraint of rights, the Court must exercise extra caution to ensure that the reasonableness test is met by looking at the issue in the context of the facts and circumstances under which the order was made and the nature of the evil being addressed.

In *Sakal Papers (P) Ltd., And Others v. UOI*³⁰⁶

In this case there was a substantial question relating to violation of Art.19 (1) (a). For regulating the Prices, Pages and Sizes of Newspaper Act have been enacted titled as “The Newspaper (Price and Page) Act, 1956”. This law allowed the federal government to control how much advertising was allowed in newspapers and how much it cost to print them. The “Daily Newspapers (Price and Page) Order, 1960” was issued by the Central Government under this Act to regulate the

³⁰⁴ CS(OS) 143/2015

³⁰⁵ 1960 SC 430

³⁰⁶ 1962 AIR 305

maximum number of pages that may be published by a daily in relation to the price charged and the maximum number of supplements that could be released.

Both the Act and the order were challenged by the petitioner on the grounds that they violated Art.19 (1) (a). The Order, which was issued in accordance with section 3 (1) of the 1956 act, was likewise found to be unlawful by the court. In this instance, the right to free press became contentious because every Indian has the right to publish, distribute, and circulate his or her ideas and opinions orally or in writing. Hence, the challenged Act and Order placed limitations on this right because Art. 19 (2) does not allow the state to restrict this freedom even when doing so would serve the public interest.

The Apex Court noted that the Order was null and unconstitutional since it ran afoul of the country's founding document. As per Art.19 (1) (a), press freedom is a part of the right to free speech and expression. A citizen's right to free speech included the ability to publish, disseminate, and circulate his or her thoughts orally and in writing. This privilege was not limited to the quantity of material that might be distributed under his control.

Reliance Petrochemicals Ltd. v. Proprietors Of Indian Express³⁰⁷

The court has given much consideration to the ways in which the media's negative coverage of an issue can put a person's life in danger. The Apex Court noted in the aforementioned case that “there is a risk of prejudice if the media is allowed to operate with complete autonomy, such that it publishes images of the suspects or the accused before the identification are constituted, and publishes remarks that categorically declare the suspect or the accused guilty even before such an order has been given by the Court.”

M.P. Lohia v. State Of W.B. & Anr.³⁰⁸

The Court reaffirmed its prior position in this matter, saying that free speech and expression are not always protected since they may interfere with the fair “administration of justice”; for example, if the Art.s reported in the media are unfair to the defendant. On 28 February 2002, Chandni tragically passed away, and an investigation into the circumstances surrounding his

³⁰⁷1989 AIR 190

³⁰⁸ (2005) 2 SCC 686

death has since been opened. The Calcutta HC noted on an application for anticipatory bail and a special leave plea was subsequently filed. Then Art. Appeared in a book named 'Saga,' and the title's fate was sealed because of dowry. Judgment on the issue of interference with the “administration of justice” has been rendered in this case. Publishers, editors, and journalists have been held accountable for their roles in a high-profile media trial, and the court has taken notice. Journalists should be aware that publishing artwork like this would obstruct the judicial process.

In addition, courts have noted that an accused person's presumption of innocence is a legal assumption that should not be shattered at the outset by a media trial, especially while an investigation is still ongoing. If it happens, it would be against the rule of law and against the rights of the accused as guaranteed by Article 21.

6.7 MEDIA TRIAL IMPACT ON JUDICIAL DECISIONS

The media has transformed into a “public court”, often called a Janta Adalat, and has begun to interfere so heavily in legal procedures that it often issues its own decision before the court does. The fundamental distinction between an accused and a convict is ignored, putting at risk the tenets of guilt beyond a reasonable doubt and presumption of innocence.

What we see in the world now is a trial by media, in which the press investigates the case on its own and shapes public opinion against the accused long before the court hears the case. As a result, the public becomes biased, and a person who should be believed innocent may instead be seen as a criminal whose rights and freedoms are unprotected.

“Contempt of court” proceedings should be initiated against the media when their coverage of a case and the suspect involved in the case hampers a fair trial or leads to categorising the accused as a person who had indeed committed the crime.

It can be acknowledged that media activism of this sort is allowed because the media's broadcasting of particular information, as was best observed in the Jessica Lal case, acts as a stimulant which is helpful to the quick advancement of the trial. After a trial has begun, however, the media has no authority to make any judgements on the defendant or the prosecution based on their own opinions. Under our constitutional system, it is the courts, not the media, whose job it

is to determine whether or not an individual has committed a crime. A person's reputation can be damaged beyond repair if they are wrongfully accused.

Positive Impact of media “freedom of speech and expression” is a prized right that underpins our democracy and is intended to allow people to express their free thoughts in order to improve political or social situations or progress human understanding. Through many historic rulings, the Indian judiciary has played a vital and proactive role in advancing press and media freedom. The definition of press freedom has been enlarged to regard the ability to disperse information in order to educate the general public. Some cases focusing on the value of free independent media and its impact on society are summarized here, taking into account the nature of the cases (civil and criminal).

6.7.1 Criminal Cases and Its Impact

In *Uma Khurana v. State of Delhi*³⁰⁹ in which a television channel exposed a Delhi school teacher who recruited and pressured female students into harlotry, has turned out to be a staged and staged sham. The female student who plays the victim of the resident pimp was neither a student nor a significant sex worker at the institution. Rather, she was a budding journalist hoping for a big break. The sting has landed on the tail in this example.

Manu Sharma has already been declared guilty by the media in the *Jessica Lal v. Vikas Yadav*³¹⁰ case, and the Delhi HC has reversed Manu Sharma's acquittal and sentenced him to life in prison. Jessica Lal (5 January 1965 – 30 April 1999) was a model in Delhi who had been gunned down at a packed bourgeois event at about 2 Am on 30th April 1999 while operating as a socialite bartender. Hundreds of eyewitnesses named Siddharth Vashisht, also known as Manu Sharma, as the murderer. Siddharth Vashisht is the son of Vinod Sharma, a rich and prominent Congress-nominated Parliamentarian from Haryana. On February 21, 2006, Manu Sharma and a number of others were acquitted in the ensuing trial.

Prosecution filed an appeal by following considerable media as well as public pressure, and the Delhi HC expedited the process, holding daily hearings over a period of 25 days. Manu Sharma

³⁰⁹ *Uma Khurana v. State of Delhi* on 14 December, 2007 : 146 (2008) DLT 429

³¹⁰ *State Of Manipur v. Vikas Yadav* on 2 March, AIR 2000

was convicted guilty of murdering Lal after the trial court's decision was overturned. On December 20, 2006, he was sentenced to life imprisonment.

In *Sanjay Dutt v. State of Maharashtra*³¹¹, the media is sympathetic to his case, where as in *Sushil Sharma v. State of Delhi Administration and Ors*³¹² conviction, if any, would be founded not on the media's narrative but on the evidence on record. The judge should be impartial. If these news pieces are recognised as a denial of a fair trial, the judge will be assumed to be biased. Regardless of press reports, the accusation must be based on proof. The allegation cannot be founded on non-public facts. The Court will construct the charge based on the evidence. I think the petitioner's fear of a rigged trial is unjustified. No news stories suggest justice has been obstructed or the Court's authority compromised. The Trial Court correctly noted that the Press's publishing of the charge sheet's contents after filing did not interfere with justice.

The arguments in Arnab Goswami's bail plea in *Arnab Manoranjan Goswami v. The State of Maharashtra & Ors*³¹³ which is about state malice and dangerous precedent. The Apex Court granted bail on November 11, 2020 to Editor-in-Chief of Republic Television Arnab Goswami in the case involving the alleged abetment of interior designer Anvay Naik's suicide. On next date, six Senior Advocates attended and argued on behalf of various parties in the case. The hearing was held before a Bench of Justices DY Chandrachud and Indira Banerjee throughout the day. Anvay Naik committed suicide due to financial problems, but how is that abetment? Abetment requires direct and indirect participation in the crime. Will the Chief Minister be arrested if a Maharashtrian commits suicide tomorrow and blames the government? The Apex Court heard Harish Salve. The Apex Court granted interim bail to Arnab Goswami and said that the Bombay HC erred in denying his bail petition.

³¹¹ *Sanjay Dutt v. State Of Maharashtra* on 16 October, 1995 : SCC (6) 189,

³¹² *Sushil Sharma v. State of Delhi and ors*, AIR 1996

³¹³ Criminal Appeal No. 742 of 2020

6.7.2 Civil Cases and Its Impact

The Apex Court in *LIC of India v. Manubhai D Shah*³¹⁴ noted that Art. 19(1)(a) entails the liberty to express one's thoughts and perspectives by speaking, writing, publishing, photographs, digital media, or just about any entails.

The Apex Court in *Romesh Thapar v. the State of Madras*³¹⁵ observed that liberty encompasses the independence of ideas, their publication, and distribution.

This right encompasses the freedom to learn about and discuss topics of public interest, according to *Hamdard Dawakhana v. UOI*³¹⁶. The right to transmit encompasses both the right to teach, inform, and amuse, as well as the right to be educated, informed, and entertained. The former is the telecaster's right, whereas the latter is the viewers right (*Secretary. Cricket Association of West Bengal v. Ministry of Information and Broadcasting*³¹⁷) Art. 19(1)(a) includes "the right to information and the right to disseminate through all sorts of media, whether print, electronic, or audio-visual".

While a civil suit was pending adjudication, the Apex Court issued a prior restraint order in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express*.³¹⁸ There was a commercial company's public offering, which began after the company received approval from the Controller of Capital Issues. The Indian Express petitioned for the order to be vacated, and the Apex Court did so after reviewing case law dealing to potentially harmful Art's and referring to the exceptions. The Apex Court cited Art. 19(1)(a), it was pointed out that there is no provision in the American Constitution for the imposition of reasonable restrictions by law. *Attorney General v. BBC*³¹⁹ was cited by the Court. In that case, the AG filed a motion for a restraining order to prevent media outlets from airing a show that touched on topics related to an appeal pending before the Local Valuation Court, arguing that to do so would constitute "contempt of court". At the time, Lord Scarman emphasised the importance of preventing any obstructions to the

³¹⁴1993 AIR 171

³¹⁵ 1950 AIR 124

³¹⁶ 1960(2)SCR 671

³¹⁷ 1995(2) SCC 161

³¹⁸ *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express* 1988(4) SCC 592,

³¹⁹ *Attorney General v. BBC* : 1981 A.C 303 (HL)

“administration of justice” (albeit the House of Lords concluded that contempt law did not apply to the Valuation Court). According to Lord Denning of the Court of Appeal, competent judges are not swayed by media coverage. Although Lord Dilhorne agrees with Lord Denning's assessment, he argues that the necessity to restrict the dissemination of matter adverse to the hearing of a case only occurs if the decision rests with laymen, rather than judges.

Everyone incumbent of the judiciary does all possible to protect his thought process from being affected by how much he observes, listens, or reads from outside the Judicial premise, and he will not contractually obligate himself to be affected in any manner by the media, nor will any lawyers knowledgeable with judicial responsibilities, in general view. However, it is believed that it is important to acknowledge that a guy may not be able to completely forget what he has seen, heard, or read, and that he may be subconsciously influenced by it. It is law, and it will remain such until Parliament changes it. “Contempt of Court” is defined as publishing of information that is likely to influence the hearing of a case before a court of law which is punishable with fine, imprisonment, or both. As previously noted, Lord Denning M. R said in the Court of Appeal that media attention will not affect judges³²⁰, a viewpoint that was rejected by the House of Lords in *Attorney Gen v. BBC*³²¹.

6.7.3 Media Trial and Its Impact on Indian Judiciary

Media trial can have a significant impact on the Indian judiciary, both positive and negative. On one hand, media coverage of legal cases can bring greater transparency and public scrutiny to the legal system, and can help to expose corruption and abuses of power. On the other hand, media trial can also prejudice the outcome of trials and interfere with the “administration of justice”.

One of the main ways that media trial can impact the Indian judiciary is by influencing public opinion and shaping the way that cases are perceived by the general public. If the media coverage of a case is biased or sensationalized, it can create false or misleading impressions about the facts of the case, the credibility of witnesses, and the guilt or innocence of the accused. This can make it more difficult for the court to arrive at a fair and impartial verdict.

³²⁰ *Attorney Gen v. BBC*: 1981AC 303 (315) CA

³²¹ 1981AC 303 (315) CA (HL)

Media trial can also influence the behaviour of witnesses, lawyers, and judges, and can create pressure on the courts to make decisions based on public opinion rather than the evidence presented in court. This can undermine the credibility of the judiciary and damage public trust in the legal system.

Despite these challenges, the media continues to play an important role in holding the Indian judiciary accountable, and in exposing corruption and abuses of power within the legal system. It is important for the media to report on legal cases objectively and accurately, and for the courts to take steps to limit media coverage if it threatens to prejudice the outcome of a trial. By working together, the media and the judiciary can help to promote transparency, accountability, and public trust in the Indian legal system.

The importance of media trials has grown in India. Many instances exist where the media has prejudged an accused person without waiting for a fair trial. There have also been infamous instances that have affected the Judiciary and enraged the public, such as The Jessica Lal case, 2010³²², in which the media celebrated their success in bringing justice to Jessica Lal despite the fact that the accused had been cleared of all charges by the trial court. Priyadarshini Mattoo³²³, a law student who was raped and murdered in 2006, was a suspect in a case where the verdict was accused of being influenced by Media Trial. If the media hadn't stepped in, the perpetrators in the Bijal Joshi rape case³²⁴ and the Nitish Katara murder case³²⁵ would likely have gone free. Yet, the media has also wrongly identified suspects in high-profile cases like the Malegaon bombing and the Maria Susairaj case.³²⁶

In a suo motu case³²⁷, the Delhi HC noted that the justice delivery system in India is extraordinarily sluggish, and that if an innocent person is subjected to a media trial during that period, the person has no genuine remedy. So, it is unusual for a victim of a trial by media to go to court seeking an injunction or monetary damages. The Court went even farther, saying that all Courts have a heavy responsibility to shield people's rights and reputations against an unfair trial

³²²Manu Sharma v State (NCT of Delhi), AIR 2010 6 SCC 1.

³²³Santosh Kumar v State, AIR 2010(9) SCC 747.

³²⁴ Supra note 24

³²⁵ Supra note 22

³²⁶ Criminal Writ Petition No.1337 Of 2008

³²⁷2009(1) KLD 133.

by media. The rule of law requires the Courts to give it life. Even if it places more work on the criminal justice system, protecting a person from media abuse is crucial. If someone is arrested on suspicion of criminal activity, it is not the job of the media to determine whether or not that person is innocent. The judicial system is responsible for this task. So, the trial by media hurts both the Court's judgement and the accused, who should in most cases be presumed innocent until proven guilty.

Inadequacies exist even in the judicial system. Since judges and other members of the judiciary are also human, they are not exempt from making mistakes. Unconsciously, they may be swayed by media attention or trial coverage. This highlights the need for rules restricting media coverage of ongoing or future trials.

6.7.4 Case Laws

When it comes to high-profile cases in the legal system, the media relies on a completely separate team of individuals to cover them. This may also have an effect on the manner in which the trial method is carried out, including the witnesses, evidence, and essential components. My research and analysis have been centred on the following examples because I believe they best illustrate the effect that the media has on both us and the criminal justice system:

1. P.C. Sen v. Unknown³²⁸

A SLP was submitted arguing that a broadcast that had occurred, on an AIR station had been an obstruction in the course of justice and had amounted to “contempt of court” because it revealed the details of the accused. The broadcast in question had given out the names and addresses of the individuals who were being prosecuted. According to Justice Shah, every legislation relating to the disobedience of the court is considered to be well-settled. Any publication or behaviour with the purpose to discredit any Judge or the court, to undermine the authority of the court, or to obstruct the due process of law will be considered a “contempt of court.”

2. Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr.³²⁹

³²⁸AIR 1970 SC 1821, 1970 CriLJ 1525, 1969 2 SCR 649.

³²⁹AIR 1975 AP 30

In a small Andhra Pradesh district, a curfew had been enforced. A claim was made in court that the curfew was unlawful because it was imposed arbitrarily and not in accordance with any statute. The Deccan Chronicles reported on the case in detail at the time it was published, detailing the history of the curfew rule, its implementation, and its effects on society. It was then noted that while a trial was ongoing, no comments should be made about the case that could reasonably be expected to influence the outcome, whether through bias on the part of the judge, the credibility of the witness, or the interest of the general public in hearing about the case in the media. It was further declared in this instance that the publication of such information, regardless of the publisher's belief in its veracity, would be considered a “contempt of court” because the truth had already been established prior to the judgement being handed down by the courts.

3. *Sushil Sharma v. The State (Delhi Administration)*³³⁰

Not much pointed to the accused as the killer of his partner. Although the case was still being heard in court, the media had already begun depicting the accused as a murderer and was able to influence public opinion regardless of the outcome of the trial. The HC of Delhi noted that a person's guilt or innocence should be determined purely on the evidence presented in court and not by public opinion. In addition, the charges against the accused must be formulated in light of the evidence in the case file rather than the media's portrayal of the accused.

4. *Secretary, Ministry of Information and Communication v. Cricket Association of Bengal*³³¹

The court stressed that “every person has the right to transmit and broadcast to the audience any significant event through electronic media by defining freedom of speech and expression in a broader sense. Radio and television have also demonstrated that the government has no monopoly over these electronic media, and neither the constitution nor any other statute in effect in the nation specify any such monopolistic power of the government.”

As a result, the ruling significantly altered the broadcast media landscape and made that industry accessible to the general public. The right to gather and disseminate information is protected by

³³⁰1996 CriLJ 3944.

³³¹1995 AIR 1236, 1995 SCC (2) 161.

the “freedom of speech and expression”. Speaking and expressing oneself freely is essential for having a clear conscience and finding joy in oneself. It enables individuals to participate in discussions on social and moral issues. It is the finest approach to ascertain the most accurate representation of anything sincere since only through it can the widest variety of ideas be disseminated. It is the only forum for political speech that is so vital to democracy.

5. R.K. Anand v. Delhi High Court³³²

The SC investigated the fundamental issues surrounding the trial of the media. Six people were killed when a BMW driven by the scion of a powerful and wealthy family sped down a street and hit them. The case arose from an undercover investigation by the private television network NDTV into the corrupt alliance between the prosecution, its witness, and the defence in the notorious BMW hit-and-run case.

After that, the Delhi HC initiated the Suo-Moto contempt proceedings, at which point it deemed both the special prosecutor and the defence attorney to be in “contempt of court”. As a result, the court prevented both of them from testifying in the case. As of the airing of an NDTV sting operation eight years after the occurrence, the trial was still proceeding. The sting revealed that the top attorney representing the accused was in negotiations to sell out in favour of the defence. A further appeal to the Supreme Court argued that NDTV had engaged in a form of "trial by media" by airing the sting operations before they had first received HC sanction. The Supreme Court of India disagreed, saying that this would not be a journalism activity but would instead have the media act as a specialised monitoring agency for the court.

The term "trial by media" was used to describe how widespread media coverage can damage a person's reputation and lead people to believe they are guilty notwithstanding the outcome of any legal proceedings. The Supreme Court noted that NDTV was not victim of an unfair media trial. The court dismissed R.K. Anand's appeal and informed him that his sentence will be enhanced.

6. Sahara India Real Estate Corporation Ltd. v. SEBI³³³

³³² Criminal Appeal No. 1393 OF 2008

³³³ C.A. No. 9813 of 2011 and C.A. No. 9833 of 2011

The Supreme Court of India convened a five-judge constitution bench in 2012 to consider whether the court should provide guidelines for the media's coverage of pending cases or matters already before the court, in a case commonly known as the media guidelines case. A private television channel inadvertently revealed confidential talks about a settlement in this case.

The court issued an order saying that this kind of coverage negatively affects corporate morale and impedes the fair “administration of justice”. We are deeply troubled by the fact that the learned counsel for the appellants has had suggestions addressed to the learned counsel for SEBI referred to on one of the television channels without prejudice. After receiving a complaint from The Sahara on the television network's unauthorised broadcast, India's Supreme Court initiated a dialogue on the topic of media coverage of court cases on the behalves of media outlets and reporters. The court has mandated that both attorneys file formal interlocutory motions with the court in order to facilitate the passing of appropriate orders in reference to the reporting of sub judice proceedings currently pending before the court.

A recent media leak sparked a debate among legal professionals about the potential downsides of excessive media coverage in court cases. While the justice system values open proceedings and media access, the Supreme Court acknowledged that in rare situations, intense media scrutiny could harm the administration of justice. The Court offered a potential solution: limited delays on reporting. However, these delays would be subject to strict scrutiny and only granted if absolutely necessary and proportionate to the situation.

7. Jasleen Kaur Harassment Controversy Case³³⁴

The allegations of sexual harassment made by Jasleen Kaur against Sarvjeet Singh in 2015 and the subsequent actions led to the controversy. Jasleen Kaur, a lady from Delhi, accused Sarvjeet Singh of harassing her in a Facebook post in August 2015. On Indian social media, the post went viral right away and received a lot of attention. She garnered a lot of support from national celebrities and lawmakers in her fight against eve-teasing and sexual harassment on social media. The following day, Sarvjeet was taken into custody and released on bail.

³³⁴ Sarvjeet Singh V. State (Nct of Delhi) & Anr [W.P. (CRL.) NO. 1598/2022]

It was followed by Trail by Media, in which Sarvjeet was referred to on national news channels as ‘Delhi ka Darinda’ (Delhi's predator) and ‘National Pervert’. A witness who confirmed Sarvjeet's innocence a few days after the occurrence gave legitimacy to Sarvjeet's account.

After four years, in 2019, the Indian court declared Sarvjeet innocent and acquitted him of all accusations. Four years after the occurrence, on October 24, 2019, the court rendered its decision. Sarvjeet was found innocent and all charges were dropped. He was cleared of every accusation levelled against him. However, because of the media attention at the time, the man lost his job and was unable to find another work.

8. Sanjay Dutt v. State Through C.B.I. Bombay on 9 September, 1994³³⁵

The Supreme Court upheld Sanjay Dutt's five-year sentence for his involvement in the 1993 Mumbai bombings. Dutt initially admitted to possessing a gun obtained from associates of Dawood Ibrahim, a known criminal. He claimed he kept the gun for protection after threats during the 1992 riots. However, he later retracted this statement.

The Court found Dutt guilty under the Terrorist and Disruptive Activities (Prevention) Act (TADA) for acquiring illegal weapons but not for direct participation in the bombings.

Despite the Supreme Court sentence for possessing illegal weapons, the Terrorist and Disruptive Activities (Prevention) Act (TADA) court eventually cleared Dutt of all terrorism charges 11 years later. The court ruled he obtained the firearms for self-defense. Dutt was initially granted bail for his conviction under the Arms Act (separate weapons charge) while appealing the sentence. He served part of his sentence but was released early on good behavior. The Supreme Court ultimately reduced his sentence to five years, which he completed in 2016. Dutt's celebrity status brought significant media attention to his case. While initially portrayed as a terrorist by some media outlets, the court's final decision cleared him of those charges. This episode undoubtedly tarnished his reputation and led to public backlash .

9. Pratim Alias Peter Mukherjea v. UOI And Anr on 19 January, 2018³³⁶

³³⁵ Special Leave Petition (crl.) 1834-35 of 1994.

³³⁶ Writ Petition No. 4400 OF 2017

When Indrani Mukherjea was arrested for the murder of Sheena Bora in 2012, the stunning news was that she was actually Indrani's daughter, not her sister. The media spotlighted the story, and even after Indrani's imprisonment, she maintained her claim that Sheena was her sister, despite the fact that she had admitted to having two children. Murder exposed Indrani's and Peter Mukerjea's shady business practises. For three years, they avoided trial because of their skilful manipulation of the facts.

It was the intrusion of the media into Indrani's private life that sparked new discussion about the murder trial. Aspects of Indrani's personality and private life that had nothing to do with the Sheena murder case were subjected to public scrutiny in the media. Once again, journalists' intrusion into a criminal case had called journalism's code of ethics into question.

10. Mukesh & Anr v. State For Nct Of Delhi & Ors on 5 May, 2017³³⁷

A physiotherapy intern was brutally gang raped and tortured and beaten in a private bus. Six guys, including the bus driver, assaulted her and her buddy on the bus. After eleven days in the hospital, she was sent to a hospital in Singapore due to an emergency, where she remained for only two days before she passed away.

This sparked widespread publicity in the national and international media. The act drew widespread condemnation from people all throughout the world, not only in India. Protests against the federal and state governments followed, with many people angry that women were not adequately protected.

Many laws, particularly the Juvenile Justice Act, were changed as a result of public outcry; for example, the minimum age for punishment for the horrific crime was lowered from eighteen to sixteen.

11. Neeraj Alias Kamal Grover v. State and Anr.³³⁸

The case went viral on social media and the news because it was so shocking. Neeraj, who had worked in a production firm in Bombay, was discovered dead in May of 2008. Neeraj's body was

³³⁷ Criminal Appeal Nos. 607-608 Of 2017

³³⁸ CRL.M.C. No.3110/2015

dismembered, placed in three trash bags, and then burned in the woods. Maria Susairaj, one of Neeraj's friends, initially reported him missing to the police until it was discovered that she had been engaged in his murder. Lieutenant M.L. Jerome Mathew, who was dating Maria at the time of Neeraj's murder, was eventually identified as the killer after it emerged that he had committed the crime out of jealousy over Maria's possible infidelity. Media outlets in India devoted a lot of space to covering the murder trial, wherein the accused were revealed to have been found guilty despite widespread public indignation over the judgement given to the individuals who had hacked the body into pieces and set fire to it. One news organisation had argued that the slander of the accused put undue pressure on the individual.

12. Mr. Sukhdev Yadav @ Phalwan v. The State Of U.P.³³⁹

The murder of Nitish Katara was an act of honour committed by Vikas Yadav, the son of the well-known politician DP Yadav. In spite of Vikas Yadav's disapproval of Nitish and Bharti's relationship, the two had an affair. Both Vikas and Nitish attended a wedding for a common friend, and Vikas used this as an opportunity to kill Nitish by giving him a ride. The post-mortem report states that Vikas had beaten Nitish so severely that his digestive system had broken down, and a DNA test was performed to confirm Nitish's identity. Vikas got a life sentence. But, the accused is not always afforded the fair trial to which he is entitled when it is broadcasted in the media.

13. Subramanian Swamy & Anr v. Delhi Police & Ors³⁴⁰

Shashi Tharoor's ex-wife, Sunanda Pushkar, was an Indian Union minister. After two unsuccessful unions, Sunanda wed Shashi Tharoor in August of 2010. The body of Sunanda was discovered in a hotel room at the Leela Palace in Delhi on January 17th, 2014, however the circumstances surrounding her death remain a complete mystery.

The day before she was murdered, she and a Pakistani journalist named Mehr Tarar got into an online Twitter argument. An affair between the journalist and Sunanda's husband, Shashi Tharoor, was a point of contention because it was indicated to in the journalist's tweets. The

³³⁹ Criminal Appeal Nos. 1531-1533 Of 2015

³⁴⁰ W.P.(CRL) 1938/2017 & CrI. MAs 11712/2017, 11713/2017

autopsy report stated that Sunanda died from an overdose of sleeping tablets, but in later October, the medical team indicated that they had been forced to deliver a customised report, so the investigation continues. The police said Sunanda was poisoned and murdered, but they couldn't find a perpetrator. As of this writing, no one is in custody in connection with Sunanda Pushkar's murder.

The media alleged that Shashi Tharoor had committed the murder while the case was still being investigated and no trial had even begun in a court of law. After that, Shashi Tharoor was the centre of much controversy.

14. State (Through CBI) v. Santosh Kumar Singh³⁴¹

A law student, Priyadarshini Mattoo³⁴², lived with her Uncle. Her dead body was found through was initially it was believed that her senior, Santosh who had been stalking and harassing her for years, was the prime suspect. Santosh, was later revealed to be the primary suspect. He used electrical wire to suffocate her to death. Santos' repeated blows to her face with the helmet had left her face completely disfigured.

The acquittal was met with widespread public protest and media campaigning, which ultimately resulted in an appeal to the HC and a conviction and death sentence. The death sentence, originally issued by the Delhi HC on 30 October 2006, was commuted to life in prison by the Apex Court.

15. Barun Chandra Thakur v. CBI³⁴³

Pradyum, a second-year student at “Ryan International School in Gurugram”, was discovered dead in the boys' room. The bus driver was reportedly taken into custody on suspicion that he sexually assaulted and subsequently murdered the boy. Later, it was revealed that a student in his class XI had murdered him in an effort to delay the upcoming exams. Although the bus driver was eventually exonerated, his reputation and career were damaged by the public trial that preceded the verdict. The media shouldn't have voiced its opinion on the case while it was still

³⁴¹2007 Cri. LJ 964, 133 (2006) DLT 393

³⁴²Santosh Kumar v State, AIR 2010(9) SCC 747.

³⁴³Criminal Appeal No. 2152-2153 of 2017

being investigated; instead, it should have waited until after the court had rendered its judgement before doing so.

16. Nupur Talwar v. CBI & Anr.³⁴⁴

The story was widely covered by the media and was front page news for quite some time. In May of 2008, Arushi and her maid Hemraj were brutally killed. At first, there were several possible suspects. Several people felt like Aarushi and the suspects were put on trial by the media because of the sensational nature of the coverage. Even though no solid proof of an affair between Arushi and Hemraj existed, the media nonetheless cast doubt on her integrity. In November of 2013, a jury found the parents guilty of murder and they were given life sentences. Many individuals, however, pointed out that the trial was heavily influenced by the media, and that the evidence against the parents was not sufficient to convict them. The Talwars appealed the judgement to the Allahabad HC, which ultimately released them from custody in 2017, citing insufficient evidence and ruling in their favour.

17. Vijay S. Mallya v. Bennett Coleman And Company³⁴⁵

This is a case relating to “contempt of court”. Wherein facts of the case shown that the Art. was published by the Times of India on 6 October, 2008 which has been amounted to “contempt of court”. This is the contempt petition wherein a reporting is made in connection with the court proceeding pending between the petitioner Vijay S. Mallya and Respondent number 6. The title of this Art. was published in the Newspaper is ‘Sr. citizen takes bullying builder drags in to court over redevept deal’.³⁴⁶ In this Art., a reference is taken from litigation pending between the parties.

In the opinion of Court stated that “if reckless and inaccurate reporting is made, then there is likelihood that the people at large may create positive or negative impression about the person. If the media reporting is not correct it may result into prejudice. Media reporting will affect the

³⁴⁴Criminal Appeal No. 68 of 2012

³⁴⁵ Criminal Contempt Petition No.2 Of 2009

³⁴⁶Sukhada Tatke, “*Sr. citizen takes on 'bullying' builder*” 2008, *The Times India*. Available at <https://timesofindia.indiatimes.com/city/mumbai/sr-citizen-takes-on-bullying-builder/articleshow/3564181.cms> (last visited on 23 Feb,2023)

conduct of fair and proper trial. Therefore media is required to show restraint and caution while reporting court proceedings. Therefore it is stated that freedom of press is always regarded as essential element of a democratic form of government.”

6.8 REGULATORY MEASURES

In India, there are several laws and regulations that govern the media and the reporting of legal cases. Some of the key regulatory measures include:³⁴⁷

1. The Indian Penal Code, 1860 (IPC)³⁴⁸ - This law contains provisions related to criminal offenses such as defamation, “contempt of court”, and obscenity. The IPC can be used to prosecute journalists and media organizations for publishing false or defamatory information about individuals or legal proceedings.
2. The contempt of courts Act, 1971³⁴⁹ - This act provides for punishment for “contempt of court”, including publishing or reporting anything that scandalizes the court or prejudices a fair trial.
3. The Cable Television Networks (Regulation) Act, 1995³⁵⁰ - This act regulates the operation of cable television networks in India, and requires that they adhere to certain standards of decency and impartiality in their reporting of news and current events.
4. The Press Council of India 1978 (PCI)³⁵¹ - The PCI is a self-regulatory group for the print media with the authority to impose rules and reprimand publications and journalists for unethical or careless reporting.
5. The News Broadcasters Association³⁵² (NBA) - The NBA is India's equivalent to the PCI, a self-regulatory organisation with the capacity to publish guidelines and reprimand members for unethical or irresponsible reporting.

³⁴⁷Media Trial is toll on Fair Trial, *supra* note 8.

³⁴⁸ Indian penal code, 1860 (Act No. 45 Of 1860)

³⁴⁹ The Contempt of Courts Act, 1971 (Act No. 70 Of 1971)

³⁵⁰ The Cable Television Networks (Regulation) Act, 1995 (NO.7 OF 1995)

³⁵¹ The Press Council of India, 1978

³⁵²The NBA was set up by leading Indian news broadcasters on 3 July 2007.

These rules are in place to protect the integrity of the media in India and prevent unfair reporting of court cases. The media continues to play an important role in moulding public opinion and holding those in power responsible, despite the difficulty of enforcing these laws and regulations.

6.9 CONCLUSION

The media and the judiciary share the same goals of discovering the truth, protecting progressive principles, and meeting the difficulties of the modern world. On the one hand, the judiciary is the purveyor of justice and the impetus for policy trends, and then, on the other hand, the media has been labelled as the maid of justice and the watchdog of the system. Conflict between these two pillars of democracy is inevitable, despite the fact that both are vital to the development of civil society.

There has never been a system of law that allows the media to try a case. In the case of journalism and media trials, there are two sides to every story. In some cases, the media may unfairly and inaccurately represent an accused person, damaging their reputation and maybe swaying the outcome of the trial and the subsequent verdict (i.e. media trials). There has been a rise in the popularity of media trials in India, and there have been several instances in which the media has arbitrarily decided a case against a suspect without affording him or her a fair trial in a court of law.

The media has the power to shape public opinion, as seen at the time When COVID-19 became a global epidemic, the media and news networks concentrated on the number of deaths and new cases each day, inspiring widespread fear. Yet, if the frequency of recoveries were made public, it might inspire hope and motivate people to join the fight against the pandemic. There are benefits and drawbacks to the media's ability to influence people's views, and a growing consensus suggests that the industry is increasingly focused on mind control as its main goal.

The public's wrath and worry have grown in response to the tragic narrative of late actor Sushant Singh Rajput, including the investigation and claimed mismanagement of his premature demise. The public has been led to believe that the accused is a criminal because of how the tale of the actor's death has been reported. Even more seriously, the media has been persistently covering the topic on a daily basis, making comments on the information without confirming the facts

grid, all based on material based on basic inferences and assumptions about the investigative route taken by official agencies.

The appeal for a restraining order against the Media Trial in the death case of actor Sushant Singh Rajput was heard by the court which found that the reputations of the parties "so called concerned" in the case were seriously harmed. Years of hard work might go to waste if someone makes a careless mistake. The court noted that until the trial is over, even if they are found not guilty of all charges, they will be marked with a stigma. An alarming segment of the media has shown a worrying lack of responsibility in recent high-profile cases. The press needs to understand the gravity of the situation, which involves compromising someone's personal rights and property. As a general rule, the press is not always helpful, although there are times when it is. But, we must recognise that cases are decided by reasonable adjudicatory judgements, and that any attempt by the press to give the impression of a predetermined outcome is improper. Although the public may be hoping for a certain result, the adjudicatory body's ability to get that result is not guaranteed. Attempts by the media to sway public opinion are not good for society as a whole.

There has never been a judicial system in which the press could decide the outcome of a case. There are two sides to every coin. trial by media occurs when a journalist presents an image of an accused person that has already been decided upon, damaging that person's reputation in a way that can have an impact on the outcome of the trial. The media's relentless scrutiny of Indrani Mukherjea, the prime suspect in the Sheena Bohra murder case, has led to a public debate on the topic of media trial of the accused. It was common for journalists' morals to be called into question after such incidents.

The media is instrumental in influencing public opinion and bringing about social change. When trials are covered in the media, it is important to assess the level of professionalism and ethics involved. The media's role in criminal cases can be problematic. Often, media outlets rush to judgment, declaring a suspect guilty before a trial even begins. A recent example is the Sushant Singh Rajput case.

The Press Council of India (PCI) has addressed this issue, outlining guidelines for responsible media coverage of criminal cases. These guidelines emphasize that the media should avoid:

- Holding "parallel trials": Don't pre-judge the case or act as if they have the final verdict.
- Speculating on the outcome: Let the legal process unfold without attempting to predict the court's decision.
- Slanting the narrative: Present the facts fairly without trying to sway public opinion towards guilt.
- Invading privacy: Respect the privacy of everyone involved, including the victim, witnesses, suspects, and the accused."³⁵³

³⁵³Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India (2012) 6 MLJ 772

CHAPTER-7

MEDIACRACY RELATED ISSUES AND CHALLENGES AND THE ROLE OF MEDIA IN THE CHANGING ENVIRONMENT

“With great power, comes great responsibility.”³⁵⁴

- Voltaire

Media is the sword arm of democracy³⁵⁵. Hence it plays a vital role in awakening of people with day to day happening in their surroundings. The media acts as a vital watchdog, holding both individuals and governments accountable. They serve as a preventative and investigative force, uncovering and reporting on potential wrongdoing. This watchdog role is wide-ranging, scrutinizing everything from the conduct of individual officials to the integrity of entire government systems. Essentially, the media acts as a public eye, ensuring those in power are acting responsibly and ethically.³⁵⁶

As earlier stated, the media not only serves an essential responsibility, but also has huge influence, granting it wider liberties. Few other authorities today have such broad powers and privileges as the media. But, in exchange for such broad powers, the media must carry significant responsibilities. When the media faces a whirlwind of challenges, it becomes more difficult to execute these hefty responsibilities.

Today's world moves at a rapid pace, and it is imperative that we change with it. As a result, media must evolve at the same rate as the rest of the world, and new media technologies and approaches have emerged. The media sector is expanding at an unpredictable rate, whether in print media such as newspapers, magazines, and journals, or electronic media such as television,

³⁵⁴Most attributed to Uncle Ben from Spiderman, but more accurately by Voltaire. Born in 1694, in Paris, France, Voltaire was a French Enlightenment writer, historian, and philosopher famous for his wit, his attacks on the established Catholic Church, and his advocacy of freedom of religion, freedom of speech, and separation of church and state. <https://www.linkedin.com/pulse/quote-great-power-comes-responsibility-voltaire-mba-bsee> (last visited 14 April, 2022)

³⁵⁵Shweta Ptated, “Responsibility of Media In Democracy”, August 9, 2020. Available At <https://Legaldesire.Com/Responsibility-Of-Media-In-Democracy/> (last visited 14 April, 2022)

³⁵⁶Media as watchdog 2012 edittion 3rd administration and cost of election project. Available at - <https://aceproject.org/ace-en/topics/me/introduction/me10/me10d> (last visited on 14 April, 2022)

radio, mobile, and social media. With the changing media landscape come new challenges and issues, and with these concerns and challenges come new responsibilities for the press business.

This chapter will go through the many requirements and issues of the media profession in general as well as in detail. Aside from the foregoing, the duty and responsibility of the media will be discussed. The role of the media as a watchdog will also be scrutinized.

7.1 ISSUES OCCURRED DUE TO MEDIACRACY

The mediocracy is one of the big problems emerging in the society which needs the attention. With knowing the causes of mediocracy one cannot understand the responsibilities of media some of the issues which are created by media are presented following:

7.1.1 Ill-Effect On Judicial Officers

One of the biggest concerns with media trials is the potential for subconscious influence on judges. The intense media scrutiny surrounding a case could theoretically impact a judge's impartiality.

Justice Frankfurter acknowledged this concern, stating that while good judges strive for conscious impartiality based on evidence presented in court, they are still human. The pressure and constant commentary from irresponsible media coverage can make it more difficult for judges to uphold their duty of fair and objective judgment.³⁵⁷ Any publication intended at poisoning the judge's mind should be considered contempt of court. Although legal systems rely on unbiased and competent judges, media trials must be avoided since they may have an impact on the judges' mind.

The media's ability to affect behaviour and the formation of prejudices and attitudes cannot be denied. It was said in *Re: P. C. Sen*³⁵⁸ that the true danger of prejudiced statements made in newspapers or by other mainstream media is that it must be avoided as it impacts the comments which may have on the Judge's mind or even on the minds of witnesses for a litigant.

³⁵⁷John D. Pennekamp v. State of Florida (1946) 328 US 331

³⁵⁸ AIR 1970 SC 1821.

The legal system is vulnerable because judges are human, and the rational process of judgment can be corrupted by an excessive effect of irresponsible language. In *Rao Harnarain v. Gumani Ram*,³⁵⁹ The Indian judiciary has spoken out against "trial by media," where journalists act as investigators or try to influence the court during a case. The Supreme Court has emphasized that journalists should not take on these roles. However, the Indian judiciary also acknowledges the difference between media scrutiny and undue influence. They've stated that judges are professionals who are unlikely to be swayed by negative publicity or media campaigns."³⁶⁰ Although the judiciary has not openly admitted any effect of the media trial on the judges, it has expressed worry about the impact that the media may have on the current trial before a court.

7.1.2 Ill Effect on Right To Privacy

The right to privacy and freedom of speech are two sides of the same coin. We all have a right to be left alone, but information is also important. The rise of media, however, creates tension. Media outlets can easily intrude on someone's private life and broadcast it publicly, causing a serious invasion of privacy.

The famous *Rhea Chakraborty* case where media zoomed into Rhea's living room to show her was a literal example of infringing privacy right.

The Indian judiciary walks a tightrope regarding media coverage of court cases. On the one hand, they strongly condemn "trial by media," where journalists act as investigators or try to sway the court. The Supreme Court emphasizes that journalists should focus on reporting, not influencing the legal process. On the other hand, the judiciary acknowledges the value of media scrutiny. They trust the professionalism of judges, who are unlikely to be swayed by negative publicity or media campaigns.

7.1.3 Issue of Giving Fair Trial

The media's role in court cases creates a complex tension between free speech and fair trials. Media outlets argue that comprehensive reporting is essential for public engagement with

³⁵⁹ AIR 1958 P H 273.

³⁶⁰ *Balakrishna Pillai v. State of Kerala*, AIR 2000 SC 2778.

important issues. However, media trials, where journalists act as judge and jury, sensationalize facts, and prejudice the public, threaten the justice system's core principle a fair trial for the accused.

This right to a fair trial is fundamental. It ensures justice is served and protects public trust in the legal system. When media trials prejudice the accused, they undermine the presumption of innocence and the rule of law. The Indian Constitution reinforces this right – Article 21 cannot be suspended, even during emergencies. The Contempt of Court Act and the power of courts to punish contempt further safeguard fair trials by holding journalists accountable for publications that could influence a case. To ensure effective justice, combating media trials is crucial.

7.2 RESPONSIBILITY OF MEDIA

The media is an important element of our lives and has a significant impact on the perspectives and outcomes of global events. The contribution allows everyone to express themselves freely, but the media must accept responsibility for its role in many of the recent difficulties. The media has had a significant influence on the young and old minds. Therefore, the media has a very strong mandate to reveal the truth in the nation. According to Hohfield³⁶¹, power is always respectable when compared to responsibility. Therefore, following are some of the responsibility of media:

7.2.1 Media as Educator

The media serves as an educator and a source of information. It is the responsibility of the media to give honest and open reporting. The media sector has a moral and legal obligation to offer accurate information to its viewers.

The media, as a facilitator, aids society in widening its collective thinking. As a result, it is the role of media practitioners to communicate accurate and transparent information.

1. Make wrongdoers fearful.

³⁶¹ Dias RMW; *Jurisprudence.*,(Butterworth&co.1994)

The media evokes dread in wrongdoers by exposing them. Media play an important role in many instances to bring the end of justice to the victims. Hence it is media's responsibility to evoke the truth out of the corrupt and unethical practices.

2. Diverse information

The modern era is an era of technology and information which make society thrive for various voluminous information. Media apart from playing the role to give this vast information to society also provides makes it easy for them to access in speedy and quick way.

It can be said that media industry not only gathers the information from entire globe but also make's availability of such information quick and easy.

3. Mirror reflection of reality

Media functions as mirror reflection of society. The mal practices, mistakes, mismanagement of all the sections of society as well as government are brought into the light by media. It is the duty of media to enlighten the society about the happenings in their surroundings. On the other hand it helps the government bodies to keep a check on this mal practices and rectify the mistakes.

Further, we can say that media serves dual responsibilities; first, it serves as a watchdog for the government and secondly, it helps the society to know the mal administration in the surroundings.

4. Fairness and accuracy

Media is considered as the backbone of the democracy. Hence the burden on the shoulders of journalism industry is more to provide fairness and accuracy in there reporting. The bad reporting can cause harm in the society.

For instance in the COVID 19 era due to bad reporting from various media channels the fear and pressure in the community was increased as a result to it the people began to stockpiling food which led to various difficulties. The new institutions should have sense of responsibility to provide accurate and honest information to the public.

5. Independence

The journalists should be free from undue influences which can hinder their quality of reporting and giving correct data's. The mass industry should not come under any political, corporate, or foreign influence, it is their responsibility to be independent in their data delivery.

7.2.2 Media as A Watchdog

Media as watchdog means that any organization which keeps a check on unlawful practices. In other words we can say that media acts as a preventive body against the illegal activities committed either by politicians or people's.

Media investigates and reports on government malfeasance and incompetence in order to uphold those in authority responsible for their conduct. Further, we can divide the role of media as watchdog into two facet: firstly media role as watchdog for government and secondly media role as watchdog for society.

Media as watchdog for government

Media also plays an important role for the government in keeping a check in society and keeping them updated about surroundings, oppositions, international affairs and so on. Nowadays government rely heavily on journalism industry be it in the form of social media or traditional form of media. The government has used this platform to reach to its citizens either by means of governmental apps or by means website, or by online popular sites like twitter, WhatsApp and so on. There are multiple reasons due to which government have increased the use of media. Some of them are discussed following:

1. Connection

The media acts as a bridge between citizens and government. Further, it helps in framing and executing the government policies by providing public feedback. Another aspect of media role for the government is that it connects the different countries together. For example, the government of two different countries can communicate with each other and public in case of emergency via media channels or social media platforms.

2. Building image

Media plays an important role in creating image of political parties by displaying the work of policies and schemes, by exposing of scams and scandals committed by political individuals. The media role helps the governmental authorities to build the trust among public.

3. True Information

The public's attitudes and reactions are communicated to the government via the media, which enables it to understand the societal pulse. The media is a high source of information during the time of election as it helps the government to know the state and requirement of the people which indeed helps the government to build their electoral campaign.

7.2.3 Media as watchdog of society

Watchdog journalism is to promote the transparency and responsibility of our governments, prominent people, and institutions.³⁶² The press performs its watchdog role by investigating in facts of public authorities' statements, politician interviews and encountering them with issues that require attention, by reporting on gathered information and to examine on the ground through wider populations. In other words, Watchdog media do not publish from the viewpoint of the authorities.

One of the earliest ideas in the practice of journalism is the watchdog theory, which states that the press is responsible for monitoring the actions of the government and other institutes in society. Accordingly Edmund Burke first used the phrase "the role of the media as a watchdog that will bring government in check" in late eighteenth-century England to describe the political clout that the media at the time held. Burke asserted that the press shared equal standing with the Lords, Church, and Commons as the other three estates of authority in the kingdom of Great Britain.³⁶³

Some of the benefits of media as watchdog of society is discussed below:

1. Accountability

³⁶²*What is watchdog journalism: definition, examples, effects on democracy* by Liberties EU, January 17, 2022. Available at <https://www.liberties.eu/en/stories/watchdog-journalism/43959> (last visited on 24 May, 2022)

³⁶³ On role of the media as society watchdog, 2016. Available at <https://shipsandports.com.ng/on-role-of-the-media-as-society-watchdog/> (last visited 16 Oct, 2022)

The watchdog journalists monitor the government's actions and report on impartial viewpoints in the press. Watchdog journalism seeks to uncover government flaws, inefficiencies, scams, and related matters. They have to act in the interest of the public. Hence, they help to make the wrongdoer accountable and thus, create a fear in the mind if the government or other institutions

2. Public opinion

The Supreme Court of India explained that the right of the people to know is the fundamental principle behind the “freedom of the press”. The Supreme Court stated, “The primary function, therefore, of the press is to provide comprehensive and objective information on all aspects of the country's political, social, economic and cultural life. It has an educative and mobilizing role to play. It plays an important role in molding public opinion”.³⁶⁴ The "liberty of the press" supports the "right to know" by providing the general public with access to all of the information available. It keeps the public informed about all concerns in order to ensure that when the right time of choice arrive the rationale decisions can be made out.

3. Transparency

The thirds role can be said is of transparency. It is responsibility of the watchdog journalism to promote transparency in their reporting so that the public can access and rely on the news and can make a fair decision when required. Also transparency in journalism can help to keep the end of justice intact.

4. Help in emergency situations

The media has played a crucial role in helping and in providing relief and support to the affected people in emergency circumstances like earthquakes, floods etc. They assist in the state's welfare role. Under these circumstances, the media serves as an additional tool for the government, enlisting the public's support to deliver the essential aid. By alerting the victims' families of their locations or other information, it helps the victims. It provides the helpline no. to the victims' families so that they can reach out for their loved ones. All these role of media plays a pivotal role in helping and transforming society.

³⁶⁴*InRe:HarijaiSinghandAnr.;InRe:VijayKumar, (1996)6SCC466.*

Criticism on Watchdog Role of Media

It is said that media are the forth pillar of the democratic society, a guardian of the people, and so on. But in reality media now-a-days have become a dog waiting for the bone.³⁶⁵ The reason for stating such statement is because media channels instead of acting as watchdogs and making wrongdoers accountable for their actions are focusing more on chasing the race of TRP. They are putting an eye cap on the public instead of providing transparent and honest news. Some of the example of it can be seen in recent news trends like these days the prime focus of the media is shifted to Imran khan action and arrest instead of focusing on floods, healthcare structures, India-china borders.

Institutions are inherently susceptible to misuse, and liberties, absent restraint, tend to devolve into license, fostering disorder and societal breakdown".³⁶⁶ However, it will not be wrong to state that media frequently fails to distinguish between an accused person and a convicted person, which has an impact on the rule of "Audi alteram partem" concept.³⁶⁷ Thus, in accordance with the media, everybody who is suspected of being guilty must be branded guilty before the law without even letting him a chance to run its course, and occasionally the impatient public mindlessly accepts the media noise.

The infamous Arushi Talwar case, involving the murder of a 14-year-old girl and her domestic worker, exposed the dark side of media coverage. The media frenzy surrounding the case was insensitive and sensationalized. News channels aired graphic details and unsubstantiated theories, including the targeting of the young victim's character and wild speculation about the parents' motives (wife swapping).

This irresponsible reporting damaged the reputations of not only the Talwar family but also anyone remotely connected to the case, including those falsely accused. The Supreme Court

³⁶⁵Abhiraj D. Vaghela "Media: How Watchdog is becoming a Pet dog of Money and TRP". Available at <https://www.legalserviceindia.com/legal/article-3716-media-how-watchdog-is-becoming-a-pet-dog-of-money-and-trp.html> (last visited on 17 Oct, 2022)

³⁶⁶ Express Newspapers v.U.O.I.,(1997)1SCC133

³⁶⁷ PreranaPriyanshu, "FreedomMediaTrial:FreedomofSpeechv.FairTrial",3IJLLJS(2015),p.285

rightfully criticized the media, emphasizing the potential for such coverage to prejudice the defense of the accused and harm the reputations of everyone involved.³⁶⁸

Another recent example can be seen in Sushant Singh Rajput suicide case where media ran behind the TRP chase and reported gossip about his relation neglecting the major facts of the case. Apart from this media at that time overlooked the pandemic situation, Assam flood, India border tensions news which could have been beneficial for public interest.

In Sushant Singh case the media instead of being a guardian of facts acted as an investing officer. They developed their own theories about how the murder must have been executed. These issues raised many concerns such as:

1. Whether the media followed the ethics
2. Whether the due process of law was taken under consideration while delivering such news against the persons involved.
3. The infringement of right of privacy was clearly seen in this case as the reports were constantly zooming rhea's house seen.
4. Defaming the reputation of culprit was clear violation of law

All these questioned the media role of watchdog and raised the serious concern on media's role in transforming the society.

7.3 CHALLENGES FACED BY MEDIA IN GENERAL

“Pen is mightier than sword”³⁶⁹ an old saying which means that one can achieve a lot with the power writing. Hence, it is of no doubt that for freedom of democracy, freedom of press is necessary. Without the free media the democratic voice of society can be lost. But this also gives rise to the question that whether journalism industry is actually serving its real purpose. Sadly the answer to seems to be unpleasant. After being freed from state supervision, the industry is not performing the public service that was anticipated. The aforementioned claim is not intended to

³⁶⁸ Mohd. Aqib1 , Utkarsh Dwivedi “Judiciary and Media Trial: A Need for Balance” Indian Journal of Law and Human Behavior Volume 5 Number 2 (Special Issue), May - August 2019.

Available at <http://dx.doi.org/10.21088/ijlhb.2454.7107.5219.8> (last visited on 23 Oct, 2022)

³⁶⁹The phrase came about in 1839 when it was invented by a nineteenth-century writer named Sir Edward Bulwer-Lytton (1803-1873), in a play about Cardinal Richelieu.

support government regulation of the media; rather, it is meant to highlight the reality that, although being independent of the government, the media consistently falls short of its obligations.

Another issue that demands consideration is what prevents the media from carrying out its obligations impartially and independently. The following is another effort to identify the obstacles facing the media as they carry out their duties:

1. Paid news

One of the most serious threats towards independent working of the journalism industry is the issue of paid news. Paid News can be defined as “Any news or analysis appearing in any media (print and electronic) for a price in cash or kind as a consideration”.³⁷⁰

Paid news is one that pretends to be news while actually being a marketed. In other words, a disguised news is one that promotes the individual be it political party, corporate house and so on for monetary terms. When we talk about “marketing” or advertising, we actually refer to the fact that the new channels get some consideration for the projection of such news. Such news which are been projected are not real, they are manipulated news for the benefit of such institutes or individuals.

Sponsored journalism is a flagrant infringement on democracy. In a society, the decision of which candidate to elect is made by the voter, who must exercise extreme care in doing so. It goes without saying that the individual must have adequate information while making such a crucial decision; only then will he make the right option. But, if a politician is being promoted by the media through the publication of paid news, it is deceiving the electorate and violating the constitution itself.

In a country like India media act as an influencer for public at large. They control the thinking process of the people specially by publishing the good or bad about an individual. This kind of publication gives advantage to certain section of society which uses such mode to get benefit in different situations from their oppositions.

Every politician who uses the bought news as a popularity tactic not only misleads the public, but also engages in three major offences. Firstly, the paid news may lead people to think things

³⁷⁰ Press Council of India defines paid news. Available at <https://presscouncil.nic.in/PaidNewsPCI.aspx> (last visited on 12 Dec, 2022)

that aren't necessarily truthful or honest because its primary goal is to receive favourable publicity.

Secondly, The Conduct of Elections Laws, 1961, established by the Election Commission of India under the Representation of the People Act, 1951, may be broken by applicants who are running for office by not declaring costs for the election campaign. Third, Along with breaking other crimes, the newspapers that received the payment but failed to reveal it in their official statements of accounts broke the Companies Act of 1956 and the Income Tax Act of 1961.³⁷¹

The simplest way to describe paid news is that it is becoming a pandemic and poses a rising danger to the spirit of democracy. Thus, it is crucial to talk about the factors that led to this impending threat:

- a. Management and the editorial division are not clearly segregated.
- b. The journalists are underpaid or are employed on contractual basis. Hence they opt for a mode of quick and larger gains.
- c. Commissions in paid news are more hence some corrupt reporters opt got such mode to satisfy their greed.

If the aforesaid causes can be curbed then the menace of paid news can be regularized.

2. Limited ownership of media houses

Another major challenge faced by press industry is limited ownership of media houses. The bulk of media companies in India are controlled by businesspeople with political clout or by those whose political influence leans towards a certain political party. For instance, BJP MP Subhash Chandra owns the Zee Network, which includes programmes like Zee News, and others.³⁷²

3. Attack on journalist

Receiving threats is one of the major issues that journalists in our nation are facing. It is getting difficult for a reporter to publish unbiased and honest news. The threat to one's life his high when it comes to honest reporting. Reporters without Borders placed India 142 out of 180

³⁷¹ *Id*

³⁷² Tanuj Chakravarty, "National Press Day: Challenges faced by Indian media", published on 15 November 2022. Available at <https://www.eastmojo.com/national/2022/11/15/national-press-day-challenges-faced-by-the-indian-media/> (last visited on 13 Dec, 2022)

nations in its 2021 Global Press Freedom Index.³⁷³ According to RSF India is among the world's dangerous country where the journalists are exposed to various violence's, be it police assault, politicians influence on their reporting, revenge organized by criminal organizations and so on. One leading example is Delhi Pogrom case where due to anti-CAA/NRC rallies violence erupted in Delhi and extended throughout the city.³⁷⁴The violence extended 4 days which killed 53 individuals, 39 of them were Muslims. Media covering the Delhi Pogrom faced warnings, pressure, physical aggression, and assault of various severities. There have been allegations of reporters being arrested. Many journalists were beaten by the mob for reporting and shooting violence. Some of them were subjected to assault and sever injuries.

4. Neglecting important issues

An important issue with the press is that it frequently depicts little news as huge news, while ignoring big news. Further, news like celerity marriages, pregnancy and so on are given greater weightage countries economic, social, and cultural developments. One of the case can be traced back during Sushant Singh Rajput case when the entire focus was shifted on Sushant singh suicide from India-china border tension. The media should establish standards of time to be devoted to such news instead of ignoring it completely.

5. Cross-media ownership

A circumstance whereby a single commercial entity controls several forms of media enterprises is known as media cross-ownership. Print, TV, film, and online media websites are examples of media firms that can be owned. Controlling various sorts of media enterprises enables a single organization to construct interconnected fenced garden that funnel clients and spend money to the industry's subsidiary companies and establish a climate of regulated messaging. For instances, the DMK party owns various media channels, newspapers, magazines along with sun group.³⁷⁵

³⁷³ Research and documented by Pooja George and Vedika Inamdar "*Patterns of Violence against Journalists in India*". <https://www.thepolisproject.com/research/patterns-of-violence-against-journalists-in-india/> (last visited 13 Dec, 2022)

³⁷⁴ *Id*

³⁷⁵ Nisha Ahuja, Oct 09, 2020 "What Is Cross Media Ownership And How Is It Responsible For Corruption In Indian Media?" Available at <https://www.youthkiawaaz.com/2020/10/the-indian-media-industry/> (last visited on 15 Dec, 2022)

6. Copyright concerns

Copyright concern or piracy has emerged as another big issue with the media industry for quite a while, and bringing justice is exceptionally hard even when all of the necessary laws are in force. Other big data issues have evolved as a result of digitization, like the publishing all the account related information that allows numerous users to read material from it using the same password. It is thus difficult for manufacturers to determine which genres of content are appropriate for adults and children.³⁷⁶

7. Underpaid journalist

Many journalists are appointed on contractual basis hence their salary remains very low. This results in quality journalism. In the midst of a surge of national elections, India's Supreme Court ruled on April 9 that media staff should receive wage raises based on Majithia Wage Board recommendations. The Indian Supreme Court dismissed the petition of several media houses seeking a review of its earlier ruling in this regard and asked them to adopt the guidelines of the new wage board beginning November 11, 2011.³⁷⁷

In an interview, Justice Majithia expressed his belief that a just equilibrium had been reached between employee expectations and employer capabilities regarding compensation.³⁷⁸ However, if the reporters are been provided with monetary benefits then these problems can be curbed.

8. Lack of finance for small media houses

Money is not such a significant issue for reputable or even emerging media houses which are supported by some powerful person; however, it is quite important for small organization. Beginning a new firm might or might not be challenging in each scenario, but one thing remains constant: generating funding and expanding along business has never been easy for all sorts of media organizations. These expenses range widely, from human resources to data collecting and processing to data protection and storage.

³⁷⁶ Article written by Devagni Vatsaraj “Challenges faced by the media industry”. (2021). Available at <https://blog.ipleaders.in/challenges-faced-media-industry/> (last visited on 23 Dec,2022)

³⁷⁷Nava Thakuria, “*Paid news in India and underpaid media employees*”, 2015. Available at <https://radioinfo.asia/news/paid-news-india-and-underpaid-media-employees/> (last visited 23 Dec 2023)

³⁷⁸*Id.*

7.4 CHALLENGES FACED BY PRINT AND SOCIAL MEDIA

There can be no question that the traditional media has a high readership and that a lot of people read and are educated by the press. The press is an effective communicator between the government and the public at large. Nonetheless, the media is not immune to criticism. The following are a few challenges:

1. Reach to limited section of society

Newspapers are read by individuals who are educated. It can be said that only individuals who are literate can connect through the print media. Uneducated persons are more likely to be excluded. They are unable to obtain information through the medium of traditional journalism.

2. Aliteracy³⁷⁹

Another issue with the journalism is aliteracy. The term is defined as "the state where a person is capable of reading yet disinterested in doing so." In other words, individuals who can proficiently read as well as are capable of writing yet choose to remain illiterate. Aliteracy is undoubtedly a hindrance to democracy; it is also an obstacle to traditional media, since newspaper circulation can be damaged. Because illiterate individuals would never spend money on a newspaper, hence, circulation of the same will be reduced.

3. outdated information

Another issue with the traditional media is outdated news. With the introduction of television as well as the internet, news from any part of the world may be spread in a matter of seconds or minutes. The same story will be printed in the following day's publication. Hence, the reader may lose his interest in reading the news. In present era, if there's any news that is graphically portrayed and can additionally be listened through audio immediately after the occurrence, many individuals will not wait to read the same news the next morning.

4. Expenses associated with manufacturing and distribution

Another difficulty that the print media faces is the expense of producing a newspaper. Production costs have a significant impact on the firm. There are several elements that influence the cost of producing a newspaper or a publication, such as the material used, the colours or quality of the

³⁷⁹Aliteracy <https://www.merriam-webster.com/dictionary/aliteracy>. the term is taken from the article on Contemporary Changes In Print Media In India By Dr. Mrinal Chatterjee. Available at: <https://www.angelfire.com/nd/nirmaldasan/journalisonline/ccipmii.html> (last visited on 26 Dec, 2023)

ink used during printing, since the cost of paper varies depending on its quality, and market rivalry. These expenses differ each year. Another critical factor is production run management of staff and educating them for the job. All these factors leads to increased financial burden.

5. Digitization

A broader audience has replaced the conventional means of newspaper, periodicals, and books with the emergence of E-Book platforms like Kindle, Noble, and Nook, as well as audio books. These digital substitutes are a superior alternative since they are less expensive and handier. Further blow to traditional media that digitization has dealt is the existence of particular duties that had to be done via printing, but owing to the Covid-19 striking the world , experiencing a state-wide lockdown, we have gone digital. We generate papers and send them online; we can design invitations, brochures, and journal styles on our computer and exchange them with others online. There is no need to print anything right now.

7.5 SOCIAL MEDIA CHALLENGES

Digitalization has become an essential aspect of today's metropolitan populace. Websites such as Instagram and Twitter have provided a forum for individuals to express themselves. It is not simply an issue of statement, but interaction also makes business easier. For every enterprise to expand, it is critical that the manufacturer reach the most number of clients possible, which can be readily accomplished via the use of Instagram or any other social media platform. But still certain challenges faced by these platforms are discussed below:

1. Privacy

One of the main challenges of digital networking is securing privacy. The data of many organizations, individual can easily be hacked or misused by these platforms. Hence many people refrain themselves from using these online platform Facebook has faced severe criticism following the Cambridge Analytica scandal, where millions of users' data was misused. The Federal Trade Commission (FTC) fined Facebook a record \$5 billion in July 2019 for privacy violations.

These issues have damaged Facebook's reputation. Senator Ron Wyden, in a recent interview, went as far as suggesting that Facebook CEO Mark Zuckerberg should face criminal charges for allegedly misleading Congress about these privacy violations.³⁸⁰

2. Use for physically challenged people

The part comprises standards for keeping government websites accessible for people with impairments, such as the blind and deaf. Such rules must be developed and implemented in order to reduce obstacles for individuals with disabilities. Such a problem should be addressed in order to improve execution in both law and spirit.

3. Competitive marketing on media platforms

Commercial advertising on social media should adhere to censorship procedures, and pornographic content in adverts should be prevented on websites designed specifically for social media. If such limits are not strictly enforced, it may damage the minds of young people, indirectly raising the rate of crime. This represents one of the most important issues faced by digital media in today's virtual era.

4. Website contractual terms

One of the biggest challenges with social media is unclear terms of service agreements. These contracts, often lengthy and complex, are difficult for users to understand. They may contain hidden clauses that grant social media platforms broad rights to user data. This can lead to a situation where users unknowingly agree to data collection practices that invade their privacy.

5. social security

Social networking sites offer a similar risk to the safety of individual information and certain other sensitive data. The most typical aspect is website hacking is that it provides threats to the readers or users. This comes out to be another significant difficulty offered by social media. This hinders the safety of individual, government data which can lead to great lose in future like for individual identity and monetary lose can occur whereas for government sensitive information leakage can threat the nation.

³⁸⁰Shreya Ganguly “What Are Some Of The Problems Faced By Social Media Companies In India social Media Companies Have Been Facing Trouble With The Indian Government Over Privacy, Data Usage And Spread Of Misinformation”, Oct 7, 2019. Available at <https://www.entrepreneur.com/en-in/news-and-trends/what-are-some-of-the-problems-faced-by-social-media/340457> (last visited on 26 Dec, 2023)

6. Authenticity and relevancy

Another major challenge of digital market is that the news or the information which are portrayed as true and fair can be incomplete or fake. The people relying a particular information is relevant or authentic is a big question these days as there are lots of fake news publication which are result of improper research or lack of quality. This can result in raging aggression among an individual mind towards a particular topic.

7. Fake websites

There are many website and apps which are providing fake products and services which indeed are making online crime rate high. Thus, a need for proper regulation is required.

8. Lack of regulation

Although there many laws which are made to combat the issues related to social media, still there implementation or operational frameworks raise a question. There is still need for proper regulatory framework for proper channelizing of online platform.

Conclusion

9. Water hole attack³⁸¹

This is a form of assault that is typically undertaken against an organisation, corporation, or other entity rather than a person. With this form of assault, the attacker first thoroughly researches which websites are used by the target organisation or firm. The attacker subsequently hacks such websites and easily obtains the necessary data or result. The main difficulty with this site is that it is impossible to determine whether the site they are viewing is infected or not. Another issue is that it is extremely tough to avoid this infection and train workers to cope with it.

10. Bullying on the internet

Because this offence can be committed with regard for anybody, small children are the hardest harmed. The attacker makes abusive, disparaging, harsh, or rude statements in this sort of offence. It has a profound effect on young brains, and they bear the scars of that wound, which may have a negative impact on their lives.

³⁸¹The National Cyber Security Centre is an organization of the United Kingdom Government that provides advice and support for the public and private sector in how to avoid computer security threats. They have provided a threat against the water hole attack. Available at <https://www.ncsc.gov.uk/collection/supply-chain-security/watering-hole-attacks> (last visited on 29 Dec 2022)

11. Spamming

Spam is defined as sending irrelevant or unwelcome communications through the internet. Someone who does so is referred to be a spammer.

Historically, spammers would target email addresses that they could readily get from chat forums, customer lists, and so on. As a result, the inbox of the mail would be blocked. However, the email filters were later modified, and as a consequence, the inbox was not banned. Spammers have recently begun to target via social media. One method by which spammers carry out their attack is to breach the user's account, after which they can send phoney emails to the user's friends list.

7.6 CONCLUSION

Over the last few decades the society has seen many transformations in role of media from conventional media to modern media. This transformation of roles has issued many questions and challenges on the functioning of media as a whole. From one end the imagining the world without technological development seems tough and on the other side there many challenges raised by media At this point, the only alternative left is to face the issues given by new media in a desirable manner, in order to get the most out of social media. Both service providers and relevant market organizations at the adequate point should investigate this topic in order to give the audience with a better new media environment. Further, the media should also work upon fulfilling the responsibilities associated to it. So that a strong and healthier media atmosphere can be created.

CHAPTER 8
ANALYSING THE MEDIACRACY: CONCLUSION, SUGGESTIONS AND
RECOMMENDATION

8.1 ANALYSING RESEARCH

The media plays a crucial role in society, particularly in democracies like India, where it serves as a vital pillar safeguarding fundamental rights and acting as a vocal advocate against criminal activities. Its freedom is paramount for upholding these rights and fostering an informed populace, making it an indispensable element of the state. This study examines the media's role and responsibility in light of the rapid and dynamic growth of the global media industry. The proliferation of media necessitates a comprehensive study of its various elements, including its broad reach, societal functions, and inherent challenges. Undoubtedly, the media has gained enormous power, capable of altering public opinion and even influencing political stability. This research aims to delve into these complex relationships, investigating how the media can both positively and negatively affect governance. By shedding light on its potential and ethical obligations, this study seeks to provide a comprehensive understanding of the media's position in modern society.

One of the central challenges addressed in this research is the intricate task of balancing the rights of the press with those of individuals, influenced by Roscoe Pound's theory of Social Engineering. Emphasizing the importance of defining and limiting these rights to prevent one from overshadowing the other, the study acknowledges that media organizations, under external pressures, sometimes exceed their boundaries, potentially compromising individual privacy rights. To address this issue, the researcher proposes strict adherence by the media to ethical, neutral, and objective standards, alongside legal requirements. This dual approach aims to safeguard individual privacy while allowing the media to exercise its freedom to report within lawful limits. Furthermore, the application of modern natural law theory suggests that while positive law sets legal boundaries, interpretations in cases involving privacy and press freedoms should be guided by fundamental natural rights. This perspective underscores the significance of ethical conduct in media reporting, advocating for responsible and unbiased journalism that respects both legal constraints and moral principles. To mitigate the negative impact of mediocracy on the judicial process, several regulatory frameworks and guidelines can be

implemented. These include stringent enforcement of media ethics codes emphasizing accuracy, fairness, and impartiality in reporting legal cases, discouraging sensationalism, and ensuring balanced coverage that upholds the presumption of innocence and due process. Clear contempt of court laws are essential to prevent the dissemination of prejudicial information that could influence trial outcomes. Robust guidelines for reporting restrictions and publication bans on sensitive case details help maintain the integrity of legal proceedings and protect individual privacy. Promoting media literacy and education on legal processes enhances public understanding and reduces the likelihood of media misinterpretations.

Finally, fostering transparency in judicial proceedings while safeguarding judicial independence ensures courts can operate free from undue external influences. These frameworks collectively uphold principles of justice, fairness, and the rule of law, mitigating the disruptive effects of mediocracy on the judicial system. One notable example of media influence on public perception is evident in the 2019 Unnao rape case involving a teenage girl who accused a prominent politician of sexual assault. This case gained widespread media coverage, with news outlets providing extensive updates and analysis on the investigation and legal proceedings. Media reporting played a significant role in shaping public opinion about the case and the individuals involved. The coverage highlighted the alleged perpetrator's political connections and the victim's plight, sparking public outrage and demands for justice. As the case progressed, media scrutiny intensified, with reporters uncovering new details and providing commentary on various aspects of the investigation and trial. This ongoing coverage kept the case in the public eye and contributed to discussions about women's safety, the role of politicians in criminal cases, and the effectiveness of the justice system. The media's portrayal of the Unnao rape case influenced public perception and played a crucial role in mobilizing support for the victim and pressure on authorities to expedite the legal process. This case serves as a recent example of how media reporting can shape public opinion and influence the outcome of legal proceedings in India. While the media's role in disseminating information and shaping public discourse is undeniable, it must navigate the delicate balance between its freedom and the privacy rights of individuals. Moreover, the study highlights the inherent tension between press freedom and individual rights to speech, expression, and privacy, particularly concerning the potential intrusion into legal proceedings. Ultimately, this research underscores the intricate relationship between media influence and individual rights within the justice system, emphasizing the need for regulatory

measures to uphold both media freedom and legal integrity. Within the legal framework in India, every entity, regardless of being governmental, corporate, or even regional subsidiaries, is held accountable to a higher authority. It is respectfully stated that the media's responsibility is rather imprecise and ineffective. While the media is accountable to the public, since it is not elected by the public, people can only criticize the media through the medium of media's TRP ratings. This serves as the sole check on the media that the people have, and as a result, the journalism industry has become a self-proclaimed authority, autonomous, and above all, powerful entity. The press should abide by the law impartially, realistically, and in accordance with the ethical principles of journalism independently, rather than waiting for the law to force it to act ethically or impartially in carrying out its tasks. At every point in time, the law cannot intervene and establish criteria for impartial and equitable reporting; otherwise, it can jeopardize the concept of media independence.

Moreover, the media must not take advantage of this situation and should adhere to a self-imposed ethical framework. Retired Justice P. B. Sawant remarked, “When it comes to sharing news and other important information, journalism has been a game-changer. One of the four pillars of our democracy is a free and independent press. The media has become a watchdog, speaking for the people in denouncing injustices and leveraging their influence for greater openness and accountability in government. Today, the media are widely recognized as the people's 'eyes and ears,' demonstrating the crucial role they play in society. Over the years, they have morphed into the very thoughts and words of the people.”

In the case of Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr, the Apex Court noted that “a newspaper conducting an unbiased inquiry into a crime for which a person has been arrested and publishing the findings of that investigation would unquestionably be ominous.” This is due to the need to prevent a trial of journalists during a case before one of the nation's established tribunals. This point of view is supported by the idea that, regardless of whether the investigation tends to favor the accused or the prosecution, such action by a publication tends to obstruct the “administration of justice.” A newspaper trial and what transpired in this case have nothing in common.

In Vijay S. Mallya v. Bennett Coleman And Company, the Times of India published an item on October 6, 2008, which amounted to “contempt of court,” according to the case's facts. In this contempt petition, the reporting was made in relation to the ongoing legal case involving

respondent number 6 and petitioner Vijay S. Mallya. This item, titled “Sr. Citizen takes Bullying Builder Drags into Court over Redetect Deal,” was published in the newspaper. A reference from the parties' ongoing case is used in this article. According to the court's decision, if careless and erroneous reporting is done, it is likely that the public will have either a favorable or negative opinion of the subject. The court also stated that inaccurate media coverage may cause prejudice and impact how a fair and proper trial is conducted. Hence, when covering judicial proceedings, the media must exercise control and discretion. As a result, press freedom is always considered a crucial component of a democratic system of governance.

Further accountability of the media in influencing can be seen through various judicial decisions, both positively and negatively. For instance, the Jessica Lal case where media intervention brought justice to the victim's family and the Nithari murder case where a positive influence was observed. Conversely, in cases like the Noida double murder case, Sushant Singh Rajput case, and Mumbai terror attack case, the media was held accountable for forming negative influences on both society and government. From the above data, it can be said that the research aim of analyzing media accountability is clearly achieved, suggesting that the journalism industry should be more careful in its reporting as it is accountable for the same. A few years ago, the focus was on how to reduce or minimize media restrictions, but now the focus is on how to control or make the media more accountable. Today's media is so powerful and nearly omnipotent that there is a fear that the rule of law and the function of the media will be supplanted by the rule of media and the role of law. In short, mediocracy is a serious issue that needs to be properly addressed, and if circumstances demand, strict restraints should be imposed on the media to prevent them from indulging in such activities of media trial.

Chapter 2 of this research delves into the origin and concept of the press. Understanding the concept of mediocracy requires exploring its origin, legislative history, and constitutional provisions. The press's origins can be traced back to ancient times when print on wooden boards and stones was common. Later, during the Mughal era, kings appointed individuals to gather information from their surroundings. The press as we recognize it today was first introduced during the British colonial period. During this time, the press was used to support independence movements, with Indian freedom fighters utilizing it as a platform to promote their goals.

On the other hand, the British government attempted to enforce strict press regulations to limit or suppress the freedom struggle. It is evident that the press had immense potential even then, as freedom fighters exploited it as a popular platform to advance their cause. However, the British government recognized the potential of the press to destabilize its control in India and continued to impose stringent laws that could eventually suffocate and suppress the press. After the pre-independence era, the research focuses on the post-British era and the development of various regulatory frameworks during that time.

Chapter 3 of the research establishes the regulatory framework of the Indian legislative system, highlighting various regulations such as Article 19, which enshrines the fundamental right of freedom of speech and expression guaranteed in Article 19(1)(a) of the Constitution and the Preamble to the Constitution, which includes the media. Several other legislations brought to light in the research include defamation laws under IPC 160, the Indian Telegraphy Act 1885, the Press Council of India Act 1978, the Information Technology Act 2000, and the RTI Act 2005, along with judicial pronouncements.

Furthermore, the judiciary, being the backbone of the legal system, provides social justice. The press has transformed into a "public court," also known as a Janta Adalat, and has become so involved in judicial proceedings that it often delivers its own judgment before the court. This blurs the fundamental distinction between an accused and a convict, jeopardizing principles such as guilt beyond a reasonable doubt and the presumption of innocence. The judiciary should not be undermined due to media participation in the judicial process. Hence, Chapters 4 and 5 of the research deal with the impact of media trials on society along with judicial responses.

The latter part of the research addresses the challenges and responsibilities of the media. The media's role as a watchdog and guardian of society is also examined. From the aforementioned research, it can be concluded that the media's journey has been long and continues to evolve. Therefore, the concept of media can be analyzed based on the aforementioned understandings. In addition to the above objectives, the research also focuses on analyzing legislative and constitutional provisions enshrined in Chapters 3, 4, 5, and 6. The objectives of suggesting measures are listed in the last chapter, where the researcher has made certain suggestions and recommendations. Furthermore, the researcher humbly submits that after analyzing the data, the stated hypotheses are achieved.

8.2 SUGGESTIONS

The suggestions provided offer a comprehensive approach to addressing the issue of trial by media, encompassing legal reforms, regulatory measures, educational initiatives, and societal interventions. Let's elaborate on each suggestion in detail:

- **Changes to the Contempt of Courts Act: Redefining the "pendency of a legal process"** to commence from the moment of arrest can prevent the media from publishing prejudicial material that could influence trials from the outset. This aligns with the recommendations of the 200th Law Commission Report, aiming to safeguard the integrity of legal proceedings. By restricting harmful publications without impeding freedom of expression, this amendment can mitigate the risk of trial by media while preserving the rights of both the accused and the public.
- **Strengthening the Press Council of India (PCI):** Enhancing the authority of the PCI to enforce standards and impose stricter penalties on errant media outlets is crucial for upholding journalistic ethics and preventing trial by media. Currently, the PCI lacks sufficient power to effectively regulate the media landscape, particularly in the realm of electronic media. Extending the purview of the Press Council Act of 1978 to include electronic media can ensure comprehensive oversight and accountability. Moreover, introducing fines as penalties for unethical practices can serve as a deterrent, promoting responsible journalism and protecting the integrity of legal proceedings.
- **Minimum Requirements for Entry into the Media Industry:** Implementing educational prerequisites for individuals entering the media sector can promote professionalism and adherence to legal standards. Journalism courses should incorporate comprehensive coverage of media laws and ethics, equipping aspiring journalists with the knowledge and awareness necessary to navigate the complexities of their profession responsibly. By instilling a culture of compliance and accountability from the outset of their careers, this initiative can contribute to a more ethical and law-abiding media landscape.

- **Monitoring Mechanisms for Internet Usage:** Given the pervasive influence of online media, establishing robust monitoring mechanisms and surveillance committees is essential for regulating content and curbing the spread of misinformation and prejudicial material. Effective oversight of internet media platforms can help safeguard against trial by media by identifying and addressing problematic content in a timely manner. Additionally, promoting digital literacy and responsible online behavior among users can further mitigate the negative impact of harmful media content on society.
- **Judicial Reforms to Expedite Trials:** Addressing the backlog of cases and reducing the workload on judicial benches can expedite trials and minimize the opportunity for media influence. Timely dispensation of justice is essential for upholding the rule of law and preserving the integrity of legal proceedings. By enhancing the efficiency and effectiveness of the justice system, judicial reforms can contribute to reducing reliance on media narratives and ensuring fair trials based on evidence and due process.
- **Regulating Content on Electronic Media:** Recognizing the significant influence of electronic media, particularly social media platforms, on public perception and discourse, there is a need for stringent regulations to govern content and protect societal values. Parents should also play a role in monitoring and regulating their children's online activities to safeguard against exposure to inappropriate or harmful content. Strengthening laws related to electronic media and enforcing them rigorously can help mitigate the risks associated with trial by media in the digital age.
- **Promoting Self-Restraint in Media Coverage:** While legal reforms and regulatory measures are essential, promoting self-restraint among journalists and media organizations is equally important in preventing trial by media. Journalists should recognize their power and responsibility in shaping public opinion and refrain from sensationalism or prejudicial reporting that could undermine the fairness of legal proceedings. Upholding ethical standards and respecting the principles of fair and impartial journalism can foster public trust and confidence in the media.

In conclusion, addressing the dangers of trial by media requires a multifaceted approach that encompasses legal reforms, regulatory measures, educational initiatives, societal interventions, and a commitment to ethical journalism. By implementing the suggested recommendations and fostering collaboration between stakeholders, it is possible to mitigate the influence of media narratives on legal proceedings and uphold the principles of justice, fairness, and accountability in society.

8.3 RECOMMENDATIONS

The recommendations provided address several key issues plaguing the media landscape, aiming to foster a more responsible and ethical journalistic environment. Let's delve deeper into each recommendation:

- **Democratization of Media Ownership:** It's true that profit-driven motives often lead to sensationalized or biased reporting. By democratizing media ownership, such as exemplified by DD News, where public interest is prioritized over profit, there's a potential to reduce the prevalence of sensationalism. Prohibiting the publication of sensationalized news and biased content can promote balanced reporting and mitigate the influence of vested interests.
- **Restrictions on Court Proceedings Coverage:** Limiting media discourse on ongoing court proceedings until the final verdict is delivered can help uphold the principle of fair trial. Article 19(1) (a) of the Constitution, guaranteeing freedom of speech and expression, may need to be balanced with the right to a fair trial. Moreover, interventions that jeopardize the integrity of the justice system should be curtailed, possibly through modifications to contempt of court laws to adapt to contemporary challenges.

Modernizing Press Council Laws: Adapting the Press Council Law of 1978 to encompass modern media platforms is essential. With the advent of digital media, traditional regulations may not adequately address emerging challenges. Extending the jurisdiction of the Press Council to include online media can ensure comprehensive oversight and regulation.

- **Educational Standards for Media Professionals:** Implementing minimum educational requirements for individuals entering the media industry can enhance professionalism and adherence to ethical standards. Knowledge of media regulations and constraints is vital for responsible journalism, and educational qualifications can serve as a foundation for ethical conduct.
- **Training on Legal Frameworks:** Providing specific legal training to media personnel during their formative training periods can equip them with the necessary understanding of laws and regulations governing their profession. This can promote adherence to legal standards and prevent inadvertent violations.
- **Implementation of Law Commission Recommendations:** The recommendations put forth by the Law Commission report should be carefully considered and implemented by relevant authorities to address systemic issues within the media industry and promote transparency, accountability, and fairness.

Overall, these recommendations collectively aim to foster a media environment characterized by ethical conduct, responsible reporting, and adherence to legal standards, ultimately serving the public interest and upholding democratic values.

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Media Ethics in Evolving Media Environment: A Legal Perspective

Kritika Goswami Ahuja^{*}
Annu Bahl Mehra^{*}

Abstract

In the growing technological world media has become a part of our daily life. From the morning tea till evening dinner media hold the eye of its viewers. There is no country without media or press in this world and they affect the lives of human being on this planet either by way of giving political news, budget news, and fashion news and so on. Hence it become a moral obligation on the media personnel to show the original and fair news to its viewers. Hence, it becomes important that the press should take its role responsibly and should be within the sanctity. Therefore, the researcher in this paper has attempted to throw some light on media ethics concept and its obligation towards society. Further, since India is a country which is based on traditional practices and believe but with the modern innovations which give rise to the biggest question that "whether these ethics practically exists in new era or they have become a saleable product in the hands of selected few powerful persons?. In order to solve this question the researcher made an attempt to analyses the concept of media regulations and morals through the lens of the Indian mainstream media. In India, media ethics has long been associated with traditional mass media. In any event, with the improvement in technology and the introduction of the internet, traditional ethical practices are constantly put to the test.

Keywords: Media ethics, Judgment, Democracy, Right of press, Communication, Media, Legal Court, Contempt, Judiciary, Broadcasting, Constitution of India, AINEC, ASCI, Press Council of India, Right to privacy, Advertisement, Freedom, Free press, Journalists.

^{*} PhD Scholar, Maharsishi University of Information Technology (MUIT), Noida. (kritikagoswami21@gmail.com)

^{*} Professor, Department of Law, Maharsishi University of Information Technology (MUIT), Noida.

Evaluative Perspective on the Constitutional Legitimacy of Media Trials

Kritika Goswami Ahuja* & Prof. Dr. K.B. Asthana**

[The major goal of the research is to determine whether or not India's media trials are constitutional. The research project will discuss Article 19 of the Indian Constitution, which states that freedom of speech and expression, including freedom of the press, impairs the right to an adversarial legal system in place and also interferes with the accuser's rights to a fair trial, representation, privacy, and other rights. Furthermore, the paper intends to call attention to the negative effects of the media and how media trials undermine the efficiency of the legal system, potentially resulting in unfairness and distortion. Furthermore, the paper seeks to call attention to the negative effects of the media and how media trials undermine the efficiency of the legal system, potentially leading in unfairness and distortion. Furthermore, because of its enormous capacity to influence the public, the media must maintain neutrality in its reporting. The paper's ultimate goal is to develop a solution in which the media reports fairly and the court maintains the rule of law.]

Today's journalism is as deceptive as a fun house of mirrors at a fair. The media has a large impact on society all around the world and is mostly responsible for raising public awareness. Article 19(1)(a) of the constitution gives the news business significant authority, and various world leaders, including Pandit Jawaharlal Nehru, have advocated for press freedom because they believe that media independence is the cornerstone of society. It is also important to note that several international treaties, like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, guarantee freedom of expression. The statements both ensure and preserve free expression and expression. The ability to practice freedom of speech and expression was not specifically provided to the media under Indian law. This is due to the belief that since people are allowed to freely express themselves, it makes sense that those who likewise have these rights make up the press. The media plays an important role in society since it is tasked with raising public understanding, safeguarding democracy, and keeping the government on its toes. Since the media has also served as a watchdog, holding public officials accountable, it is currently seen as the fourth pillar of democracy.

However, the unfortunate reality of today is that media outlets are controlled entirely by businesspeople or political parties. The concept of objective reporting has given way to increased ad revenue, which is only possible if the channel has a high TRP (Television Rating Point). Furthermore, because the media is not subject to strict regulations, it is impossible to prevent it from

disseminating false information. As a result of the media's evolution into a superpower that is blindly obeyed, its meddling has repeatedly hampered the legal system. As a result, the number of media trials has increased.

The term press trial or media trial refers to the broad impact that newspapers and television have on the image of the person being charged by creating an impression of innocence or culpability before or after the court's ruling. It is critical to emphasize that media trials have assumed the role of the court and have significantly questioned the courts' authority. Nowadays, the media serves as a "Janta ki Adalat," or public court, where the general public can access the court system and make decisions based on the scant information available.

The Media as a Barrier to Justice

A media-covered trial has negative consequences for both the accused and the victim. The media closely monitors every action, and through frequent dramatic coverage, viewers form an opinion about the accused's guilt or innocence. The majority of media trials are based on criminal cases; they are distinguished by impartial judgment, impartial administration, the need to protect justice, the independence of the judiciary, and, most importantly, the right to a fair trial. All of this is swept away in a media trial. Furthermore, it is a well-known legal principle that an accused person is presumed innocent until proven guilty beyond a reasonable doubt, which means that the court provides each accused person with an opportunity to prove their innocence. Even if the accused is ultimately found not guilty, in a media trial, they are typically displayed to the public because the mainstream media views them as guilty.

* Research scholar, Maharishi Law School, MUIT, Noida.

** Dean, maharishi law school, MUIT, Maharishi University of Information Technology, Noida.