
TRIAL BY MEDIA, CONSTITUTIONAL PROTECTION AND ADMINISTRATION OF JUSTICE: INDIAN SCENARIO

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ABSTRACT

The press is known as the fourth stanchion in a democracy. There is no uncertainty that, it played an imperative part in the Indian freedom struggle. In the recent past, we have witnessed sensational reporting and media trials and even fake news on the news channels on some of the heated issues and a spurt of the construction of selective narratives against its citizenry in India. Particular among them are the people of marginalized and the weaker and the minority communities, who are often at the receiving end of the media which has become the hotbed of toxic and intended, deliberate and vile propaganda in the name of prime time debate. As we have witnessed in recent past that how media transgress its nature of work place itself in to Judicial Institution such as in Sushant Singh Rajput's suicide case where an actress being declared by various premier media houses as culprit and reason for his suicide. Even during covid, the media houses equivocally declared the members of *Tablighi Jamat* (Muslim Minority Religious Group) as prime actors for communicating in India. This article broadly highlights the legal and statutory vacuum in the electronic media regulation, constitutional protection of both the media and the person victimized by the media, the doctrine of innocence, and administration of justice affected by media trial, the need for an exclusive effective and impartial regulating authority of the electronic-media.

Keywords: Media; Freedom of Speech and Expression; Constitution; Media Trial; Administration of Justice.

1. INTRODUCTION

M.K. Gandhi once stated, “The press is called the fourth estate. It is definitely a power, but to misuse that power is criminal. I am a journalist myself and would appeal to fellow journalists to realize their responsibility and to carry on their work with no idea other than that of upholding the truth.”¹ During India’s struggle for independence, the media played a vital role in invigorating people, serving as a voice for change. Today, the media is still considered the fourth pillar of democracy, a “conscience keeper” of society, and a powerful force that can shape public opinion. The responsibility of media to act as a watchdog and uphold the truth has never been more critical, especially in the face of challenges such as misinformation, sensationalism, and “trial by media.”

Democracy, in its broadest sense, is a system of governance grounded in the sovereignty of the people. One of the cornerstones of democratic republics is the freedom to discourse and the provision of space for diverse viewpoints. A democratic system functions most effectively when the general public is extensively informed about various issues. The media, in its many forms, plays a critical role in providing this information, ensuring that citizens are equipped with the knowledge needed to participate meaningfully in civic life.

Media, particularly electronic media, has profoundly impacted human lives in the contemporary era. Traditionally dominated by print media, this domain now faces fierce competition from the rise of electronic and digital media, including social media platforms, which have transformed communication and the dissemination of information. The internet, as the harbinger of this new wave, has enabled instantaneous sharing of ideas and opinions across vast distances, giving everyone a voice. However, despite these advancements, a critical question arises: is the media fulfilling its social responsibility? Regrettably, the answer is often no.

A disturbing trend that has emerged in recent years is “trial by media,” where public opinion is shaped by media coverage before legal proceedings have concluded. This phenomenon is not new. It first gained attention in the case of Roscoe (“Fatty”) Arbuckle, a Hollywood actor who was acquitted of rape and manslaughter charges in 1922. Despite the jury’s verdict, the

¹ M K Gandhi, *Harijan*, 27 April 1947.

media had already pronounced him guilty, tarnishing his reputation irreparably.² Similarly, in the infamous case of *The People of the State of California v. Orenthal James Simpson*³, the media coverage was so intense that it overshadowed the actual trial process, contributing to the public perception of guilt long before the verdict was delivered.

In India, trial by media has become an alarming trend, with several high-profile cases showcasing the dangers of media sensationalism and its impact on the administration of justice. For example, the 2008 Aarushi Talwar murder case saw extensive media coverage, often speculating about the motives and casting doubt on the investigation long before the trial concluded. The relentless media attention, combined with sensational reporting, contributed to public prejudices that potentially influenced the judicial process.

Another notorious instance is the *Nirbhaya* case of 2012, where the brutal gang rape and murder of a young woman in Delhi became the subject of intense media scrutiny. While the case garnered necessary attention to the issue of women's safety in India, the sensationalism surrounding it often led to moral panic, creating a narrative of "good" and "bad" characters that obscured the complexities of the case. The media's portrayal of the accused, particularly before the trial's conclusion, was criticized for potentially compromising the fairness of the legal proceedings.

The media's role in these cases raises important constitutional questions. The Indian Constitution guarantees fundamental rights such as the right to a fair trial, as enshrined in Articles 14, 19, and 21. However, when media trials interfere with judicial independence, there is a direct challenge to these rights. The Indian judiciary has, at times, intervened in matters of media excess, with courts admonishing the press for jeopardizing the presumption of innocence or unfairly influencing public opinion. Despite these interventions, the growing influence of social media has exacerbated the issue, making it increasingly difficult to control the spread of trial by media.

This paper will explore the phenomenon of trial by media in the Indian context, examining its implications for constitutional protections and the administration of justice. Through a critical

² Gilbert King, 'The Skinny on the Fatty Arbuckle Trial' (Smithsonian Magazine, 8 November 2011) <https://www.smithsonianmag.com/history/the-skinny-on-the-fatty-arbuckle-trial-131228859/> accessed 19 October 2021.

³ [1996] 67 U. Colo. L. Rev. 727.

analysis of notable cases, the paper will discuss the balance between media freedom and the right to a fair trial, proposing solutions to mitigate the harmful effects of media trials on the legal system and individual rights.

2. Understanding the Concept of “Media Trial”

The concept of a “media trial” refers to a situation in which the media, through its coverage of a case, influences public opinion about the guilt or innocence of an accused individual, often before the conclusion of the legal proceedings. This can involve the media taking on the role of judge and jury, delivering verdicts to the public, and shaping perceptions of the case in a manner that might interfere with the fairness of the judicial process. The widespread nature of media, especially with the rise of digital platforms, has exacerbated this phenomenon, which now extends beyond traditional print and electronic media to include social media and online news outlets.

A media trial does not follow the traditional rules of evidence, the right to a fair trial, or the legal principles of due process. Instead, it is often driven by sensationalism, with the primary focus on increasing viewership, readership, or online engagement. This can result in the accused being subjected to a trial in the court of public opinion, where their reputation, credibility, and even potential verdict may be influenced by external factors unrelated to the merits of the case.

In the Indian context, the issue of media trials has been a subject of considerable judicial scrutiny. One of the most significant and illustrative cases in this regard is *R. Rajagopal v. State of Tamil Nadu*⁴, where the Supreme Court of India expressed concerns over the role of the media in influencing legal processes and impacting the right to a fair trial. In this landmark case, the Court ruled on the balance between the media’s right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution, and the individual’s right to a fair trial and privacy. The Court emphasized that while the press plays a vital role in a democratic society by informing the public and acting as a watchdog, it must refrain from engaging in practices that usurp the function of the courts or interfere with the judicial process.

The Supreme Court, in this case, stated that “The press or the media can never be permitted to usurp the function of the courts, especially in matters which directly concern the life and liberty

⁴ (1994) 6 SCC 632.

of a person. The media must report only what is true and refrain from making statements that are prejudicial to the administration of justice or the presumption of innocence.”

This observation reflects the Court’s view that media trials not only undermine the principle of the presumption of innocence but also have the potential to alter the public perception of a case long before it reaches the courtroom. The judiciary in India has repeatedly expressed concerns about media trials interfering with an accused person’s right to a fair trial, a fundamental right enshrined in the Constitution under Article 21, which guarantees the right to life and personal liberty. In essence, a media trial risks prejudicing the accused and the public, often leading to irreversible harm to the integrity of the judicial process.

In the case of *State of Uttar Pradesh v. Rajesh Gautam* (2014), the Supreme Court further affirmed that the media must ensure its reporting does not prejudice the administration of justice. The Court cautioned that media coverage, particularly before the trial, should not interfere with the legal principles of fair hearing and due process. It was noted that the media should act as an informer, not as an adjudicator, and refrain from presenting biased or sensationalized versions of events that may influence the opinions of the public and the authorities.

The scope of media trials extends beyond judicial proceedings and touches upon the very fabric of democratic society. The media is entrusted with the responsibility of ensuring that the public remains informed about matters of societal importance. However, when media outlets prioritize sensationalism over facts, they risk eroding public trust in the justice system and creating an atmosphere of fear, mistrust, and partiality. This is especially significant in high-profile cases where the media’s reach can influence the very outcome of a trial.

For instance, in the 2008 Aarushi Talwar murder case, the Indian media was heavily criticized for its extensive and often speculative coverage, which sensationalized the details of the case and questioned the investigation’s legitimacy. The media, at times, even openly speculated about the roles of the accused before the trial reached its conclusion. This pervasive media coverage had far-reaching consequences on the trial’s fairness, as it painted the accused in a negative light, thus undermining the presumption of innocence and potentially influencing the

course of the trial.⁵

Similarly, in the high-profile *Nirbhaya* case of 2012, the media's coverage, while instrumental in bringing attention to the issue of women's safety, also led to sensationalized portrayals of the accused, their families, and the circumstances surrounding the case. This media trial created a narrative of good and bad, with the accused being vilified in the public eye before any judgment had been made by the court. Such coverage, while raising awareness, also raised concerns about the potential prejudice created against the accused and the fairness of the judicial process.

In light of these instances, the Supreme Court has stressed the importance of media responsibility and the need for a careful balance between freedom of expression and the right to a fair trial. The role of the media is not to judge but to inform, and it must do so with caution, avoiding speculation and maintaining respect for the legal process. The Court has also pointed out that media outlets should refrain from publishing details that could influence the jury or judge, particularly when the case is ongoing and the matter is sub judice.⁶

Media trials pose significant challenges to the judicial system and constitutional rights in India. The balance between media freedom and the right to a fair trial is delicate, and the potential for harm is considerable. The judiciary must continue to monitor and regulate media practices to ensure that the administration of justice is not compromised. As highlighted by the Supreme Court, the media must exercise its power responsibly and recognize that its role is to inform, not to decide guilt or innocence.

3. TRIAL BY MEDIA: WHERE THE PROBLEM LIES?

George Orwell once stated, "If large numbers of people believe in freedom of speech, there will be freedom of speech, even if the law forbids it. But if public opinion is sluggish, inconvenient minorities will be persecuted, even if laws exist to protect them."⁷ The media's role came into play where the system failure arises as a result of political influence or simply police apathy. In these circumstances, the media takes up the Case and render excellent service

⁵ Anupam Srivastava, "Media and the Aarushi Murder Case: A Case Study of Trial by Media," *Indian Journal of Legal Studies*, 2012, 23(2): 115-130.

⁶ State of Uttar Pradesh v. Rajesh Gautam, (2014) 13 SCC 245.

⁷ George Orwell, *Freedom of the Park*, The Orwell Foundation, accessed January 24, 2025, <https://www.orwellfoundation.com/the-orwell-foundation/orwell/essays-and-other-works/freedom-of-the-park/>.

to the rule of law. When the media, on the other hand, develops an analogous system of rule of noise, that rule of noise begins to supplant tenet of law.

Trial by media is a breach of law. When the system or administrative bodies are inactive, the prime role of media in criminal cases comes into play in the following ways:

- a) Detection of the offence
- b) Expose the protection of criminals by rich and powerful
- c) Reveal the facts of the case and bring it to the public domain
- d) Build pressure that investigation is commenced and further expose attempts by agencies to protect the accused

The criminal trial consists of four stages where it kicks off with the filing of complaint followed by the investigation which leads to the framing of charge sheet and finally tried in the court of law, ends up in the conviction and acquittal.

The media will be considered as relevant up to the stage of filing of a complaint and then it will be all in the authority of the investigating agencies and the court of law. Media do not sit with its panel in the form of juries, who are almost in all cases unaware of the processes of the court of law and declared the one or other party as their presumptive victim. This is against the ethos of one of the cardinal doctrine of criminal jurisprudence which declares the advantage of reasonable doubts. The principle of burden of proof also requires that one who alleges must prove. So when we look at the technicalities of these principles, trial by media amounts to a gross breach of law.

At the investigation stage, the media should have a free hand but limited to the discovery of facts only, opinions are matter relating to the assimilation of facts leading to prima facie inferences and later conclusions.

Media bother less about source's credibility than from where they get such facts instead tried to sensationalize the event even if it takes distortion of facts.

The fact is that media with its immense power may instantly transform a hero into a villain. Sometimes, media verdicts are overshadowed by court decisions. Today Media is reincarnated

itself into a public court. The media presumes guilt and the victim must prove them as innocent. The presumption of guilt substitutes the standard of reasonable doubts without any benchmark standards. In the trial by media, the rule of evidence and other procedural laws has no place.

The media plays an important role when the crime is yet to be discovered but when the stage of a formal investigation process begins, the institution of law is obliged to investigate all the facts both which are in the public domain and those which are to be discovered during the investigation. At this stage, the media's role is to abstain from ascribing guilt to an individual.

When the trial goes in public, the judges are human beings and are liable to be influenced by what is happening outside of the court.⁸

We can look into it from another angle, while the investigation is the process and a parallel trial is going on in the media, it also influences the investigating agencies.

4. MEDIA TRIAL IN THE CONTEXT OF INTERNATIONAL LAW AND INDIAN CONSTITUTION

Noam Chomsky has said: "The picture of the world that's presented to the public has only the remotest relation to reality. The truth of the matter is buried under edifice after edifice of lies upon lies. It's all been a marvellous success from the point of view in deterring the threat of democracy, achieved under conditions of freedom, which is extremely interesting."

The jurisprudence of criminal law manifests the following principles:

- a. every person accused in a court of law must be proven guilty without a reasonable doubt or presumption of innocence,
- b. Let 100 criminals go untouched, but one innocent should not be punished,
- c. the burden of proof lies on the plaintiff (*Actori incumbit onus probandi*)

Not only these principles, the accused is entitled to right to silence. This is also one of the fundamental rights not to be incriminated. This is the rationale behind, why confessions made

⁸ Law Commission of India, '200th Report on Trial by Media, Free Speech and Fair Trial under Criminal Procedure Code, 1973' (August, 2006) <<https://lawcommissionofindia.nic.in/reports/rep200.pdf>> accessed 19 October, 2024.

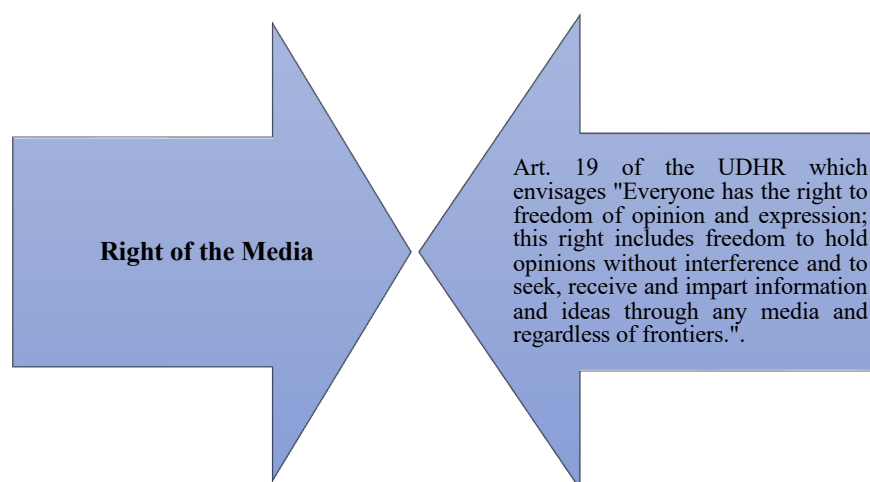
before the police are inadmissible in a court of law. This right has been considered in detail by the Law Commission in its 198th report.⁹

For the purpose of this article, it is of utmost importance to discuss some essential concepts relating to human rights as enshrined in the International Conventions and the Municipal legal instruments to understand the rights available to media vis-à-vis right of the accused in a criminal trial.

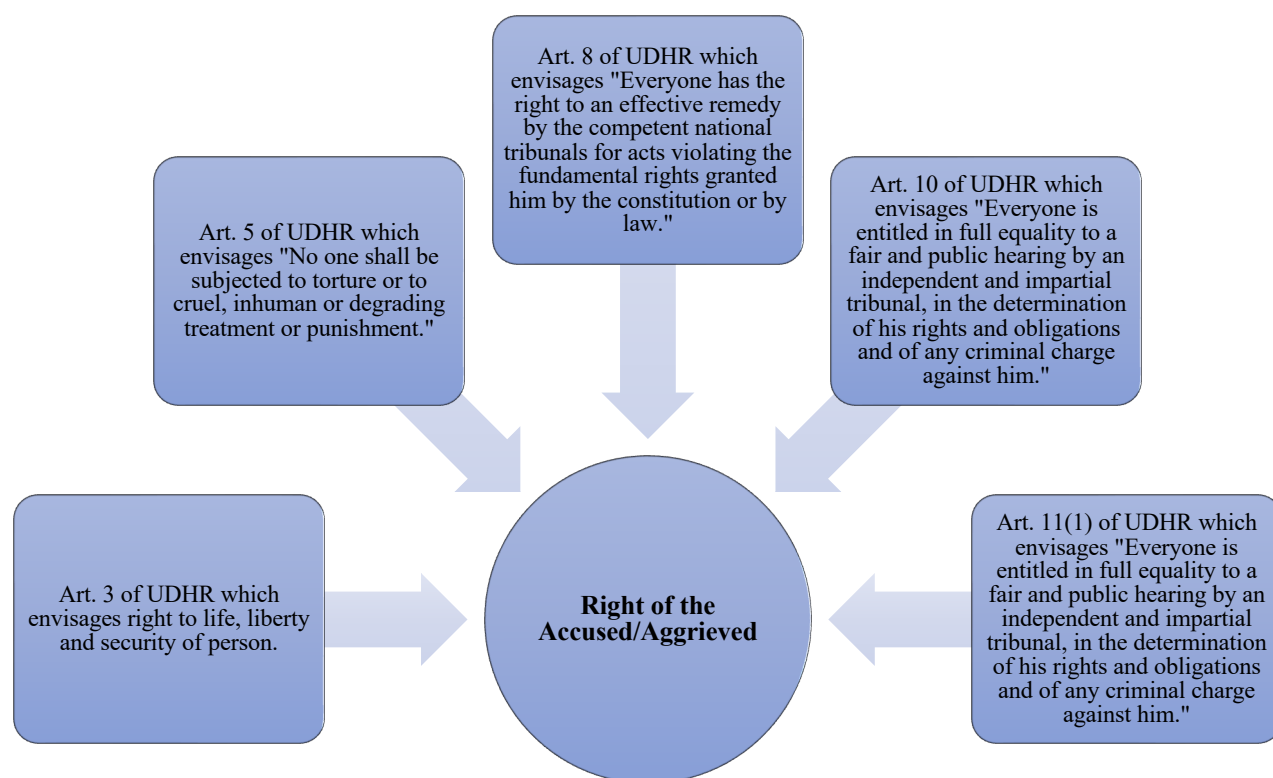
A. International Instruments and Conventions

1. Universal Declaration of Human Rights (UDHR)

The first intercontinental instrument concerning human rights is the Universal Declaration of Human Rights. It is considered to be one of the landmark manuscripts in the history of human rights and was drafted by the representatives of the different cultural and legal environments from and across the globe. The UN General Assembly proclaimed the UDHR in Paris on December 10, 1948. It is the grundnorm for the human rights legislation. Now we will specifically look at the provisions, which aim at the right of media and that of the aggrieved or accused.



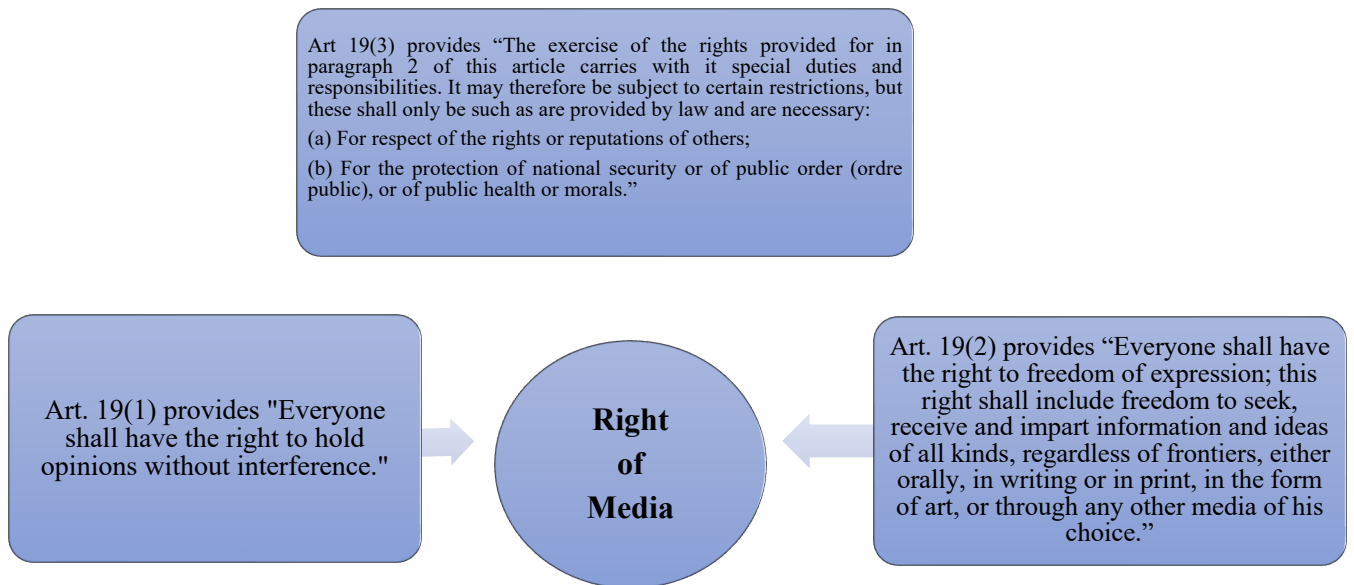
⁹ Law Commission of India, '180th Report on Article 20(3) of the Constitution of India and the Right to Silence' (May, 2000) <<https://lawcommissionofindia.nic.in/reports/180rpt.pdf>> accessed 19 October 2024.



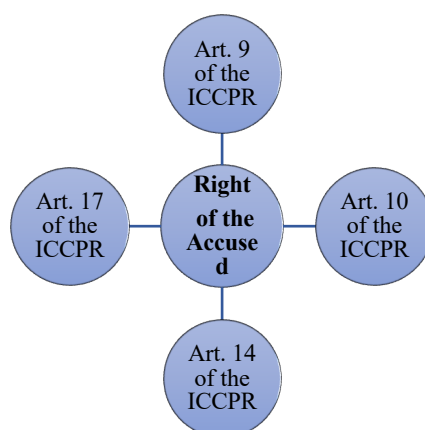
2. *International Covenant on Civil and Political Rights (ICCPR)*

The International Covenant on Civil and Political Rights (ICCPR) endeavours the guardianship to the civil and the political rights. It was ratified by the Resolution 2200A (XXI) of the UN General Assembly on December 19, 1966, and came into operation on March 23, 1976, under aegis of Article 49 of the covenant itself. The UDHR, the International Covenant on Economic Social and Cultural Rights (ICESCR) and the ICCPR and its two Optional Protocols, are inclusively recognized as the International Bill of Rights. The ICCPR assimilates the inherent dignity of each human being and commits to permit the achievement of civil and political rights. The nations that have endorsed the convention are obligated to “defend and safeguard basic human rights,” as well as “compelled to take legislative, administrative, and judicial measures to protect the rights so enshrined treaty and offer an appropriate remedy.”¹⁰ The ICCPR currently has 74 signatures and 168 parties.

¹⁰ “Summary: International Covenant on Civil and Political Rights”, Canadian Civil Liberties Association (CCLA), (2005). available at <<https://ccla.org/privacy/surveillance-and-privacy/summary-international-covenant-on-civil-and-political-rights-iccpr/>> (last visited on 19 October, 2024).



When we closely scrutinize the provisions of Art 19 (1) of ICCPR, it talks about the freedom to express oneself without fear of retaliation, whereas Art. 19 (2) is an extension of the rights which is enshrined in the Art 19 (1). Art 19 (2) provides that opinions and expressions may be either verbally, in written form or print or any form of art. Art 19(3) restricts the rights provided under the provisions of Art 19(1) and 19(2). Such limitations or restrictions must be imposed by law, where one who enjoys the rights in the Art 19 shall have the duty to protect state security, social stability, public health, or aesthetics, as well as human autonomy and identities. This is the standard set forth for the media personnel to bear in mind while presenting the news especially the media trial. Now, we will have to look at the right of the accused or aggrieved person.



To understand the standards set out for the protection of the accused of an aggrieved person, we will have to study the provisions of the ICCPR minutely. The provisions of Art 9 provide that the right to liberty and security belongs to everyone. It further provides safeguard against arbitrary arrest and detention. The grounds for the arrest in a criminal matter, the person who is arrested, must be acquainted of such reason, then promptly brought before a judicial officer or other officer authorized in this regard, such accused shall be entitled to a speedy trial and release if the contrary is established. Whoever is unlawfully detained shall be entitled to compensation.

The ethos of Art 10 talks about the humane treatment for the person devoid of their liberty and in exceptional circumstances is treated as an innocent person. The provisions also talk about the protection of juveniles and separate treatment to them.

The provisions of Art 14 are quite lengthy. It provides that everyone is equal in the eyes of the court and the tribunals. This article also states that in a democratic society, of morals, public order (order public), or state security, or when the parties' private lives require it, or to the extent of absolutely indispensable in the opinion of the court of law, in such special circumstances where media hype would prejudice the interest of justice, the press and the public may be barred from trial.

According to Art 14 (2), until proven guilty, everybody accused of an offence has the protection of reasonable doubt under the law. The provisions of Art 14 (3) set forth the minimum guarantees in criminal offence to accused which are as follow:

- (a) to be informed of the grounds of the accusation against him immediately and in a language he is wise of;
- (b) to provide sufficient time and resources for his defense, as well as the ability to speak with counsel of his own choice for such defense;
- (c) to be tried as soon as possible (24 hour rule);
- (d) to provide free legal assistance, it lacks the financial ability to afford the same;
- (e) to compel witnesses to appear and testify on his behalf and the vice-versa;

- (f) if he does not comprehend or communicate in the language spoken in court, he is enfranchised to free interpreting services;
- (g) not being forced to be self-incriminate.

Art 14 (4) talks about the procedure of juvenile trials and the importance of encouraging their reintegration.

Finally, Art 17(1)) envisages that “No one’s privacy, family, home, or communication shall be invaded arbitrarily or unlawfully, nor should anyone’s honour or reputation be attacked arbitrarily or unlawfully.” Art 17(2) provides that every person possesses a legal entitlement to protection against such interference or attacks.

3. European Convention on Human Rights (ECHR)

The states that are representatives of the Council of Europe (CoE) have their human rights safeguarded under the aegis of European Convention on Human Rights (hereinafter ECHR).

The treaty has been ratified by all the representatives, including the United Kingdom on 4th November 1950. The ECHR is also known as the “Convention for the Protection of Human Rights and Fundamental Freedoms”. This was framed by the then-Council of Europe in 1950. The convention came into effect on 3rd September 1953. The provisions of Art 5 provide the *Right to liberty and security*, Art 6 provide the *Right to a fair trial*, Art 7 provide *No punishment without law* and Art 8 provide the *Right to respect for private and family life*. These provisions escorted the right of the accused while Art 10 provides freedom of expression where the right of the media is inherent. The provisions concerning freedom of expression under the ECHR are identical to the provisions of the ICCPR.

4. The Madrid Principles regarding Media and Independent Judiciary

A commission comprising forty eminent legal experts and media representatives, organized by the International Commission of Jurists (ICJ), its Centre for the Independence of Judges and Lawyers (CIJL), and the Spanish Committee of UNICEF, convened from January 18 to 20, 1994, in Madrid, Spain. The conference aimed to examine the connection between media and judicial autonomy as outlined in the 1985 UN Basic Principles on the sovereignty of the courts and to develop a framework acknowledging the interplay between freedom of speech and

judicial independence. The resulting instrument includes a preamble and fourteen articles, which are divided into three main sections:

- (a) Basic Principles
- (b) Scope of the Basic Principle, and
- (c) Restrictions

The main provisions concerning media trial and right of the accused are contained in Art 4 which provides as follow:

“The basic principle does not exclude the preservation by-law of secrecy during the investigation of crime even where investigation forms part of the judicial process. Secrecy in such circumstances must be regarded as being mainly for the benefit of persons who are suspected or accused and to preserve the presumption of innocence. It shall not restrict the right of any such person to communicate to the press information about the investigation or the circumstances being investigated.”

After looking into the provisions of the above-mentioned article, we will understand how important is the reputation and right of the accused which is at risk while the media trial. The right of the accused is more important than that of the right to get informed.

B. Constitution of India

Indian Constitution also deals with the right of media and the right of the accused person under Part III. The right of the media or press is not specified explicitly in the constitution but is inherent in provisions of Art 19(1) (a). It provides the freedom of speech and expression, which is subject to reasonable restriction under the provisions of Art 19(2).

Article 19(2) reads:

“Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with

foreign States, public order, decency or morality, or about contempt of court, defamation or incitement to an offence”.

The law of contempt of court deals with non-intervening the “administration of justice”, as well as how the “due course of justice”, which would be essential for a fair trial, can necessitate reasonable limitations on freedom of speech and expression.

In several cases, Indian Apex Court analyzes the right to freedom of speech and expression in particular.

The Apex Court of India in *Life Insurance Corporation of India v Manubhai D Shah*¹¹ has said that “the right to freedom of speech and expression” in Article 19(1)(a) means the freedom to vocalize one’s cognitions, whether by speech, writing, printing, photographs, or electronic media or in any other means.

It was further discussed in the case of *Hamdard Dawakhana v Union of India*,¹² that right to free speech and expression includes the ability to acquire and disseminate ideas and information on issues of significant concern. Free speech should not be confused with the right to make baseless and reckless accusations against the judicial institution.¹³

The right of the accused which is the topic of discussion of a media trial on one hand is protected under the provisions of Articles 20, 21, and 22 of the Indian Constitution, which protect conviction for crimes, protection of life and personal liberty, and protection against arrest and detention in certain cases, respectively on the other.

In conclusion, the discussion on the instrument of law whether municipal or foreign, we find out that a higher social responsibility is on the media under the aegis of freedom of speech and expression on one hand and the protection of accused could not be compromised under law in any circumstances whatsoever on the other.

5. LAWS GOVERNING MEDIA IN INDIA

“If the Press is to function effectively as the watchdog of public interest, it must have a secure

¹¹ (1992) 3 SCC 637.

¹² (1960) 2 SCR 671.

¹³ *Radha Mohan Lal v Rajasthan High Court*, (2003) 3 SCC 427.

freedom of expression, unfettered and unhindered by any authority, organised bodies or individuals. But, this claim to press freedom has legitimacy only if it is exercised with a due sense of responsibility.” observed Justice G. N. Ray.

India has one of the world’s largest media networks. In India, television and radio have proven to be two of the major forms of mass communication. For a long period, All India Radio (hereafter AIR) and Doordarshan have provided us with entertainment, information, and educational programmes. Since 1991, commercial television networks have begun to play an important role in the same way as AIR and Doordarshan did. In India, the media is primarily self-regulatory. Press Council of India (hereinafter PCI), is a statutory agency. It was incorporated in 1978 under the provisions of the PCI Act, 1978. There is a chairman and 28 additional members on the board. The PCI’s primary objective is to:

- (i) assist the newspapers in maintaining their autonomy;
- (ii) enact a *modus operandi* for journalists and news organizations;
- (iii) assist in maintaining quality of public accountability and encouraging citizen conscientiousness; and
- (iv) appraise the developments that may restrict the circulation of news.

The PCI is authorized to examine accusations of journalistic ethos or professional misdemeanors by the journalist or the editor. It is accountable of looking into the complaints that have been received. It has the power to summon witnesses and require them to testify, to demand copies of public information, and even to issue warnings and reprimands the broadcasting, news agency, editor, or journalist. It may even necessitate that details of the investigation be published in any newspaper. The decisions of PCI are final and cannot be challenged. The authority of PCI is limited in the following ways:

- (1) The PCI’s authority to enforce the rules is restricted. It is unable to sanction newspapers, news organizations, editors, or journalists who violate the criteria, and
- (2) The PCI focuses exclusively on the operation of the press.

It does not have the jurisdiction to investigate the operation of electronic media like radio,

television, and the internet.

Short films, documentaries, television series, and ads must be approved by the Central Board of Film Certification (hereafter CBFC) before being screened in theatres or broadcast on television. The CBFC's responsibility is confined to regulating the content of films and television shows, among other things. It lacks the authority to enforce rules governing news and journalistic ethics, unlike the PCI. Whereas, the Cable Television Networks (Regulation) Act of 1995 (hereinafter CTVN Act, 1995) proclaimed the Program and Advertisement Codes to regulate the content transmitted on television. The District Magistrate can seize¹⁴ the equipment of the cable operator in case he broadcasts programs that violate the Codes which are enshrined under CTVN Act, 1995. Commercial television networks and radio channels have to comply with the conditions which are part of license agreements. Defiance may lead to suspension or revocation of the license.

News channels are primarily governed by self-regulatory systems. The News Broadcasters Association (hereinafter NBA) has devised one such system. To govern media programmes, the NBA has created a Code of Ethics. For violations of the Code, News Broadcasting Standards Authority (hereafter NBSA) has the authority to caution, reprimand, censure, convey disapproval, and fine the broadcaster up to one lakh rupees. The Broadcast Editors' Association (hereinafter BEA) is another such organization. These organisations are regulated by the agreements rather than by the statute. A proposal for Broadcasting Services Regulation Bill, 2006, was prepared by the national government in 2006. The Broadcasting Regulatory Authority of India (hereinafter BRAI) would be to be established as an independent body with a chairperson and six full-time members, according to the Bill. It would be given authority over everything from licensing, registration, and service quality to resolving disputes and authenticating content. The Broadcasting Services Regulation Bill was first proposed by the Ministry of Information and Broadcasting, in 2007, however, it was never introduced in the Parliament. The following are some of the most important electronic media regulations.

A. Code of Broadcasting News for AIR and Doordarshan

The nine points of the broadcasting code are nothing but significantly more than just the legitimate restraints stipulated in Article 19 (2) of the Constitution. The following are

¹⁴ The Cable Television Networks (Regulation) Act, 1995(Act 7 of 1995), Chapter III, ss. 11-15.

prohibited by the code to:

The media has a significant responsibility in shaping public discourse and maintaining societal harmony. It is essential that broadcast content adheres to ethical standards and legal boundaries. First, broadcasts that condemn allied nations or incite hostility between nations are highly problematic and should be strictly prohibited. Similarly, the media should refrain from airing content that promotes the persecution of religious communities, as it undermines social cohesion and promotes division. Additionally, the broadcast of obscene or libelous material not only harms individual reputations but also erodes the moral fabric of society, and therefore, such content must be avoided.

Moreover, broadcasting content that provokes violence or undermines public tranquility poses a direct threat to social stability and should be censured. The media must also be held accountable for broadcasting aspersions against the integrity of critical institutions such as the President, the Governorship, and the Judiciary, as these attacks undermine public trust in governmental structures. In a similar vein, the media should refrain from airing content that constitutes contempt of court, as this can jeopardize the rule of law and the impartiality of the judicial system.

Furthermore, broadcasts that directly attack a political party by name can incite political instability and are inappropriate in a balanced democratic discourse. Finally, while content that discredits the Constitution or promotes unconstitutional amendments should be banned, campaigns advocating for constitutional amendments through proper legal channels should not face such restrictions. The media plays a crucial role in informing the public, but this role must be balanced with a duty to protect societal values, legal principles, and national unity.

B. Broadcasting Code Governing Air and Doordarshan

While appreciating, the extraordinary influence of radio and television. Whilst transmitting on air, all broadcasters will be expected to maintain the following solemn trustworthiness:

The media plays an essential role in maintaining ethical standards and contributing positively to society. One of the primary objectives is to ensure that news presentations are objective, with neutral and impartial commentary, thus fostering an informed public. Additionally, media should support the growth and development of educational institutions and cultural values,

thereby enriching the intellectual and social fabric of society.

Another key responsibility is to promote the highest standards of decorum and civility in all broadcasts, ensuring that the content upholds societal norms and contributes to a respectful public discourse. Media outlets must also curate programs that cater to youth, emphasizing the principles of good citizenship and encouraging the cultivation of responsible and engaged individuals in society.

Moreover, it is critical for the media to advocate for mutual understanding, religious tolerance, and global cooperation, fostering a culture of peace and inclusivity. In handling contentious issues, the media must adopt a balanced and calm approach, presenting diverse viewpoints in a manner that encourages constructive dialogue rather than division. Finally, the media should consistently respect and promote civil rights and human dignity, reinforcing the fundamental values that uphold a democratic society.

The code was enacted during IVth Asian Broadcaster Conference in 1962 in Kuala Lumpur (Malaysia), to which the AIR be a participant.

C. Cable Television Networks Rules, 1994 And Cable Television Networks (Regulation) Act, 1995

The Cable Television Networks Rule, 1994 has been enacted by the central government. This code was recently amended on February 27, 2009. The programme code and the advertisement code are codified in the provisions of sections 6 and 7 of the said rules, whereas the Cable Television Networks (Regulation) Act, 1995 only renders a reference to the provisions of Rules 5 and 6 respectively listed below:

The provisions of Rule 6 titled as Programme Code, provide that news channels should forbid themselves from streaming any programme that:

- (a) disturb the public tranquility, decency,
- (b) friendly nations are being criticized,
- (c) target religious beliefs or communities, or images or words that are derogatory to religious groups or promote communal sentiments,

- (d) amounting to contempt of court,
- (e) disturbing the veracity of the country,
- (f) maligns or slanders any individual or group, as well as aspects of the nation's social, public, and moral life,
- (g) promote witchcraft or blind belief,
- (h) disrespects lady by portraying the her figure, or carcass, or any aspect of it, in any way that has the effect of being licentious or disparaging to lady, and
- (i) breach of the Cinematograph Act, 1952

The provisions of Rule 6 (2) provide that, “the cable operator should strive to carry programmes in his cable service which project women in a positive, leadership role of sobriety, moral and character-building qualities”.

The provisions of Rule 6 (3) provide that no cable operator broadcast any programme which violates the protection IPRs except in case of permission through a license.

The provisions of Rule 6 (4) and (5) aim at the welfare of the children where it categorically provides that any programme of children do not in any form language which harm their mental faculty and wellbeing or exhibit scene of violence.

Another important provision the CTVN Rule, 1994 contains in Rule 7 titled “Advertising Code” and provides that the advertisements are designed in such a manner to correspond to the legislations of the land and should not offend morals, graciousness and religious susceptibilities of the viewers. It further provides guidelines for the advertising agencies and these agencies while creating advertisements shall follow the same. The advertisement shall abide by the terms and conditions which are as follow:

The media plays a crucial role in shaping societal norms and values, and as such, it is essential that broadcasts adhere to ethical and legal standards. Content that violates any provision of the Indian Constitution is strictly prohibited, as it undermines the legal framework that governs the country. Furthermore, broadcasts that mock any race, caste, colour, creed, or nationality are not only unethical but also harmful, as they perpetuate discrimination and intolerance. The

media must avoid content that encourages individuals to commit crimes, incites chaos, or promotes violence and obscenity, as this type of content threatens public order and societal peace.

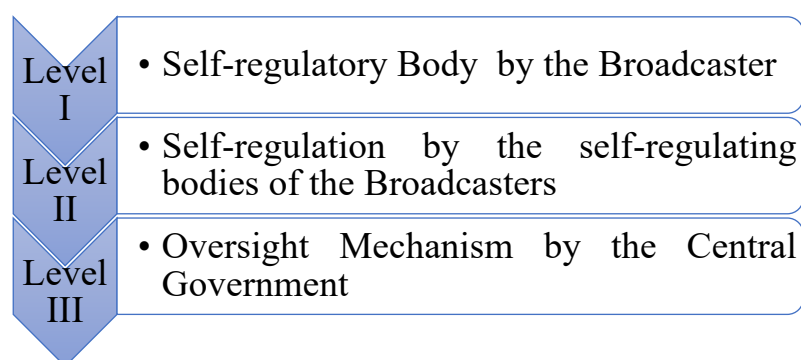
In addition, media content should uphold the dignity of all individuals, particularly women. Advertisements or portrayals that depict women in a disparaging manner, reinforcing weak or subservient characteristics or positioning them as secondary to men in both domestic and public spheres, are unacceptable. Such representations perpetuate harmful gender stereotypes and contribute to societal inequality. Lastly, the media should refrain from promoting the production, sale, or consumption of harmful substances, such as cigarettes, tobacco products, alcohol, and other intoxicants. Content that encourages or glamorizes the use of such substances poses a serious risk to public health and well-being. In all these aspects, the media must act responsibly, ensuring that its content upholds social harmony, public health, and human dignity.

The provisions of Rule 7 (3) provide that the advertisements are obliged not to be intended for any religious or political end. Whereas the provisions of Rule 7 (3A) provide that advertisement shall be prohibited which hurt religious sentiments. The other key guidelines such as the advertisement should not endure any imperfection or discrepancy as has been mentioned in the Consumer Protection Act, 1986.

The Ministry of Information and Broadcasting India in the exercise of powers conferred by section 22 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), the government has established a statutory mechanism to address citizens' grievances and complaints against TV channel programs. Additionally, several amendments have been made to the Cable Television Networks Rules, 1994 through the notification in the official gazette dated June 7, 2021 namely the Cable Television Networks (Amendment) Rules, 2021. The provisions added by the said amendment are:

- (a) Sub-Rule 7 in Rule 6 which provides upon complaint of violation of the Code, the Central Government where "the Central Government is satisfied that the programme of any channel is not in conformity with the Programme Code may give an opportunity of hearing to the cable operator, and by an order in writing prohibit the transmission or re-transmission of any such channel or programme in accordance with the provisions of section 20 of the CTVN Act, 1995."

- (b) Sub-Rule 12 in Rule 7 which the Central Government will follow the same pattern as has been mentioned in Sub-Rule 7 of Rule 6 in respect of advertisement.
- (c) Rule 15 to 21 will be added to CTVN Rule, 1994 which broadly provide complaint redressal structure, procedures for filing and processing grievances or complaints, self-regulation by broadcasters, self-regulation by broadcaster-established bodies, oversight mechanisms by the central government, establishment of inter-departmental committees, and protocols for disclosure of information.
- (d) This mechanism has been incorporated by the Rule 15 of the CTVN (Amendment) Rule, 2021. Apart from the regulations and guidelines for broadcasting, the Cable Television Networks (Regulation) Act, 1995 also prescribes provisions for seizure and confiscation under chapter III and the provisions of punishment for offences and penalties are provided under the scheme of chapter IV.



6. JUDICIAL RESPONSES TO THE MEDIA TRIAL IN INDIA

The question of whether media publications have a subliminal impact on judges needs to be addressed.¹⁵ T. E. Carter has stated “The court of public opinion moves much faster than the law.” The Law Commission of India had raised this pertinent question in its 200th report. The answer to this question has a different approach. The American view is that media publications do not influence jurors and judges, whereas the Anglo-Saxon view is that Judges may be influenced subconsciously, though not consciously.

This viewpoint has gained acceptance by the Apex Court in, *In re P.C. Sen*¹⁶, “No distinction

¹⁵ Supra note 4, Chapter III, 46-60.

¹⁶ AIR 1970 SC 1821, 1829.

is, in our judgment, warranted that comment on a pending case or abuse of a party may amount to contempt when the case is triable with the aid of a Jury and not when it is triable by a Judge or Judges.”

The Apex Court¹⁷ has reaffirmed its prior standpoint that freedom of speech and expression occasionally may amount to obstruction with the justice administration and the write-up of the media could be detrimental, should not be sanctioned.

The Supreme Court appears to have agreed that judges are likely to be persuaded subconsciously in its decisions by the media.

The Delhi High Court has observed “This Court is of the opinion that it is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during, and after trial, without violating the presumption of innocence. In fact, the presumption of innocence and a fair trial is at the heart of criminal jurisprudence and in way important facets of a democratic polity that is governed by rule of law. Journalists are free to investigate but they cannot pronounce anyone guilty and/or pre-judge the issue and/or prejudice the trial. The grant of the fairest of the opportunity to the accused to prove his innocence is the object of every fair trial. Conducting a fair trial is beneficial both to the accused as well as to society. A conviction resulting from an unfair trial is contrary to the concept of justice.”

The Supreme Court has determined that trials conducted by the press or electronic media fundamentally oppose the rule of law in its entirety and can lead to a miscarriage of justice. The Supreme Court in *A. C. Pradhan v. Union of India*¹⁸, has held that “No occasion should arise for an impression that the publicity attached to these matters (the hawala transactions) has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial”.

The Supreme Court pronounced that such media publications unequivocally hinder the administration of justice. It emphasized that the media must cease such practices, admonishing

¹⁷ *M.P Lohia v. State of West Bengal*, (2005) 2 SCC 686.

¹⁸ (1996) 6 SCC 354.

the publisher, editor, and journalist responsible for any such articles to refrain from conducting a kangaroo court while the matter remains sub-judice.¹⁹

In *Saibal Kumar Gupta v. B.K. Sen*²⁰, while dealing in the perspective of a parallel investigation by the media has held that, “it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime and to publish the results of such investigation, and that such trial by media must be prevented as it tends to adversely interfere with the course of justice”

In *Justice K.S. Puttaswamy (Retd.) v. UOI*²¹, the Supreme Court of India has acknowledged that the right to privacy is an inherent aspect of the right to life and personal liberty as enshrined under Article 21 of the Indian Constitution. Persistent media intrusion into the personal and private lives of the accused, suspects, and their families and friends constitutes a violation of the liberty guaranteed by Article 19(1)(a).

In *Subramaniam Swamy v. UOI*²², the Supreme Court of India evaluated the expressions “defamation” and “reputation” and ascertained that the notion of repute is integrated within the bounds of the safeguard of “dignity” is a constitutional protection stipulated under Art 21 of the Indian Constitution. Thus right to speech and expression does not supersede the right to prestige.

The Apex Court in *R.K. Anand v. High Court, Delhi*²³ has asserted that it would be a significant travesty for the court to mandate that the media operate strictly within its permissible jurisdiction. The function of media would not be the spammers of the court. The media should act within the limitations of journalistic standards and not as a peculiar entity for the court.

The court²⁴ has held that the media credibility is built on honest and objective reporting, and accountability for this must be established to ensure that the administration of justice be ensured.

¹⁹ *Supra* note 12

²⁰ AIR 1961 SC 633.

²¹ (2018) 1 SCC 809.

²² (2015) 13 SCC 353.

²³ (2009) 8 SCC 106.

²⁴ *Ganstone & Ors. v. State of Maharashtra*, (2020) WPCR No. 548.

The Apex Court in *Rajendran Chingaravelu v. R.K. Mishra*²⁵ has observed that “Improper revelations” or “leakage” to the media during an ongoing inquiry can not only endanger and hamper the subsequent investigation but will also occasionally allow the genuine perpetrator to elude justice.”

The High Court of Andhra Pradesh²⁶ has held that “In the recent past, the freedom of the prosecuting agency, and that of the Courts, to deal with the cases before them freely and objectively, is substantially eroded, on account of the overactive or proactive stances taken in the presentations made by the print and electronic media. Once an incident involving a prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts to examine the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements, and the unhealthy competition in the field of journalism resulted in the obliteration of norms or commitment to the noble profession. The freedom of speech and expression which is the bedrock of journalism is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively.”

The Apex Court in *Re: Harijai Singh & Anr*²⁷, resonance concern in the subsequent paragraph:

“10. But it has to be remembered that this freedom of the press is not absolute, unlimited and unfettered at all times and in all circumstances as giving unrestricted freedom of speech and expression would amount to an uncontrolled license. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. Freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. The element of responsibility must be present in the conscience of the journalists. In an organized society, the rights of the press have to be recognized with its duties and responsibilities towards society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrongdoings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by a court of law. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and

²⁵ (2010) 1 SCC 457, 465.

²⁶ *Labour Liberation Front v. State of Andhra Pradesh*, (2005) 1 ALT 740.

²⁷ (1996) 6 SCC 466, para. 10.

impact than the utterances of an individual and because of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for the preservation of the freedom of the press itself.”

The High Court of Mumbai recently in *Nilesh Navlakha & Anr. v. UOI through the Secretary/Joint Secretary (P & A) Joint Secretary (Broadcasting) Ministry of Information and Broadcasting*²⁸, “No report, discussion, debate or interview should be presented by the press or media which could harm the interests of the accused being investigated or a witness in the case or any such person who may be relevant for any investigation, to satiate the thirst of stealing a march over competitors in the field of reporting. Accordingly, we direct the press or media to exercise restraint and refrain from printing or displaying any news item and/or initiating any discussion, debate or interview of the nature, as indicated hereunder:

- a. About death by suicide, depicting the deceased as one having a weak character or intruding in any manner on the privacy of the deceased;
- b. That causes prejudice to an ongoing inquiry or investigation by:
 - (i) Referring to the character of the accused or victim and creating an atmosphere of prejudice for both;
 - (ii) Holding interviews with the victim, the witnesses or any of their family members and displaying it on screen;
 - (iii) Analyzing versions of witnesses, whose evidence could be vital at the stage of trial;
 - (iv) Publishing a confession allegedly made to a police officer by an accused and trying to make the public believe that the same is a piece of evidence which is admissible before a Court and there is no reason for the Court not to act upon it, without letting the public know the nitty-gritty of the Evidence Act, 1872;
 - (v) Printing photographs of an accused and thereby facilitating his identification;
 - (vi) Criticizing the investigative agency based on half-baked information without proper

²⁸ (2020) PILST.92252, 245-246, para. 349.

research;

(vii) Pronouncing on the merits of the case, including pre-judging the guilt or innocence qua an accused or an individual not yet wanted in a case, as the case may be;

(viii) Recreating or reconstructing a crime scene and depicting how the accused committed the crime;

(ix) Predicting the proposed/future course of action including steps that ought to be taken in a particular direction to complete the investigation; and

(x) Leaking sensitive and confidential information from materials collected by the investigating agency;

- c. Acting in any manner to violate the provisions of the Programme Code as prescribed under section 5 of the CTVN Act read with rule 6 of the CTVN Rules and thereby inviting contempt of court; and d. Indulging in character assassination of any individual and thereby mar his reputation.”

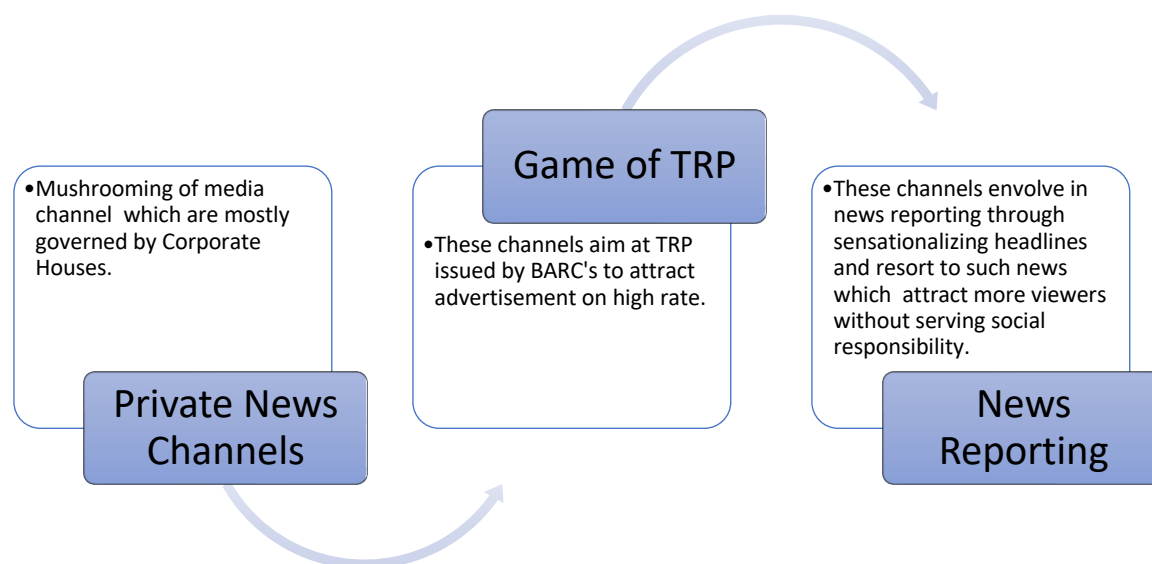
7. THE PRE-CENSORSHIP OF THE MEDIA: NEED OF THE HOUR

The Supreme Court of India has observed “The problem with the electronic media is all about TRPs, leading to more and more sensationalism, damage reputation of people and masquerade as form of right.”

The right to freedom of speech and expression must be exercised with prudence. It is essential to establish an internal mechanism to prevent publications that might undermine the judiciary’s reputation and hinder the administration of justice. In all instances, the inclination towards sensationalism must be restrained. Claims by publishers, editors, or other involved parties that they were unaware of the publication’s damaging nature or that it was done in haste are unacceptable. A free and responsible press, alongside an independent judiciary, is indispensable for upholding the rule of law and maintaining a just society. While the media may engage in legitimate critique of court decisions in the public interest, it must do so with the intent of promoting public welfare.

Notwithstanding recent media coverage, it not only contravenes the CTVN Act and its

accompanying rules but also breaches the Code of Ethics and Broadcasting Standards Regulations. The corporate media, which constitutes the mainstream media in this country, is neither governed nor administered by the state. Rather, it is owned and controlled by business entities that depend on TRP-driven performance metrics and viewership-focused business models to generate revenue through advertisements, sponsorships, and investments.



The media is afflicted by excessive reporting, as evidenced by inordinate broadcasting given to infinitesimal and moronic matters distinct to the democratic norms of the state and its citizens, as contrasted to the subject matter of regional and global significance such as the Corona virus (COVID 19) crisis, widespread chronic unemployment, economic stagnation, hunger, clinical and medical services infrastructure problems, agricultural challenges, and so forth. These are just the issues that rarely receive substantial importance or significant coverage when compared to the TV time given to embellished and glamorized irrelevancies.

It is unequivocally not the province of the media to adjudicate a name guilty, and there is no concern of culpability until the investigation and trial are concluded. However, it is discernible that the media is diligent in attempting to portray the persons named in the FIR as criminally responsible by inexorable monotonous and repetitious sloganeering.

The Court's decisions are public documents that can be remarked on, interpreted, and critiqued, so they should be done decently without assigning motive.

Due to this irresponsible reporting through hatred, marginalized and accusative headlines and

subject matter. It is the need of the hour to set up a corrective mechanism of pre-censorship, an independent constitutional institution, of the news matter of these reckless news channels and expunge any of the matter of news or headlines which flouts the guidelines of the CTVN Act and the Rules there-under.

8. CONCLUSION AND SUGGESTIONS

Heather Marsh has once stated “As information and voice amplification become the new symbols of power, those who would assume control of society have moved to hoard voice amplification and control the message received by the public in new ways.”²⁹

The fundamental occupation of the news agencies is to broadcast news as it happen, and people have exclusive control over that how they believe about them. However, the media is streaming live opinion based and tailored news, which is outside the jurisdiction, domain accorded to the metaphorical fourth column, and therefore is a flagrant misappropriation of the privileges so endowed by the Constitution of India, and which is unjustifiable and against all norms of righteousness in a constitutional republic. The suspected accused has already been openly prosecuted and sentenced by the media. Such accused being characterized as a murderer, accomplice, addicted, gold-digger, scammer, and other unsubstantiated accusations.

Even, there are comprehensive programme codes and journalistic codes of ethics, but all these rules and regulations seem to be of no use. Due to the absence of the competent enforcement authority and the tribunal which will act as a shield against the misconduct of the media.

The media needs to understand and believe in its social responsibility entrusted by the provisions of Art. 19 (1)(a) of the Indian Constitution. It does not lose its trust within society. As per the report released on June 17, 2024 by the Reuters Institute Digital News Report, 2024, India ranks 159 out of 180 countries on levels of overall trust in news. Only 41 % of respondents from India said that they trust news overall.³⁰ This is how the media lost its credibility within the society through its irrelevant reporting.

²⁹ Heather Marsh, ‘Concentric Groups, Knowledge Bridges, and Epistemic Communities,’ January 23, 2013 <https://georgiebc.wordpress.com/2013/01/23/concentric-groups-knowledge-bridges-and-epistemic-communities-2/>.

³⁰ <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/india> (accessed 10 July, 2024).

The paper primarily addresses the issue of media trials, highlighting several key recommendations to address the challenges posed by such trials in the media landscape.

First, it suggests that there should be central government legislation on electronic media. Specifically, the government should revisit the Broadcasting Services Regulation Bill of 2006, considering necessary amendments to ensure it aligns with contemporary challenges and effectively regulates the digital media environment.

Second, the establishment of an independent institution is recommended to scrutinize news scripts before they are aired live on television. This body would be tasked with expunging any content that violates the programme code or journalistic code of conduct, thereby ensuring that broadcast content adheres to ethical standards and legal guidelines.

Third, the paper advocates for the creation of an internal department within each media house responsible for upholding these standards. Such a department would work in coordination with the external institution to ensure that the media content produced by the organization complies with established regulations and ethical practices.

Fourth, the paper proposes the formation of a tribunal specifically dedicated to addressing complaints related to media trials. This tribunal should be empowered to resolve such issues within a set timeframe, no longer than 90 days, to ensure timely and effective redress for aggrieved parties.

Lastly, it is recommended that the penalty for media trial offenses should be limited to financial damages rather than imprisonment. The imposition of higher pecuniary damages would serve as a deterrent without resorting to the punitive measure of incarceration, which may not be appropriate for such cases and calls for comprehensive reforms to the regulatory framework surrounding media trials, with a focus on proactive oversight, ethical accountability, and timely resolution of complaints.