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ON TOPIC:

A Study on the Influence of Trial by Media on the Administration of Justice & Rights of the Accused

Under the Guidance and Supervision of

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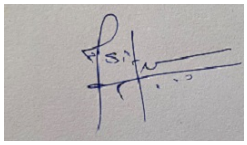
CERTIFICATE

This is to certify that **Ms. APOORVA SINGH, REG NO: LM0120010**, has submitted her Dissertation titled "A Study on the Influence of Trial by Media on the Administration of Justice & Rights of the Accused" in partial fulfilment of the requirement for the award of the Degree of Masters of Constitutional and Administrative Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that the dissertation submitted by her is original, bona fide and genuine.



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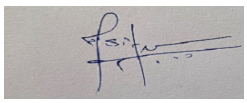

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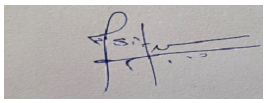

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DECLARATION

I declare that this dissertation titled, "A Study on the Influence of Trial by Media on Administration of Justice & Rights of the Accused", researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfillment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of Dr.Asif E is an original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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APOORVA SINGH

LIST OF ABBREVIATIONS

CPC	Civil Procedure Code
CrPC	Criminal Procedure Code
CBI	Central Bureau of Investigation
ED	Enforcement Directorate
ECHR	European Convention on Human Rights
FIR	First Information report
I&B	Information and Broadcasting
ICCPR	International Covenant on Civil and Political Rights
IPC	Indian Penal Code
MOM	Media Ownership Monitor
NCB	Narcotics Control Bureau
NSG	National Security Guard
NBA	National Broadcasters Association
NBSA	News Broadcasting Standards Authority
PCI	Press Council of India
PDBP	Personal Data Protection Bill
RSF	Reporters Sans Frontiers
TRP	Television Rating Point
TRAI	Telecom Regulatory Authority of India
UDHR	Universal Declaration of Human Rights

LIST OF STATUTES

Constitution of India, 1950

Contempt of Courts Acts, 1971

Civil Procedure Code, 1908

Human Rights Act, 1998 (UK)

Indian Penal Code, 1860

Information Technology Act, 2000

Press Council Act, 1978

Printing Act, 1662 (UK)

LIST OF CASES

Prabhu Dutt vs. Union of India, AIR 1982 SC 6 5

Romesh Thapar vs. State of Madras, AIR 1950 SC 124

Riley vs. National Federation of the blind 487 US 781 (1988)

R. Rajagopal vs. State of Tamil Nadu, (1994) 6 SCC 632

R vs. Lewes Prison (Governor), ex p Doyle, (1917) 2 KB 254

R (Guardian News and Media Ltd) vs. City of Westminster Magistrates' Court (2013) QB 618

Reliance Petrochemicals Limited vs. Proprietors of Indian Express Newspaper Bombay Pvt. Ltd (1989) AIR 190

R.K. Anand vs. Delhi High Court (2009) 8 SCC 106

Sorrell vs. IMS Health, 564 U.S. 552 (2011)

Schenck vs. United States, 249 U.S. 47 (1919)

State of Uttar Pradesh vs. Raj Narain (1975) AIR 865

Sakal Papers Ltd. vs. Union of India, AIR 1962 SC 305

Scott vs. Scott (1913) AC 417

Santosh Kumar Singh vs. State (2010) 9 SCC 747

State vs. Sanjeev Nanda (2012) 8 SCC 450

Securities and Investment Commission vs. Rich (2009) NSWSC 1229

Salman Salim Khan vs. State of Maharashtra Cr. Appeal No. 572 of 2015

Shreya Singhal vs. Union of India, (2013) 12 SCC 73

State of Maharashtra vs. Rajendra Jawanmal Gandhi 1997 (8) SCC 386

The City of Chicago vs. Alexander, 2014 IL App (1st) 122858

The Superintendent, Central Prison, Fatehgarh vs. Ram Manohar Lohia (1962) 2 S.C.R. 321

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CHAPTER-1

Introduction

1.1 Introduction to the Research Topic

"A responsible media is the handmaiden of effective judicial administration."[1]

Media is popularly known as the "fourth pillar of democracy" after the Legislature, Executive, and Judiciary. It plays a vital role in creating awareness among people and can change society's viewpoint. Therefore, to ensure democracy, free and independent media is necessary. Part 3 of the Constitution of India does not explicitly talk about Freedom of the Press. However, in several cases, the Supreme Court held that the freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution of India also includes freedom of the press.

Free speech, in simple terms, means the liberty to say what one feels like and is considered the first condition of liberty. It is the expression of thoughts into words without any restraints. It is considered to be an innate right. It is not the State or the Government that provides this right, but every person acquires it naturally. However, this does not mean that the Constitutions of various countries are not required to guarantee it. In a liberal democracy, guaranteeing the right to free speech is of utmost importance. It creates an opportunity for free public discourse. Freedom of expression involves the communication of ideas irrespective of the medium used.

"The word, "expression" used in Art. 19 (1)(a) in addition to "speech" is comprehensive enough to cover the press. The lack of specific mention of the media in the Constitution created no difficulty when the Supreme Court was called upon to protect the freedom of the

[1]Fali S. Nariman, ARE IMPEDIMENTS TO FREE EXPRESSION IN THE INTEREST OF JUSTICE, Vol 4, CIJL Yearbook, (1995).

media in several cases, which came before it, right from 1950."[2] Even modern science and technology have invented and are still inventing and bringing many forms of expression and facilitating communication of ideas. The fundamental right guaranteed thus includes the collective right of the community, the right of citizens to read and be informed, and share information. In essence, it is the right of the people to know.

In ***Romesh Thapar vs.State of Madras***[3] the court held that the freedom of speech and the press lay at the foundation of all democratic organizations. Since then, the freedom of the press had begun to be widely enforced and acknowledged. In ***Prabhu Dutt vs. Union of India***[4] the apex court held that the right to know news and information about government-related activities is incorporated in the freedom of the press. However, this right is not absolute, and restrictions can be imposed on it in the public interest. A clear definition of press freedom originated in the case of **Indian Express Newspaper vs. Union of India**[5]. This case defined "press freedom" as the freedom from interference with the newspaper's circulation and content. Press freedom is considered the core of political and social discourse. According to the constitution's mandate, the court has rightly upheld the freedom of the press and invalidated administrative actions and laws that interfered with it.

There is a need for reforms in the institutional forum of the media for maintaining and improving the standards of newspapers and media houses. Currently, the PCI, which the Press Council Act, 1978, established, is vested with certain powers to deal with cases where the newspaper or the news agency may have offended against the standards of journalistic ethics. The Council also has the power to warn, admonish or reprimand the journalist or the editor of a news agency in case of any professional misconduct. However, the media's freedom of speech might strengthen after passing the Personal Data Protection Bill, 2019. Under Article 36(e), the bill allows exemptions for processing personal data for journalistic purposes. If this bill becomes an Act, Journalists would have the liberty to distribute views and opinions regarding any information that they consider masses interested in.

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[2] *Shabnam Saidalavi, Media trial: freedom of speech v. fair trial*, Academike, (Feb. 20, 2021, 1:17 PM) https://www.lawctopus.com/academike/media-trial-freedom-of-speech-v-fair-trial/

[3] Romesh Thapar vs. State of Madras, AIR 1950 SC 124

[4] Prabhu Dutt vs. Union of India, AIR 1982 SC 6

[5] Indian Express Newspaper v Union of India, 1986 AIR 515

The primary purpose of journalism has always been the same: to hold out a mirror to society, however ugly the sight is. With the rise of technology and mobile applications, newspapers in almost every regional language, and the emergence of the internet, news, and information is available to everyone through these different mediums. This tremendous influence makes people aware of the events happening worldwide and regularly informs them of public affairs.

The media also plays a crucial role in decreasing white-collar crimes, wealthy industrialists, corrupt officials, and celebrities trying to eliminate court trials by bribing officials. The media monitors this contemptuous behavior and plays an essential role in unearthing government or officials' huge scams. One cannot deny the role which media plays in shaping contemporary people's thinking. It has done an incredible job of getting criminals to justice in many cases, such as the Priyadarshini Mattoo rape case, Jessica Lal murder case, and Nitish Katara murder case. Due to media recognition, the games played by IPL (Match-fixing & Betting row) beget in broad daylight came to the public's conscience. In these situations, the media has undoubtedly played a positive role.

However, nowadays, the role of media is often criticized, especially in the reporting of high-profile cases where the media tries to sensationalize news and distort facts to grab the attention of the people to keep up with the competition in the field. This undermines the actual purpose of the media as a fourth estate and affects its credibility. The media sometimes goes beyond its domain and acts as the judge and jury on the pretext of investigative journalism. This leads to interference with the functions of the court. So, a question arises that *"should the media stop reporting such cases that directly or indirectly interfere with the powers of court?"* These days, the media has started functioning as a public court. It conducts a parallel trial with the court and fails to recognize the gap between an accused who is presumed 'innocent until proven guilty' and a convict whose guilt is proved beyond a reasonable doubt. This can act as an impediment to the guarantee of the right to a fair trial. So, because of these reasons, the press must use its freedom in a way that should not hurt others.

'Trial by Media' generally refers to a practice where the media starts a separate investigation and forms a public opinion against the accused before the actual trial commences. In this way, it prejudices the trial leading to infringement of the rights of the accused. Thus, the accused, who should be considered innocent until proven guilty, is now presumed guilty, violating his fundamental rights. The topic 'Trial by Media' has been discussed by civil rights activists, constitutional lawyers, judges, and academicians almost every day in recent times. With the rise in the internet and social media users, the amount of publicity any crime or suspect or accused gets in the media has reached alarming proportions. Innocents may be condemned for no reason, or those who are guilty may not get a fair trial and end up getting a higher sentence than what they deserve.

Envisage for a moment a situation wherein an individual is accused of having committed an offense. There is a complete disregard for the facts of the case. Issues are not allowed to be raised, arguments that are rarely advanced in court, and procedure of law that does not exist. The only thing that prevails is the intention of the accused, which is presumed to be guilty. In this situation, the pursuit of conviction obscures the search for justice entirely. One might believe that such a situation would never occur in a democracy where the rule of law is the supreme law of the land, especially in India, which has the world's most potent apex court. Unfortunately, with the Media assuming the role of the Courts of law, this situation has become today's harsh reality.

"From fanciful words to powerful speeches, it can enhance and denigrate the perception of a person simultaneously."[6] Trial by the media, one of the Media's uglier multidimensional facets, has become an everyday phenomenon today. It is the process of declaring an accused person guilty of the crime before the court gives its verdict. The widespread circulation and publication of content portray that person as guilty and worthy of punishment even though the court proceedings are ongoing. The Fourth Estate can bully their way into anybody's life and be voyeuristic about it. They can point fingers at anyone and cast aspersions on any

[6] Piali Thatte and Kanika Adake, Trial by the Media- Judgment Outweighs Justice, 2, LEXFORTI legal journal, p.1, (2020)

institution on the pretext of the fundamental right granted to them. Every constitutional and statutory right, including the privacy of individuals, has been trampled. The difficulty reaches its peak when there is extensive coverage of the matters that are *sub judice* and publishing of opinion and information that patently prejudices the parties' interests in a pending case before a Court. The institution of the judiciary is capable of conducting a fair trial, and trials by media should be avoided, or else it would lead to interference with the work of the judiciary.

Trial by Media is a Contempt of Court and needs to be punished. The Contempt of Courts Act, 1971 defines 'contempt' as civil and criminal contempt. Criminal contempt has been defined by Section 2(c) of the Act. According to this section, publication of any matter, **scandalizing or lowering the court's authority, prejudice or interference with the due course of any judicial proceeding, obstruction/interference with the administration of justice would amount to contempt of court.**

The 200th Report of the Law Commission of India made some recommendations to **reduce the practice of media trials.** The Commission has recommended prohibiting publication of anything prejudicial towards the accused from the time of his arrest. It also recommended that the High Courts be empowered to postpone publication or telecast in criminal cases. The report noted that currently, under Section 3(2) of the Contempt of Court Act, 1971, such publications would be contempt only after the filing of the charge sheet. The Commission has suggested that the starting point of a trial should be from the ‘time of arrest’ of an accused and not from the ‘time of filing the charge sheet’. In the opinion of the Commission, such an amendment would prevent the media from prejudging or prejudicing the case. The 17th Law Commission also made recommendations to the government to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during the investigation, and trial.

The literature on the subject indicates that trial by media is a dynamic process through which the parties are exposed to the public opinion where they are condemned without being heard. This research attempts to analyze the impact of such trials by the media that is often reduced

to a public spectacle. It seeks to shed light on the environment of accused shaming created by the media that ridicules the tenets of the freedom afforded to them as an institution.

1.2 Statement of the problem

Freedom of the press is of utmost importance in a democracy. However, it must be such that it does not harm an individual's freedom. Media trial tends to threaten the right to a fair trial of an accused. Media trial is a very recent phenomenon that cannot be ignored because it interferes with the court proceedings, and it completely fails in understanding the essential gap between an "accused" and a "convict". This is a worldwide phenomenon, and the media being a powerful institution, can significantly influence the public, which may have a negative impact. Trial by media amounts to undue interference with the administration of justice and rights of the accused. This problem needs to be fixed so that social order is maintained and no one is misled in the name of sharing information.

1.3. Research Objectives

The objectives of this research are-

1. To examine the role played by the media in a democracy.
2. To study the evolution of freedom of the press in England, USA, and India.
3. To analyze the role of investigative journalism in criminal trials and public opinion of the case.
4. To critically analyze the practice of media trials.
5. To study the ill-effects of media trials.
6. To endeavor to strike a balance between the two conflicting rights, that is, the right to privacy & fair trial right of the accused versus the right of freedom of the press.
7. To suggest a few steps to curb the prejudicial reporting of cases by the media.

1.4 Research Methodology

The research methodology used in this study is the doctrinal method. The study would use various secondary sources such as books, journals, newspaper articles, online sources, research articles, statutes, conventions, etc., which are available relating to the concerned topic. The researcher will also refer to various statutory laws and the Law Commission Report of India about the topic to conclude this study.

1.5 Research Questions

1. What role do the media play in a democratic society?
2. What are the effects of media trials on trials in the court?
3. How does the media shape public opinion?
4. How does the media trial affect the rights of the accused?
5. What is the role of social media in trial by the media?
6. What criteria can be evolved to strike a balance between the rights of the press and the rights of the accused?
7. Whether the current regulatory mechanism of the media is sufficient to control the practice of media trials?

1.6 Hypothesis

1. Media trials interfere with the administration of justice & rights of the accused.

2. There is a need for reforms in the current regulatory mechanism to reduce media intervention in criminal trials.

1.7 Literature Review

- M.P. Jain, “Indian Constitutional Law”, 7th edition, LexisNexis India

The author, in this book, elaborately discussed the "freedom of speech and expression" under the Constitution of India. He also discussed the freedom of the press, which flows from the freedom of speech and expression. The author further pointed out the factors that constitute restrictions on the freedom of the press. He also dealt with the issue relating to the interference with the administration of justice. These facets of freedom of the press are of great importance to the researcher for dealing with the subject of the study more effectively.

- D. S. Chopra and Ram Jethmalani, “Cases and Materials on Media Law”, Thomas Reuters, New Delhi.

The authors of the book have attempted to present the statutory laws and judgments dealing with media. They have discussed series of cases relating to freedom of the press and reasonable restrictions on that freedom. The authors also explained the laws relating to defamation and contempt of court, which are the grounds to restrict press freedom. The book contains a chapter solely based on ‘media trial’ in which various cases are discussed in detail and the effect of the media trial on those cases. Through these cases, the authors have criticized the indulgence of journalists in such trials.

- Juhi P. Pathak, “Introduction to Media Laws and Ethics”, Shipra Publications, New Delhi.

The author discussed the history of press laws in India and referred to the US and UK. The author also mentioned the need for and the development of freedom of the press. But, at the same time, she criticized the press for affecting the right to a fair trial, right to privacy, and defamation. The author expressed her views relating to constitutional provisions, press freedom, and law. This has simplified the researcher's task in understanding various pros and

cons revolving around press freedom, which will help develop an adequate conclusion to the study.

- M. Neelamalar, "Media Law and Ethics", Prentice Hall India Learning Private Limited

The author begins with the history of law relating to the media in India and discusses the specific provisions in the Constitution which are essential for a journalist to know. Then she defines the concepts of freedom of media, defamation, and Intellectual Property Rights. Further, the author also discusses the provisions of the IPC and the CrPC relevant to the media. Finally, the author throws light on media law concerning women and children. The book also includes several important cases which have enabled the researcher to relate various acts and regulations to real-life situations.

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

The authors of this article begin by describing the importance of press freedom and how it behaves like the fourth pillar of democracy. The authors also point out the media's role in a democratic society. The authors attempted to analyze the impact of trial by media on judicial proceedings and, for this purpose, referred to prominent cases. The authors of this article are not much in favor of curbing media freedom but are more inclined to hold the media accountable. They focused on the idea to make media more careful and cautious of its conduct.

- Prerna Priyanshu, "Media Trial: Freedom of Speech v. Fair Trial", 3 IJLLJS 284 2015.

The author of this article points out the influence of media on the opinions of the people and the misuse of freedom of speech by the media. The author further makes detailed discussion relating to media trials and fair trials. The author also highlighted the impact of media trials

on the accused and subconscious of judges and examined the justifications put forward by the media. The author gives a brief idea of the seventeenth Law Commission recommendations. From the understanding of this article, the researcher will continue further studies on media trials and Law Commission recommendations which would be beneficial for the research work.

1.8 Chapterization

The study is divided into five chapters as follows-

Chapter 1, titled "Introduction," gives a general introduction to the research topic. It includes a statement of the problem, research objectives, research questions, hypothesis, and literature review.

Chapter 2, titled "The origin of Freedom of Speech & Press," will focus on the development of the freedom of speech and the press in England, USA, and India. from both a historical and theoretical perspective.

Chapter 3, titled "Trial by Media and its effects," will deal with the ill-effects of media trials. This chapter will also describe media trials, social media trials, and the concept of open court in India. Further, this chapter will also explain how media trial affects the rights of the accused.

Chapter 4, titled "Analysis of Media Intervention in some Prominent Cases & Gaps in the existing system," will refer to various cases of trial by media. With the help of those cases, this chapter will explain how media trials interfere with the administration of justice. Further, this chapter will also point out some of the flaws in the existing regulatory mechanism of the media.

Chapter 5, titled "Conclusion & Suggestions," will give the concluding remarks to this study. Further, suggestions will also be made to reduce the practice of trial by media.

CHAPTER-2

The Origin Of Freedom Of Speech And Press

2.1 Introduction

Freedom of speech and expression is regarded as the most basic condition of liberty. That is why it occupies a preferred and essential position in the hierarchy of liberty in various democracies. Over a period of time, it has evolved so much that now it also includes freedom of the press within its ambit. A free and independent press is a necessary component of democracy as it plays a vital role of a conscious keeper, a watchdog of the nation's institutions, and endeavors to attend to the wrongs in our framework by bringing them out into the open, hoping for a correction. Therefore, in order to understand the intricacies of press freedom, this chapter focuses on the development of the freedom of speech and the press from both a historical and theoretical perspective.

2.2 Freedom of Speech & Expression in England

While discussing free speech, many writers start with the signing of the Magna Carta in 1215. Following the rebellion by the English nobility against his rule, King John put his royal seal on *Magna Carta* or *the Great Charter.* This document, which was essentially a peace treaty between John and his noblemen, also guaranteed that the King would respect feudal rights and privileges, uphold the church's freedom, and maintain the nation's laws. Magna Carta is widely known as one of the most important legal documents in the development of modern democracy as it was a crucial turning point in the struggle to establish freedom.

The next recorded achievement in improving the fundamental liberties was the Petition of Right, created in 1628 by the English Parliament and sent to King Charles I as a statement of civil liberties. The Petition of Right, which Sir Edward Coke initiated, was based on earlier statutes &

charters. It asserted four principles: (1) No taxes may be levied without the consent of parliament, (2) No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus), (3) No soldiers may be quartered upon the citizenry, and (4) Martial law may not be used in times of peace. Thus, this document set out certain rights and liberties against the crown's prerogatives for the ordinary man.

The Glorious Revolution of 1689 restored the monarchy in England. As a result, the Parliament put William III and Mary II on the throne, and part of the settlement was signing the English Bill of Rights. This was another milestone in the history of freedom of speech & expression in England as, in addition to certain fundamental civil rights, it also granted freedom of speech within the parliament, which we know as parliamentary privilege today. English Bill of Rights enacted in 1689 stated: *"That the freedom of speech and debates or any proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament."*

However, during the 17th century, one form of speech that was widely restricted in Britain was *seditious libel*, and laws were set up that made criticizing the government a crime. The King was above public criticism, and articulations reproachful to the government were prohibited by the English Court of the Star Chamber. Truth was not a defense to seditious libel at that time because the objective was to prevent and punish all government condemnation. Not until 1843, truth became a legitimate defense in seditious libel suits by Lord Campbell's Libel Act.

During the 19th century when J. S. Mill further developed the "freedom of speech" arguments in his philosophical essay ***'On Liberty***.' He believed that the right of expression rests with each person until he harms no other person due to such right. Mill observed that *"if all mankind minus one, were of one opinion, and one, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."*[7] At the time when J. S. Mill was involved in writing, England reached the final stage of liberalizing its "freedom of speech" laws. However, even after that, there were several other kinds of controls over free speech, such as blasphemy, sedition, private libel, and so on.

[7]Wikipedia, https://en.wikipedia.org/wiki/Freedom_of_the_press_in_the_United_Kingdom (last visited Jul. 1, 2021)

In the year 1948, when UDHR was passed, it guaranteed under ***Articles 18 and 19*** that *everyone has the right to freedom of thought, conscience and religion*, and *everyone has the right to freedom of opinion and expression*. Almost all the modern constitutions in the world, barring the UK, incorporated those Articles of UDHR. However, the watershed moment in freedom of speech in the UK happened when the European Convention on Human Rights (ECHR) was incorporated into the national law of the United Kingdom by the Human Rights Act, 1998. Article 10(1) of the Human Rights Act states:
"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."[8] Therefore, this article provides freedom of expression and grants the right to hold opinions and exchange ideas without state interference. It specifically included politics and matters of public interest.

Freedom of expression is not an absolute right. This means that it may be curtailed in certain situations provided it is prescribed by law and necessary in a democratic society to protect a legitimate aim of the state. Article 10(2) of the Human Rights Act specifies as follows:
"The exercise of these rights, since it carries with it certain obligations, may be subject to such formalities, conditions, restrictions, or penalties as may be prescribed by law and as are necessary for a democratic country, in the interests of national security, territorial integrity, or public safety, for the prevention of social disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, and for maintaining the authority and impartiality of the judiciary."[9]

The ECHR held that the determination as to whether the restriction on freedom of expression is necessary or not depends upon the existence of an immediate social need and that the restrictions should be no more than is proportionate.

[8] Human Rights Act, 1998, § 10(1), C.42, U.K. (2012)
[9] Human Rights Act, 1998, § 10(2), C.42, U.K. (2012)

2.3 Freedom of Press in England

Prior restraint has always been a part of the history of the printing press in England. In 1476, W. Caxton introduced the art of printing to England. The initial years of printing saw a small number of printers publishing only non-controversial matters. However, when Henry VIII established himself as head of the Church in England, religious controversy inevitably headed for entanglement with political issues. The monopolies and limited licensing instruments were supplemented constantly with new rules and regulations that aimed to control content and regulate commerce. The pinnacle of restrictive practices was reached in 1586 under Elizabeth I when a Star Chamber decree specifically limited the number of printing establishments and required all books to be reviewed before publication by the Archbishop of Canterbury or the Archbishop of London. Control was applied through the Stationers Company, a society of the licensed printers.

In 1641, the Parliament abolished the Star Chamber, thus incidentally ending the licensing system's mechanism. For quite a while, the press was left without an effective censor and powerful copyright protection. The bitter verbal battles and the disorder of the printing trade that followed, at last, moved the parliament to formulate a new censorship enforcement mechanism. It set up a leading group of Licensors in 1643 and re-established authorization position to the Stationers Company through the courts. Restriction moved from royal and episcopal control to parliamentary and puritan control. The imposing business models of the Stationers Company were also scaled back. However, the licensing system continued.

John Milton made an early defense of press freedom in 1644 in his pamphlet '***Areopagitica***.' It was written in response to the British Parliament's passage of Licensing order of 1643. Milton argued that *"Truth and understanding are not such wares as to be monopoliz'd and traded in by tickets and statutes, and standards."* In this work, Milton argued against this type of government censorship, and propagated the idea, writing, *"when as debtors and delinquents may walk abroad without a keeper, but unoffensive books must not stir forth without a visible jailer in their title."*[10] Milton's focal contention was that the individual is fit for utilizing reason and distinguishing right from wrong and good from the bad. "To have the option to practice this right

[10] *Supra note 7.*

rationally, the individual must have unlimited access to the ideas of his fellow men in *a free and open encounter."*[11] Milton's works fostered the concept of *the open marketplace of ideas* according to which, when people argue with each other, only good arguments will prevail. At that time, Milton's work did very little in stopping the act of licensing. However, it is recognized as significant writing which defended press freedom eloquently.

With the Restoration of the monarchy in 1689, the Printing Act of 1662 established the licensing system under the authority of the parliament with far greater specificity in the requirements for a license. A Surveyor of the Press under the Secretary of State was established, but it was a precarious job. The approval of books that were offensive to the Crown would lead to his immediate removal. The Glorious Revolution of 1689 brought no immediate revolution in the licensing system, but in 1694 Parliament permitted the licensing act to expire. John Locke also contributed to the lapse of licensing Act in 1694. He believed that *"censorship is an improper exercise of power by government and freedom of expression is a natural right."* The direct legacy of the termination of the licensing act and the absence of prior restraints was the belief that expression was not limited to the privileged few but was common property for all individuals. Regardless of the limitations forced by seditious libel laws, discussion of the wisdom of government measures spread from parliament to the populace.

The 18th century saw the growth of political journals and journalists. The independent tradesmen who had profited from the termination of the Printing Act extolled the virtues of its abolition, as the absence of prior censorship progressed from being a simple statement of fact to a principle. This principle was expressed in its most recognizable form by **William Blackstone** in his ***Commentaries on the Laws of England-*** *"The liberty of the press is indeed crucial to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity."*[12] With the guarantee of freedom of speech comes the

[11] *Ibid.*
[12] Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt1_2_1/ (last visited Jul. 6, 2021)

guarantee of freedom of the press and this freedom is not absolute. Article 6 of the ECHR provides that- *"In the determination of his civil liberties and obligations or of any criminal charge against him, everybody is qualified for a fair and public hearing within a reasonable time by an autonomous and impartial authority established by law. Judgment shall be pronounced openly, however, the press and public might be avoided from all or part of the trial in the light of legitimate concern for ethics, public order or national security, where the interests of juveniles or for the protection of the privacy of the parties, or to the extent necessary in the opinion of the court in special circumstances where exposure would bias the interests of justice and equity."* Now, the position is that since the United Kingdom joined ECHR, the provisions dealing with the fair trial also apply to the English legal system, and the freedom of the press can be curtailed if it harms the interests of justice.

2.4 Freedom of Speech & Expression in the United States of America

During English colonialism in America, the regulations of speech were very restrictive. After the invention of the printing press in 1476 in England, the crown was critical of opinions being published and printed against it. Hence, there were many restrictions against the free speech of the press. America being an English colony was also subject to this rule. However, the degree of restrictions on freedom of speech varied in different colonies. During the colonial period in America, prosecutions for seditious libel were fewer than those in England.

In 1735, John Peter Zenger, a New York publisher, was tried for seditious libel for criticizing the Royal Governor of New York through his publication. Andrew Hamilton, who represented Zenger, argued that *"truth shall be a defence to libel,"* but the court did not agree with this contention. However, the jury was persuaded by Hamilton's argument to disregard the law on seditious libel and acquitted Zenger. At last, the case led to the triumph of freedom of speech. It established the principle that truth is a defense to libel, and a jury could determine whether a publication is seditious or defamatory.

In the period between1776-1791, the freedom of speech in America was practiced in its real sense, where people came out with their opinions and wildly criticized the government. This implies that freedom of expression was practiced even before the citizens' rights were explicitly

granted through the Constitution. Initially, in 1787, when the US constitution was first introduced, it did not include any provision that granted its citizens the liberty to speak. In 1789, James Madison introduced the draft of **the American Bill of Rights**, which were 12 amendments to the Constitution, in the parliament, and it was later adopted in 1791. The federalists opposed this bill, and Roger Sherman was one of the leading opponents of including the bill of rights in the Constitution.

Nevertheless, 10 out of 12 amendments proposed in the bill were adopted on 15th December 1791. Out of these ten amendments, the First Amendment talks about the right to speech and expression. The **First Amendment** of the American Constitution provides that ***"Congress shall make no law with respect to any establishment of religion, or prohibit the free exercise thereof; or abridge the freedom of speech, or of the press, or the right of the people to assemble peacefully, and to petition the Government for reprisal of grievances."***

To comprehend the inspirations and intense emotional involvement of the framers of the Constitution, with its added Bill of Rights, one should look at the progression of events in English and colonial American history. The First Amendment's prohibition against interference with free speech and press directly resulted from centuries of the bitter experience of living under extremely repressive English laws controlling free speech and press. The authority of government was regarded as supreme, irresistible, and absolute for a long time. Before the English Revolution of 1688, absolute sovereignty had been exercised by the monarchs. Subsequently, the same power was vested in the British parliament. Any criticism of the government was considered not only objectionable but dangerous heresy which must be ruthlessly suppressed. The First Amendment rejected this entire concept.

"The term freedom of speech incorporated in the First Amendment encompasses the decision of what to say and what not to say."[13] The American Supreme Court has recognized several categories of speech given lesser or no protection by the First Amendment and recognized that governments might enact *content-based restrictions and reasonable time, place, or manner restrictions* on speech. The First Amendment's constitutional right of free speech, which applies to state and local governments under the incorporation doctrine, prevents only government

[13] Riley vs. National Federation of the blind 487 US 781 (1988)

restrictions on speech, not restrictions imposed by private individuals or businesses unless they act on behalf of the government.

Restrictions on speech

The American Supreme Court has recognized several different types of restrictions and subjects each type of law to a different level of scrutiny.

- **Content-based restrictions-** A content-based law or regulation restricts speech based on the substance of what it communicates. In general, the government may not regulate speech because of its message, ideas, subject matter, or content. However, the legality of content-based regulation is determined by a compelling interest test derived from equal protection analysis. The government must show that the restriction is needed to serve a compelling state interest and is attracted to accomplish that end.
  The Court has recognized two ways in which the government can impose content-based restrictions. Firstly, a government regulation of speech is content-based if the regulation prima facie draws distinctions based on the message a speaker conveys. For example, in **Boos vs. Barry**[14], the Court held that an ordinance prohibiting the display of signs near any foreign embassy that brought a foreign government into public disrepute prima facie drew a content-based restriction. Secondly, the Court has also recognized that primarily content-neutral laws can be considered a content-based restriction on speech if it cannot be justified without reference to the content of speech or was adopted because the government was in conflict with the message that the speech conveys. Subsequently, in an example provided in **Sorrell vs. IMS Health**[15], "the Court noted that if a government bent on frustrating an impending demonstration passed a law demanding two years' notice before the issuance of parade permits, such a law, while primarily being content-neutral, would be content-based because its purpose was to suppress speech on a particular topic."[16]

[14] Boos vs. Barry, 485 U.S. 312 (1988)
[15] Sorrell vs. IMS Health, 564 U.S. 552 (2011)
[16] Cornell Law School, https://www.law.cornell.edu/constitution-conan/amendment-1/government-restraint-of-content-of-expression (last visited, Sept. 5, 2021)

Designating law as either content-based or content-neutral is a significant initial phase in determining whether it violates the First Amendment. Content-based laws are presumed unconstitutional and subject to the highest form of judicial review, whereas content-neutral laws are generally only subject to intermediate scrutiny.

- **Time, place, and manner restrictions-** Perhaps the earliest mention of the principle of time, place, and manner restrictions came in the case of **Cox vs. Louisiana**[17]. Justice Goldberg stated that *"From these decisions, certain clear principles arise. The rights of free speech and gathering peacefully, while being fundamental to our democratic society do not mean that everyone with beliefs or opinions to communicate may address a large group of people at any public place anytime."* From this, the American Supreme Court evolved the doctrine of time, place, and manner restrictions.

  It is easy to erroneously interpret the First Amendment as conceding individuals the option to say anything wherever and whenever they want. However, the Supreme Court has interpreted that the First Amendment never intended to give such power to people because it does not protect speech at all times and in all places. The court has consistently ruled that the government has the power to impose restrictions on free speech concerning its time, place, and manner of delivery. It was held in **Clark vs. Community for Creative Non-Violence,**[18] "time, place, and manner restrictions are validly provided as they are justified without reference to the content of the regulated speech. They are formulated to serve a significant government interest, and that they leave open ample alternative channels for communication of the information." Since time, place, and manner restrictions put a value on convenience and public order, there are certain types of behavior that is not permitted. For instance, one cannot shout "fire" in a crowded space where there is no fire. This action would lead to an uproar of chaos and can harm others. Hence, this act would not qualify as a protected right under the First Amendment. As Justice Holmes put it in **Schenck vs. United States**[19] "even the most severe form of

[17] Cox vs. Louisiana, 379 U.S. 536 (1965)
[18] Clark vs. Community for Creative Non-Violence, 468 U.S. 288 (1982)
[19] Schenck vs. United States, 249 U.S. 47 (1919)

protection over free speech would not protect a man in falsely shouting fire in a theatre and causing alarm."[20]

These restrictions are proved constitutional time and again by the Supreme Court in many cases. In **The City of Chicago vs. Alexander[21],** it was held that the First Amendment does not ensure the right to express one's thoughts or opinions at all times and places in any manner. Thus, the state may impose reasonable restrictions on the time, place, or manner of constitutionally protected speech occurring in public places.

2.5 Freedom of Press in the United States of America

Freedom of the press, which is the right to report news or circulate opinion without any prior restraint from the government, was considered "one of the great bulwarks of liberty" by the founding fathers of the American Constitution. In the United States, freedom of speech & expression of the press is legally protected by the First Amendment to the Constitution. However, there are certain restrictions on the freedom of the press, such as defamation law, barriers to access information, and lack of protection for whistleblowers who face prosecution under the World War I era Espionage Act, 1917 for any leaks to the media in the public interest.

The First Amendment allows information, ideas, and opinions to be communicated without government interference, constraint, or prosecution. However, before the signing of the Declaration of Independence, the media was subject to a series of regulations under British rule. British authorities endeavored to preclude the publication and circulation of information of which they did not support. In 1734 one of the earliest cases concerning freedom of the press happened in a libel case against The New York Weekly Journal publisher Zenger by the British governor William Cosby. The jury acquitted Zenger, and the publication continued until 1751. Around then, there were just two newspapers in New York and the second newspaper was not critical of Cosby's administration.

[20] *Ibid.*
[21] The City of Chicago vs. Alexander, 2014 IL App (1st) 122858

During World War I, the Espionage Act, 1917 and the Sedition Act, 1918, which amended it, forced limitations on the press during wartime. The acts imposed a fine of USD 10,000 and imprisonment of up to 20 years for those publishing disloyal, profane, or abusive language about the government, the Constitution, the military or naval forces, or the flag of the United States. **In Schenck vs. United States**[22], the Supreme Court was requested for the first time to invalidate a law violating the Free Speech Clause. It was a case related to the Sedition Act of 1918, which condemned disloyal, scurrilous, or abusive language against the government. In this case, the Supreme Court observed that *"the question in such a case is whether the words are used in such circumstances and are of such nature as to create a 'clear and present danger,' that they will bring about the substantive evils that Congress has a right to prevent."* Thus, in this case, the court evolved a new doctrine of *clear and present danger.*

While discussing freedom of the press, one of the landmark judgments came from the US Supreme Court in **Near vs. Minnesota**[23] in which, the court recognized the freedom of the press by rejecting prior censorship of publications. In this case, a statute was passed by the Minnesota legislature empowering the Courts to cease 'malicious, scandalous and defamatory newspapers'. The court held that the statute was unconstitutional as it violated the First Amendment. Then in **Branzburg v. Hayes**[24] freedom of the press was described as a "*fundamental personal right, not confined to newspapers and periodicals."*

New York Times Co. vs. United States[25] was another landmark judgment of the Supreme Court on the freedom of the press. This decision made it possible for *The New York Times* and *The Washington Post* newspapers to publish the then-classified *Pentagon Papers* without the risk of government censorship or punishment. President Richard Nixon had claimed executive authority to force The New York *Times* to suspend publication of classified information in its possession. In this case, the issue was whether the constitutional freedom of the press, guaranteed by the First Amendment, was subordinate to a claimed need of the executive branch of government to maintain the secrecy of information. The court held that the First Amendment protected the right of *The New York Times* to print the materials. Justice Hugo

[22] *Supra note 19*
[23] Near vs. Minnesota, 283 U.S. 697 (1931)
[24] Branzburg vs. Hayes, 408 U.S. 665 (1972)
[25] New York Times Co. vs. United States, 403 U.S. 713 (1971)

Black wrote an opinion that elaborated his view of the absolute superiority of the First Amendment: *"The injunction against The New York Times ought to have been vacated without oral argument when the case was first presented. Every second's continuance of the injunctions amounts to a flagrant, indefensible, and continuing infringement of the First Amendment right. The press is supposed to serve the governed, not the governors. The Government's power to censor the press was annihilated so that the press would remain free from the control of Government. The press was given protection so that it could bring out secrets of the government and ensure transparency and accountability. Only a free and unrestrained press can effectively expose shortcomings of the government. Furthermore, fundamental among the obligations of a free press is the obligation to prevent any organ of the government from deceiving the people. To find that the President has 'inherent power' to halt the publication of news would wipe out the First Amendment and destroy the fundamental right and security of the very people the Government hopes to make secure. The Framers of the First Amendment, completely mindful of both the need to defend a new nation from the abuses of the English and Colonial governments, tried to give this new nation strength and security by providing that, freedom of speech, press, religion, and assembly should not be violated."*

The press does not enjoy unlimited freedom under the First Amendment. The government can impose restraints on the media on the grounds of '*content-based restriction'* and *'time, place and manner restrictions'.* In **Federal Communications Commission vs. Pacifica Foundation**[26], the Supreme Court allowed the government to regulate indecent speech over the broadcast medium. The Court upheld the FCC's power to regulate broadcast media, citing two governmental interests. In the first place, the 'exceptionally inescapable' nature of these broadcasts permits them to seep into the security of the home without the assent of the watcher. Second, these broadcasts are instantly available to kids whose vocabulary could be developed in a moment by hearing a foul or profane language. Thus, the Court held that these two concerns were sufficient to justify special treatment of indecent broadcasting, thereby allowing the FCC to regulate the broadcast media and fine broadcasters for airing inappropriate content.

The 2021 World Press Freedom Index published by Reporters without Borders, a French media watchdog, has placed America at 44th position out of 180 countries in terms of press freedom.

[26] Federal Communications Commission vs. Pacifica Foundation, 438 U.S. 726 (1978)

The report applauded the Joe Biden administration for ensuring accountability and transparency in governance and condemned the Donald Trump administration's final year in office, which saw nearly 400 journalists assaulted and more than 130 detained in custody as they tried to cover nationwide protests on systemic racism and police brutality towards people of color. According to this report, the United States had a press freedom index of 23.93 points, up slightly from 23.85 a year earlier. The report suggests that the greater the index score, the worse the situation is regarding freedom of the press in a given country. In the years displayed from 2015-2021, the index score has decreased by 0.48 points, denoting an improvement in press freedom in the United States.

2.6 Freedom of Speech & Expression in India

The **Constitution of India Bill, 1895** is considered the first Indian articulation of a constitutional vision. It contained the provision related to freedom of speech and expression – *"Every citizen may express his thoughts by words or in writing, and publish them in print without prior censorship, but they shall be held accountable for abuses, which may be committed by them while exercising this right in such mode as the Parliament may determine."* There were other constitutional antecedent documents too, which contained provisions for freedom of speech and expression. Those were: **Commonwealth of India Bill 1925**, **Nehru Report 1928**, and **States and Minorities 1945**. In most cases, some form of provision for restrictions on freedom of speech and expression was there.

The Constituent Assembly of India debated the freedom of speech and expression (Article 19(1) of the Draft Constitution, 1948 for its inclusion into the Constitution. The draft article read: *Subject to the other provisions of this article, all citizens shall have the right – (a) to freedom of speech and expression;*

Proviso: Nothing in clause (1)(a) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the security of, or tends to overthrow, the State.

Most members of the Constituent Assembly agreed to the inclusion of this right in the Constitution. However, conflicts emerged around the part which imposed restrictions on the right. While some of the members opposed the mention of restrictions on the right, others supported it. Members who opposed the restrictions argued that it is not fruitful to have a right to freedom of speech and expression with restrictions. According to them, imposing restrictions on the freedom of speech was a colonial practice. Members who supported the restrictions argued that imposing a reasonable restriction was fine as the government was no longer colonial. They also argued that the state's law & order and security could not be compromised, and the right to free speech was not unrestricted anywhere in the world. In the end, the Constituent Assembly voted in favor of the Article. It included the right in the Constitution of India, 1950, with restrictions similar to the ones mentioned in the Draft Constitution, 1948.

The law in the present form finds its root in Section 295(A) of the Hate Speech Law enacted by the British Administration in India. During the colonial era, the liberties of the Indians were at a total stake. The atrocities of the British Empire curbed the freedom of expression and speech of the Indian masses. The prevention of the Seditious Meetings Act, 1907, which forestalled open conversations and the formation of Unions, was also the main thrust behind the fundamental right of freedom of speech and expression being guaranteed to the citizens, which was previously denied to them.

Freedom of speech enjoys a unique position in a democratic country like India. The significance of this freedom can be easily understood by the fact that the preamble to the Constitution itself ensures to all its citizens the liberty of thought, expression, belief, faith, and worship. By its presence in the preamble to the Constitution, this right has transformed itself into a fundamental human right. Article 19(1)(a) of the Constitution provides that all citizens have a right to freedom of speech and expression. Freedom of Speech and expression includes the right to express one’s thoughts, beliefs, and opinions freely by words, in writing, by printing, in the form of pictures, or any other mode. Thus, it means that one can express their ideas in any communicable form or visual representation, such as gestures, signs, and the like. The actual embodiment of the right to speak freely lies in the fact that it forms and shapes public opinion, brings about healthy discussions, helps better exchange ideas and opinions, and serves as the ground of debates and effective decision-making, which develops stronger democratic institutions.

While explaining the scope of freedom of speech and expression In **Maneka Gandhi v. Union of India,**[27] Justice Bhagwati was of the view that *"Democracy depends mainly on free debate and open conversations, for that is the only corrective of government action in a democratic setup. If democracy is government of the people, for the people and by the people, it is obvious that every citizen is entitled to participate in the democratic process and in order to enable him to exercise this right rationally, free and general discussion of public matters is essential."*

While expanding the scope of free speech and expression, the Supreme Court opined that the right to obtain information is another feature of the right to freedom of speech and expression. The right to impart and receive information without any restriction is a significant part of this right because an individual cannot form a strong opinion or make an informed choice and effectively participate socially, politically, or culturally without receiving adequate information. The court in the case of **State of Uttar Pradesh vs. Raj Narain** [28] held that Article 19(1)(a) of the Constitution provides to its citizens the freedom of speech and expression in addition to protecting their right to know and the right to receive information regarding matters of public concern.

However, no freedom can be absolute or without any restriction. Therefore, while it is necessary to maintain and preserve freedom of speech and expression in a democracy, it is also essential to place some restrictions on this freedom to maintain law & order in society. Accordingly, Article 19(2) of the Constitution provides that the state is allowed to make a law imposing 'reasonable restrictions' on the exercise of the right to freedom of speech and expression in the interest of the security of the state, friendly relations with the foreign states, public order, decency, morality, sovereignty and integrity of India, or in relation to contempt of court, defamation or incitement to an offense. Thus, no restrictions can be placed on the right to freedom of speech and expression on any ground other than those specified in Article 19(2).

A look at the grounds contained in Article 19(2) shows that they are all conceived in the national interest or the interest of the society. The first set of grounds- the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, and public order, are concerned with the national interest. While, the second set of grounds- decency, morality,

[27] Maneka Gandhi vs. Union of India, AIR (1978) SC 597
[28] State of Uttar Pradesh vs. Raj Narain (1975) AIR 865

contempt of court, defamation, and incitement to offense, are concerned with the interest of society. Some of the grounds on which restrictions can be imposed are-

- Security of the state and public order

  Security of the state is of vital importance, and a government has the power to restrict the activity affecting it. Under Article 19(2), reasonable restrictions can be imposed on freedom of speech and expression in the interest of the security of the State. However, the term "security of the state" refers only to severe and exasperated forms of public order, e.g., rebellion, taking up arms against the State, uprising, and not ordinary breaches of public order such as unlawful assembly, riots, affray, etc. Thus, speeches or expressions by an individual, which incite or encourage the commission of violent crimes such as rebellious acts against the government, crimes of violence intended to overthrow the government, external aggression, are matters, which would undermine the security of the State.

  On the other hand, public order is a broad concept that entails the idea of a peaceful society where its members can live in harmony while maintaining socially acceptable morals and values. Thus, the government considers the aspirations and opinions of the general public while sanctioning laws in light of a legitimate concern for public order. Public order is different from Public security; it is considered that any disturbance to peace and tranquility to public peace harms public order. The Supreme Court held in **The Superintendent, Central Prison, Fatehgarh vs. Ram Manohar Lohia**[29], public order must be differentiated from the other grounds mentioned under Article 19(2) and taken in an exclusive sense to mean public peace, safety, and tranquility *instead of* national upheavals, such as revolution, civil strife, and war, affecting the security of the State.

- Friendly relations with foreign states

  The purpose behind restricting the freedom of speech concerning friendly relations with foreign states is that persistent and malicious propaganda against a foreign power having friendly relations with India may cause considerable harm to its foreign policies, which may embarrass India on an international level. It may ultimately affect India's relations

[29] Fatehgarh vs. Ram Manohar Lohia (1962) 2 S.C.R. 321

with foreign states and threaten the security of the country. That is why free speech can be curtailed to prevent people from indulging in such propaganda. This ground is of broad import as it is susceptible to supporting legislation that may even restrict legitimate criticism of the foreign policies of the Government of India.

- Sovereignty and integrity of India

  This ground was added through the Constitution (Sixth Amendment) Act, 1963, to Article 19(2). Upholding the sovereignty and integrity of India is of utmost priority to the government. Keeping this in mind, freedom of speech and expression can be curtailed so as not to permit anyone to challenge the country's sovereignty or preach something that might result in a threat to the country's integrity.

- Decency or Morality

  The terms ‘Decency’ and ‘Morality’ are of variable content having no fixed meaning because ideas about decency or morality vary from society to society and from time to time depending on the standards of morals prevailing in contemporary society. Nonetheless, the way to express something or say something should be a decent one and should not affect society adversely. Our Constitution has taken care of this assertion and inserted decency and morality as a ground to curb free speech & expression. The words morality and decency are of broad interpretation. Sections 292-294 of the Indian Penal Code provide for restrictions on freedom of speech and expression to maintain decency in the society. These sections prohibit the sale, distribution, and exhibition of obscene works in public places. Till now, no fixed standard has been laid down as to what is immoral and indecent. Therefore, it remains a subjective matter for the courts to decide. This ground of restriction was introduced to restrict any speech or publication that may disregard public morals.

- Contempt of Court

  In a democratic society, freedom of speech and expression is a special privilege and a salutary right. However, at the same time, ensuring the independence and integrity of the judiciary and public confidence in the administration of justice is also essential. It thus

becomes necessary to draw a balance between the two values. The Constitution recognized this, and accordingly, power has been conferred upon the Supreme Court under Article 129 and the High Courts under Article 215 to punish for its contempt. Freedom of speech and expression guaranteed under Article 19(1)(a) is thus subject to Articles 19(2), 129, and 215.

The question of contempt of the Supreme Court and the High Courts has already been discussed earlier. In the case of **E.T. Sen vs. E. Narayanan**[30]*,* it has been held that the High Courts can punish for contempt of other courts under the Contempt of Courts Act, 1952. A challenge to the Act as imposing an unreasonable restriction on the right under Article 19(1) (a), because it does not define the expression 'contempt of Court', has been rejected on the ground that the term has a well-recognized judicial interpretation.

- Defamation

  Defamation is both a crime as well as a tort. **Winfield** defines defamation as: *"Defamation is the publication of a statement which reflects on a person's reputation and tends to bring him down in the estimation of right-thinking members of the society."* How an individual possesses the right to freedom of speech and expression, in the same way, those people also have a "right to reputation." Therefore a person's freedom, be it of any type, must not affect the reputation or status of another person. That is why the Constitution considers it as a ground to restrain the freedom of speech.

- Incitement to an offense

  This ground was added by the **Constitution (First Amendment) Act,** 1951. Having the "freedom of speech and expression" does not mean that it permits people to incite offense. Incitement of a crime is punishable according to the general theories of criminal law. The Constitution of India does not define what an 'offence' is, but according to the General Clauses Act, 1897, the term offense means "any act or omission made punishable by any law for the time being in force." Therefore, a person's freedom of speech can be curtailed on this ground.

[30] E.T. Sen (Retd.) vs. Edatata Narayanan And Ors., AIR (1969) Delhi 201

2.7 Freedom of Press in India

Although Article 19 does not have an express provision for freedom of the press, the fundamental right of press freedom is implicit in the right to freedom of speech and expression. In the famous case of **Express Newspapers (Bombay) (P) Ltd. v. Union of India**[31] the Supreme Court observed the importance of the press very aptly. The court held in this case that *"In today's world freedom of press lies at the heart of social and political intercourse. The press has now arrogated to itself the role of the public educator making formal and non-formal education conceivable on a large scale, particularly in the developing world where television and other kinds of modern communication are still not available to all sections of society. The press aims to promote public interest by publishing facts and opinions without which a democratic electorate cannot make responsible decisions. Newspapers being purveyors of news and opinions having a bearing on public administration, very often carry information which would not be palatable to Governments and other authorities."*

In another landmark case of **Romesh Thapar vs. State of Madras**[32] , Chief Justice Patanjali Shastri observed: *"Freedom of speech and the press lay at the foundation of all democratic organizations as without free political discussion, no public education so crucial for the legitimate functioning of the popular government is possible."* The above assertion of the Supreme Court represents that the freedom of the press is essential for the proper functioning of a democracy.

Democracy means the government of the people, for the people, and by the people. Therefore, every citizen must be entitled to participate in the democratic process. To enable him to rationally exercise his right to choose, free and general discussion of public matters is essential. This explains the constitutional views of the freedom of the press in India. The press' liberty consists in printing without any license or prior censorship subject to the consequences of the law. Thus, the freedom of the press means freedom to

[31] Indian Express Newspaper v. Union of India, (1985) 2 S.C.R. 287

[32] Romesh Thapar vs. State of Madras, (1950) AIR 124

print and publish what one pleases, without prior permission, but the press would be held liable if it is found to violate the grounds mentioned under Article 19(2). This freedom is limited to mainstream print media and extends to pamphlets, circulars, and other sorts of publications giving information and opinion. Thus, the press has the same right as an individual, but it does not mean that it stands on a higher footing than any other citizen, and it cannot claim any privilege unless conferred explicitly by law. Even during the Constituent Assembly Debates, **Dr. B. R. Ambedkar** said that: *"Press has no special liberties which are not to be given or which are not to be exercised by the citizens. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press."*[33]

The freedom of the press is more for the benefit of the general public than the press itself because the public has a right to know, and the government has a 'duty to educate' and furnish information to the people whenever prompted. Imposition of censorship on print media or broadcast media before publishing any news would violate the constitutional imperative of free speech and expression. In **R. Rajagopal vs. State of T.N**[34] the Court ruled that there is no authority of the government established by law to impose "prior restraint" on defamatory publications against its officials. However, after the publication of such defamatory material, if it is proved to be based on false facts, action for damages could be taken by the aggrieved person. Similarly, in **the Indian Express Newspapers case**, the Court held that pre-censorship imposed, circulation curtailed, or newspaper prevented from starting under a law led to the infringement of freedom of speech and expression.

In **Sakal Papers Ltd. vs. Union of India**[35], the petitioner challenged "The Newspaper (Price and Page) Act, 1956" and "The Daily Newspapers (Price and Control) Order, 1960" for being unconstitutional on the ground that this Act and government order directed the newspapers about the "minimum price" it can charge and the "number of pages" it can publish. This was an absolute infringement of the freedom of the press. The

[33] Constituent Assembly Debates: Official Report, (Delhi, 1946-1950), VII, p. 18.
[34] R. Rajagopal vs. State of Tamil Nadu, (1994) 6 SCC 632
[35] Sakal Papers Ltd. vs. Union of India, AIR 1962 SC 305

petitioners were asked to raise the price without increasing the newspaper pages, which in turn reduced the circulation. The Supreme Court ruled this order "invalid" because its motive was to minimize the circulation of some newspapers by raising their prices. It directly affected the "freedom of speech and expression" as inherent in this freedom is the "right to publish and circulate the information by media." Freedom of speech can only be curtailed on the grounds mentioned in Article 19(2) of the Constitution.

The present situation of media in India is that it has been ranked 142 out of 180 countries in the 2021 World Press Freedom Index published by Reporters without Borders. India was ranked 142 last year as well, thus showing no improvement in the environment it provides to its journalists. India has fared poorly amongst its neighbors, with Nepal at 106, Sri Lanka at 127, and Bhutan at 65. The report has blamed an atmosphere of intimidation created by the nationalist government for any critical journalist, often brandishing them as anti-national. The situation is even more worrisome in Kashmir, where police and paramilitaries' incidents of harassment of reporters have surfaced. The report classified India as one of the most dangerous countries for journalists trying to do their jobs properly because they are exposed to every kind of attack, including police violence, ambushes by political activists, and reprisals instigated by criminal groups or corrupt local officials. The journalists have also been subject to coordinated hate campaigns on social media, and these campaigns turn particularly violent when the targets are women. In India, the order of the day is that it is among the countries classified as "bad" for journalism. Recently, Prime Minister Narendra Modi has also been accused of being one of the "predators of press freedom" along with 37 other heads of states and Governments in a list published by French media watchdog Reporters without Borders or Reporters Sans Frontieres (RSF).

2.8 Conclusion

Historically, the concept of press freedom originated in England, where the subjects were persecuted both by the Church and the State for freely expressing their views. During the English colonialism in America, the freedom of the press was restricted as the crown was critical of

opinions being published and printed against it. Hence, there were many restraints against the free speech of the press. Such restraints, through licensing and censorship, came to be accentuated after the 17th Century. This period witnessed an opposition against monarchial absolutism. This demonstrated how powerful the press was as a medium of expression. Various scholars all over the world protested for press freedom through their writings. It was a result of such protests that the House of Commons did not renew the licensing system in 1694, which eventually led to the freedom of the press. In India, the Supreme Court ensured the freedom of the press by interpreting it as one of the fundamental rights guaranteed by the Constitution. At last, it can be concluded that freedom of the press is essential for every democracy as it encourages political and social discourse.

CHAPTER - 3

Trial by Media and its Effects

3.1 Introduction

In the previous chapter, it was discussed how the media got the right to freedom of speech & expression. In this chapter, the author will analyze the impact of that freedom in the reporting of high-profile cases by the media. This chapter will give an insight into the role of the media in a democracy and focus on describing media trial. Further, this chapter will deal with the various impacts of trial by media vis-à-vis rights of the accused.

3.2 Role of media in a Democracy

Democracy means 'government of the people, for the people, and by the people.' However, a real democracy envisages much more than the holding of periodic elections or a representative government. It denotes a social state where all the people have equal rights without hereditary or arbitrary difference of status or privilege. A genuinely vibrant democracy allows the people to create and participate in a broad range of activities such as independent labor unions, non-governmental organizations, and independent media, all of which encourage political and social participation.

A democracy usually involves public participation and three strong pillars of the judiciary, executive, and legislature. However, media emerged as the fourth pillar with a rise in its power to reach every corner of the nation. Media and democracy are so much interrelated that one is incomplete without the other. A robust media is an indispensable feature of a contemporary democracy as it plays a vital role of a conscious keeper, a watchdog of the institutions of the nation, and endeavors to attend to the wrongs in our framework by bringing them out into the open, hoping for a correction.

Like all the other fundamental freedoms provided by the Constitution, the freedom of the press is also not absolute and must be exercised with reasonable caution. With its increasing power and importance in a democracy, the need for accountability and professionalism in reporting cannot be overlooked. Presently, the media can mould society's opinion and change how people perceive various events. The increasing role of the media in today's globalized and tech-savvy world can be rightly put in the words of ***J. Learned Hand*** of the U.S. Supreme Court when he said, *"The hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country."*[36]

The role of media in a democracy is to promote transparency and accountability, and there is no doubt that it performs this role eloquently. In India, the press has unearthed many scams like the 2G scam, Commonwealth Games scam, and Harshad Mehta stock market scam, and it should be appreciated for this. Media also plays a pivotal role in divulging corruption in the system and bringing out the government's inaction on many occasions to public notice, and eventually, action is taken. Nevertheless, conflicts arise when media transgresses its domain and indulges in irresponsible and unethical journalism. Freedom of the press should be utilized for a public cause rather than influencing their minds and usurping the judiciary's power.

3.3 Concept of Open Court in India

The concept of open court, in simple words, means holding the court proceedings in public. ***J. Woolf*** considered it as *"A principle of the common law that proceedings ought to be open to the public, including the contents of court files and public viewing of trials."*[37] Article 6(1) of the E.C.H.R. provides that: *"In the determination of his civil rights and obligations, or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interests of morals, public order, or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly*

36 Yashdeep Lakra, *Choking Freedom of Press: The Death of Mainstream Media in 2020*, ACADEMIKE, (Sept. 30, 2021, 1:16 PM), https://www.lawctopus.com/academike/media-trial-ssr-20/

[37] R v. Lewes Prison (Governor), ex p Doyle, (1917) 2 KB 254

necessary in the opinion of the court in special circumstances, or where publicity would prejudice the interests of justice."

The Indian legal system also recognizes the concept of the open court. Article 145(4) of the Indian Constitution provides that the judgments of the Supreme Court of India shall be delivered only in an open court. Order 18 Rule 4 of the C.P.C., 1908 also emphasizes the concept of open court by stating that the evidence of the witnesses shall be taken orally in an open court in the presence and superintendence of the judge or the commissioner appointed by the court, as the case may be. The same principle is emphasized in criminal law as well. The basic principle of open court is that administration of justice must be open to scrutiny save in some exceptional cases. **Scott vs. Scott**[38] is an authoritative common-law decision on this principle. It laid down the proposition that even if a case is heard in private, the material that emerges from it can be published unless the court makes an order restricting the release or other reporting. Since *this decision,* both statute and the common law in the U.K. have intervened to regulate *the* subsequent publication rule:

- "In proceedings relating to children and those suffering from mental incapacity.
- In respect of documents produced by compulsion of a duty to disclose (such as in matrimonial financial relief proceedings)."[39]

Most recently, in the U.K. in the case of **R (Guardian News and Media Ltd) vs. City of Westminster Magistrates' Court**[40] the issue was whether a court could release documents to a journalist after a hearing to make better sense of the proceeding. The Court of Appeal held that such release was permitted by extensive reference to the open justice principle.

In **Naresh vs. State of Maharastra**,[41] J. Bachawat elaborated on the open justice principle: *"Long ago, Plato observed in his laws that the citizen should attend and listen attentively to the trials. In his Philosophy of Right, Hegel maintained that judicial proceedings must be public since the aim of the Court is justice, which is a universal belonging to all save in exceptional*

[38] Scott vs. Scott (1913) AC 417
[39] David Burrows, Scott v Scott and release of court material, ICLR, (Sept. 6, 2021, 6:41 PM), https://www.iclr.co.uk/blog/commentary/scott-v-scott-and-release-of-court-material/
[40] R (Guardian News and Media Ltd) vs. City of Westminster Magistrates' Court *(2013) QB 618*
[41] Naresh vs. State of Maharastra 1967 AIR, 1

cases; the proceedings of a Court of justice should be open to the public." J. Bachawat was of the opinion that open judicial proceedings are a universal principle as it enhances public knowledge and ensures the administration of justice; however, exceptions shall be placed to safeguard openness and due course of justice.

The proponents of freedom of the press argue based on the open court principle that media cannot be restrained from reporting court proceedings because it ensures that the judicial process is subject to public scrutiny. However, every rule has exceptions, and so does the concept of open court. In certain cases in India, the court can conduct the trial *'in-camera'*, prohibit the media reporting of the cases, and not disclose the identity of the witnesses and accused. The court may also restrict the publicity of proceeding in the interests of justice if it is satisfied beyond a reasonable doubt, and there are apprehensions that the ends of justice would be defeated if the case is tried in an open court. If necessary, the Supreme Court and High Courts may invoke its inherent power under Articles 129 and 215 of the Constitution, respectively. They can prohibit publications of court proceedings or evidence of a case outside the court by the media. Thus, the right to open justice is not absolute and can be restricted in exceptional cases.

Paramount importance in a democracy is always given to the freedom of speech, open justice, and right to access courts. However, courtrooms are not just an instant source of facts for the media. Since media acts as a translator between the court and the general public, when there is an adverse apprehension on the presumption of innocence or anything disproportional to a fair trial, it exemplifies the indiscretion of open justice. Thus, the media has to maintain accountability and transparency while reporting. The landmark judgment in **Australian Securities and Investment Commission vs. Rich**[42] laid down certain considerations that qualify the principle of open justice – "*prematurity, trial by media, ambush, misleading reports, commercial confidentiality"* are some of the qualifications to the principle of open justice in order to maintain the right to a fair trial and to avoid prejudice.

In **Reliance Petrochemicals Limited vs. Proprietors of Indian Express Newspaper Bombay Pvt. Ltd**.[43], the Supreme Court restrained the press from publishing articles in a sub-judice matter, i.e., prior restraint was ordered by the court on the ground that it interfered with the

[42] Securities and Investment Commission vs. Rich (2009) NSWSC 1229
[43] Reliance Petrochemicals Limited vs. Proprietors of Indian Express Newspaper Bombay Pvt. Ltd (1989) AIR 190

administration of justice. The Court looked into the U.S. doctrine of 'clear and present danger' originated in *Schnek vs. United States*[44]. Thus, in India postponement order for a temporary period is recognized as an inherent power of the court to meet the ends of justice, and such orders could not be held to be violative of freedom of press. When the freedom of speech and expression of the press outweighs the balance of public importance, the media should refrain from any publication that may hinder the administration of justice and fair trial. Therefore, the media needs to strike a balance between reporting the court proceedings and the need for fair trial while upholding the principle of open justice to reconcile the differences.

3.4 Media Trial

The criminal jurisprudence of India rests on a system in which an accused has the right to a fair trial, and he is presumed to be "innocent until proven guilty." The right of the accused to a fair trial and freedom of the press are fundamental rights guaranteed by the Constitution. However, these constitutional guarantees present one of the most critical conflicts in the administration of criminal justice when opposed to one another. The problem involves what is presently called "media trial" or "prejudicial news reporting."

On account of its vast powers, media goes a long way to report facts and publish interviews of people like the witnesses, victim's relatives, and members of the legal fraternity, which causes prejudice to the pending criminal proceedings. Prejudicial news reporting also affects the perception of the public at large since media can reach the masses swiftly. In the past couple of decades, it has been witnessed that there is an increasing trend of reporting of cases related to corruption, rape, murder, terrorist activities by the media in a way that sensationalizes the news.

Trial by media resulted from a phenomenon called *'Media Activism'* in which the media, and communication technologies are used for many purposes like social and political movements to spread awareness among people and change in society. However, the problem occurs when the media while exercising its activist role crosses the boundaries within which it is required to function. Trial by media imposes indirect pressure on the judiciary to administer justice to the victim in a way that interferes with the rights of the accused and proceedings of the case. In the

[44] *Supra note 19.*

process, the media tends to overlook the primary ideas of "guilt beyond reasonable doubt" and "innocent until proven guilty" which prevails in the criminal justice system in India.

Through this process, media has now transformed itself into a "Janta Adalat" or "Public Court" where it conducts a parallel investigation, and the vital gap between the 'convict' and 'accused' is conveniently ignored. Due to this, all the sensitive details relating to the case are openly discussed, thereby prejudicing the trial pending before the court. Trial by media begins much before the actual trial in the court. In matters relating to investigation, arrest, or bail, the media interferes with the actual proceedings of the court with the idea of influencing the course of justice. This puts a burden on the trial court, which has a constitutional duty to minimize the effects of prejudicial publicity on the case. The argument in favor of trial by media is that it ensures the administration of justice. However, in reality it makes the courts' task even more difficult.

There have been a few instances where due to the efforts of media, justice was delivered. In *Jessica Lal murder case*[45] there was a delay in justice as all the witnesses turned hostile, and the accused Manu Sharma was acquitted. Then the media, through the *'Justice for Jessica'* campaign, played a crucial role in delivering the justice. Similarly, in the *Priyadarshini Mattoo case*[46] 'justice for Jessica' campaign steered the trial of the accused charged with rape and murder. With the subsequent media intervention, the case investigation was fast-tracked, and the accused was convicted. Then again, in the *BMW hit and run case*[47] the accused was brought to justice after a news channel conducted a sting operation that exposed the accused's lawyer bribing the witnesses. However, there have also been various instances where the media created a frenzy due to its reporting. In the *Arushi Talwar murder case*[48] the media displayed a brazen lack of concern for the law. Media coverage, in this case, raised severe legal concerns relating to violation of privacy, breach of confidentiality, and the defamation of both living and dead persons. *Sheena Bora Murder case*[49] also gave rise to the controversial aspect of reporting of trial proceedings of the accused as every aspect of her life was under public scrutiny, which had nothing to do with the case or the general public. The most recent incident of media trial in the

[45] Manu Sharma vs. State of Delhi (2010)6 SCC 1
[46] Santosh Kumar Singh vs. State (2010) 9 SCC 747
[47] State vs. Sanjeev Nanda (2012) 8 SCC 450
[48] Nupur Talwar vs. Central Bureau of Investigation and Another (AIR 2012 SC 1921)
[49] Pratim Alias Peter Mukherjea vs. Union of India and Anr.

Sushant Singh Rajput death case is a stark reminder that media trials are detrimental not only to the accused but also to the victim and people related to them.

The Supreme Court of India observed in the case of **R.K. Anand vs. Delhi High Court**[50] that *"during high publicity cases, the media is often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial impossible but means that regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny."*[51]

The justice delivery system in India moves forward in a prolonged manner. By that time, if a person who is not guilty is subjected to media trial, then there is no real remedy for that person. Some legal remedies are available to the accused against such defamatory remarks, but the damage had already been done. Therefore, there is a great responsibility on all the courts to protect the individual's rights and reputation from an unwarranted trial by media by being more vigilant and proactive. Trial by media should not be appreciated in a democracy where there is already a competent judicial system to conduct the trials in a fair and just manner.

3.5 Social Media Trial

In this era of the digital age, a vast amount of information can be accessed and broadcasted via the internet within a matter of seconds. Social media services also allow their users to receive an instantaneous response, enabling them to share information quickly and efficiently, and it has changed the way how people interact with one another. Social media has become an integral part of everybody's life as it is easily accessible through smart phones, computers, and other devices. With social media into play, every individual can indulge in sharing their opinions without any restriction. These opinions or views expressed are at a global portal, where it might play an influential role in framing the views of others. The rise of the internet and the use of social media have posed severe challenges in the context of the openness of a trial, especially in the case of criminal trials.

[50] R.K. Anand vs. Delhi High Court (2009) 8 SCC 106
[51] *Ibid*

Social media trial happens when the individuals on the internet form public opinion against the accused based on their thoughts & opinions on the case even before the investigation is complete or the court takes cognizance of the case. This can be explained as a phenomenon called *'citizen journalism'* also known as *'collaborative journalism', 'guerilla journalism'* or *'street journalism'*. It involves the *"citizens who are non-professionals, taking an increasingly central role in the process of collecting information, news reporting, writing, editing, publication, and distribution."*[52] With the advent of internet and social media services, citizen journalism now also includes blogging, photo and video uploading, sharing, and instantaneous commenting on current events. The practice of citizen journalism not only interferes with the administration of justice but also propagates a false message to society, and the society starts to form its opinions based on that message rather than relying on the judiciary.

With the increasing social media usage, the phenomenon of citizen journalism has increased manifolds. Ordinary people can engage in news reporting and dissemination of every kind of information with just a click on the computer. The primary purpose of citizen journalism is to focus on topics out of the mainstream domain and to encourage a public debate where no one of the participants is privileged. This kind of journalism, in general, does not focus on the facts as seen by the lobby of journalists and editors but instead promotes public engagement in the news. Hence, the advent of the internet, especially the increase in systems like social media applications and web blogs, encourages more people to engage in topics of public interest.

Nevertheless, the citizen journalism phenomenon has brought severe challenges to traditional journalism, its role, and boundaries and has aroused a debate among traditional and non-traditional journalists. Indeed, traditional journalism is associated with people who have received training and work with established news or media agencies under editorial supervision; therefore, they usually report the news accurately and objectively. However, citizen journalists do not get paid, lack training, and their methods of collecting and disseminating information are unfiltered and unsystematic. Unregulated use of such information may cause serious damage to the administration of justice. The most recent example of social media trial is the case of the death of a famous Hindi film actor Sushant Singh Rajput which shows how social media trials can be

[52] S. Bowman and C. Willis, *We Media: How Audiences are Shaping The Future of News and Information*, The Media Centre at the American Press Institute, (2003)

detrimental to the rights of the accused. The media reported that the actor's girlfriend(accused) allegedly abetted the actor's suicide after which, people were quick to conclude that she was, in fact, guilty. Despite federal investigative agencies like the C.B.I., E.D., and N.C.B. being involved in the case, she was constantly denounced by the news channels and people on social media. The insane media coverage around her life and hate campaigns against her on the microblogging site 'Twitter' and other social media platforms led to her virtual character assassination without any conclusive proof. Despite being remanded to judicial custody based on the F.I.R. filed by the N.C.B., the *'Twitterati'* kept branding her as the "witch who drove her boyfriend to suicide."

Social media trials are increasing dramatically. A survey by the Edelman Trust Barometer in 2008 found that the majority of Americans believe that peer-to-peer opinions are more trustworthy and have a more serious impact on people than information coming from professionals. One could argue in favor of social media publications that mainstream media organizations primarily focus on profit and advertising instead of peer-to-peer digital networks, which promote dialogue and interaction. But, it cannot be denied that publication about the sub-judice matter on social media is problematic as it can infringe the privacy and harm the accused's reputation. Moreover, there are no empirical studies that can prove the efficacy of social media trials. Therefore, the use of social networking sites for posting anything related to a highly publicized ongoing trial should be restrained or at least regulated for now.

3.6 Effects of Media Trial

Trial by media poses enormous threats to the judicial system as it can cause a genuine bias towards the due process of law and even rob the accused of a fair trial. A parallel investigation by the media, in any case, can create unwarranted and enormous pressure on the investigating authorities and can hamper the investigation. The media going out of its way and undertaking the role of a judge to try the case and deliver its judgment on the accused long before the court can reach a decision is entirely against the procedure established by the law. Moreover, the media is not justified in committing such investigative journalism outside the purview of the competent court because it defeats the purpose of the institution of an adjudicatory body. Whenever the

media sensationalizes a case, millions of people watching news channels or reading the newspapers start getting influenced by the information provided by the media and form their own opinion of the case. Thus, one can say that the practice of media trial encroaches upon the fundamental rights of the accused, victim, witness, and other parties concerned with the case.

- **Media trial & rights of the accused**

The problem with the media trial is that it fails to balance 'free speech of the press' and 'the right of the accused to a fair trial.' The justification given by media in favor of free speech is that this freedom originates from the public's right to know and indulge in the discussion which affects them. However, this freedom should also be consistent with the rights of the accused, and it should not override the justice delivery system by sensationalizing and twisting the facts. To administer justice, the guarantee of a fair trial is of utmost importance. If there is any scope of bias or unfairness in a criminal trial, the criminal justice system would be at risk, and the public confidence in the system will be shaken.

India is a signatory to various international covenants like the I.C.C.P.R. and U.D.H.R., which provide a 'fair trial' right. These provisions are present in the Indian legal system in the form of Articles 20, 21, and 22 of the Constitution of India. These provisions also reflect in our criminal procedural law. The right to fair trial involves independent judges, public hearings, the presumption of innocence, the right to counsel, the right to privacy, and many other factors. The objective sought to be achieved through this is that a trial should be fair for both the prosecution and the accused, and the accused should get a reasonable opportunity to defend himself. The Supreme Court has also observed that *"if the criminal trial is not free and fair, the criminal justice system would be at stake shaking the confidence of the public in the system and the rule of law."*[53]

Like the right to a fair trial, the freedom of the press is also recognized by various International Charters such as the E.C.H.R. and I.C.C.P.R. These charters also impose specific duties and responsibilities upon the press to be careful while disseminating information. Despite that, media is found to exceed its rights on several occasions through its publications, which is considered prejudicial to the right of the accused to have a fair trial. It tends to violate the principle of

[53] K. Anbazhagan v. Superintendent of Police AIR (2004) SC 524

presumption of innocence on which the whole criminal justice system rests. It is an accepted principle under the common law that the 'presumption of innocence' is applied in a criminal prosecution, and the guilt of the accused must be proved beyond a reasonable doubt. Various other countries have also adopted this principle. So, the right to a fair trial in a democracy is of utmost importance for the proper administration of justice. When a fair trial is denied to the accused, it is as much injustice to the accused as much as it is to the victim and the society.

Another right that is affected by the media trial is the right to privacy of the accused. Article 12 of U.D.H.R. and Article 17 of I.C.C.P.R. protects the concept of privacy, and India being a signatory to these international covenants, is bound by these provisions. Yet, we do not have a codified law on privacy, and it does not even find a mention as a ground for imposing reasonable restrictions on the freedom of speech and expression under Article 19(2) of the Constitution of India. Additionally, there is no special legislation in India that can protect the right to privacy against excessive publicity by the press, including media trials.

The case of actor Sushant Singh Rajput which garnered a lot of media coverage, led to infringement of the fundamental human right to privacy of both the victim and the accused. The media conducted a parallel investigation into the actor's death and published his medical history and various details of the accused, such as her bank account details including transactions, numerous private messages, photos, and videos of various other people regardless of its relevance to the case. A similar thing happened in the cases of the death of Arushi Talwar (2008), and Sheena Bora (2015), where both the victims and the accused were subject to incessant media scrutiny, and all of their private details were published which were not even relevant to the case. Such prejudicial reporting resulted in the violation of the privacy of the persons involved in the case and defied the principle of 'innocent until proven guilty.'

While considering the conflict between freedom of media to disseminate information and the right to privacy, there has always been a question about the relative weight of privacy versus public interest. Although India does not have a codified law on the right to privacy, it has acquired constitutional recognition, leading to the Personal Data Protection Bill's drafting in 2019. Unfortunately, this bill does not provide a safeguard from privacy encroachment by the media. Article 36(e) of P.D.B.P. has allowed exemptions for processing personal data for journalistic purposes. According to it, journalists have been given the liberty to distribute views

and opinions regarding any information they consider masses interested in, acting as a data fiduciary. The rationale provided by the government behind giving such unrestricted liberty is to ensure that press and media channels are independent of unnecessary restrictions in doing their job.

Lastly, media trial has even started creating pressure on the lawyers who take up the case of the accused, thus forcing them to go to the trial without proper defense, which is against the principles of natural justice. For instance, when eminent lawyer Ram Jethmalani defended Manu Sharma, a prime accused in the *Jessica Lal murder case* in the trial court, he was subjected to contemptuous ridicule and public humiliation. Media channels came up with headlines like *"defending the indefensible."* Again, in the *26/11* trial, the main suspect Ajmal Kasab was represented by a lawyer named Abbas Kazmi, who claimed that he had gone through mental harassment by the media and the Public Prosecutor, which distressed him greatly. These instances raise a critical issue of increasing pressure upon the lawyers once they decide to take up the case of the accused in a high-profile case, and at the same time, their reputation is also at stake. The 'media verdict' of guilty directly impinges the principle of fair trial, and there is a probability of the lawyers getting intimidated, resulting in refusal to take up such cases.

- **Media trial & potential effect on judges**

Another major issue that arises from media trials is their potential effect on judges. It is a highly debatable issue, and there are many views on it. Most prominent among these are the American view and the Anglo-Saxon view. The American view is that Jurors and Judges are not liable to be influenced by media publications, while the Anglo-Saxon view holds that Judges may still be subconsciously (though not consciously) influenced, which makes the people think that such media publications influence the judges.[54] One of the most eminent jurists of the 20th Century, ***Lord Denning***, clearly specified in the Court of Appeal that the media publicity will not guide judges, but the House of Lords did not accept this view.

[54] 200th Law Commission of India Report, Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure (amendments to the Contempt of Court Act, 1971), 46 (2006), http://lawcommissionofindia.nic.in/reports/rep200.pdf

In **John D. Pennekamp vs. State of Florida**[55], it was observed by ***Justice Frankfurter*** that *"No Judge fit to be one is likely to be influenced consciously, except by what he sees or hears in court and by what is judicially appropriate for his deliberations. However, Judges are also human, and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process is—and since Judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print."*[56] According to Justice Frankfurter, the judiciary could not function properly if the press continues to disturb the judge in his duty and capacity to act solely based on what is before the Court. The judiciary will not be independent unless Courts of Justice are enabled to administer law by the absence of pressure from without or the presence of disfavor.

The Indian Supreme Court has also accepted the Anglo-Saxon jurisprudence after examining some English cases. In the **Reliance Petrochemicals case**[57] the Supreme Court referred to **Attorney General vs. B.B.C.**[58] and quoted ***Lord Dilhorne*** as follows: *"It is sometimes asserted that no Judge will be influenced in his Judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a Judicial Office does his utmost not to let his mind be affected by what he has seen or heard or read outside the Court, and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experience in the discharge of Judicial duties. Nevertheless, I think it should be recognized that a man may not be able to put what he has seen, heard, or read entirely out of his mind and that he may be subconsciously affected by it. It is the law, and it remains the law until it is changed by Parliament, that the publications of matter likely to prejudice the hearing of a case before a court of law will constitute contempt of court punishable by fine or imprisonment or both."*[59]

The New South Wales Law Commission, in its Discussion Paper (2000) (No.43) on ***'Contempt by Publication'*** stated that most law reform bodies *"tends to take the view that Judicial officers should generally be assumed capable of resisting any significant influence by media publicity.*

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[55] John D. Pennekamp vs. State of Florida (1946) 328 US 331
[56] *Ibid*
[57] *Supra note 43.*
[58] Attorney General vs. B.B.C. 1981 A.C. 303 (H.L.)
[59] *Ibid*

Despite this, they have not gone so far as to exclude altogether as a possible ground of liability for sub-judice contempt, the risk of influence on a Judicial officer." The N.S.W. Law Commission also referred to an article, which concluded that there is no empirical data to support or refute the assertion that Judicial officers are not likely to be significantly influenced by media publicity. The Canadian Law Commission also took the view that, while Judges may generally be immune to influence, but the possibility of such influence could not be ruled out altogether. [60]

A study conducted by Walden University's Dr. V.V.L.N. Sastry revealed some interesting results. The participants of the study (practicing advocates in India) were asked whether they believe that public media can influence judges' perception of a case under trial. There were 430 out of the 450 advocates who "strongly agreed" and 12 "agreed" that public media can influence judges' perception of a case under trial. In comparison, 7 advocates "disagreed" and 1 "strongly disagreed" with the proposition. Another critical insight from the study reveals that out of the 450 advocates, 312 "strongly agreed" and 82 "agreed" that they have witnessed an offender receiving harsher sentence than required by the law due to Indian public demand through excess publicity. However, 50 advocates "strongly disagreed" and 6 advocates "disagreed" with the proposition.

A survey conducted in the U.K. in 2010 also revealed some interesting results. The survey included 688 jurors who served in 62 different cases, including high-profile cases with extended publicity, which lasted more than two weeks and standard cases with little media coverage that lasted less than two weeks. The recall of media coverage in high-profile cases was 70%, as opposed to standard cases, which was 11%. In high-profile cases with media coverage, 89% of the jurors remembered the defendant as guilty, and 20% admitted that it was difficult for them to put these reports out of their minds while serving as jurors. Moreover, in high profile cases, 26% of the jurors admitted that they saw information on the Internet about the trial and 12% admitted looking for information online. In standard cases, the proportion was 12% and 5%, respectively.[61]

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[60] *Supra note 53.*
[61] Cheryl Thomas, Are juries fair? Ministry of Justice (2010), https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf (Last visited Aug. 31, 2021, 7:20 PM)

Thus, these studies indicate that media often permeates the courts and its high walls, and probably, the judiciary is not as invincible as it is perceived to be.

- **Media Trial and Contempt of Court**

It is well understood by now that the right to freedom of speech & expression guaranteed by the Indian Constitution is not absolute, and restrictions could be imposed on it on various grounds, including *'contempt of court.'* Under the Contempt of Courts Act, 1971, if a publication interferes or tends to interfere with the administration of justice, it may result in criminal contempt. Section 2 of the Act defines criminal contempt as "publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or

(ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or

(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."[62]

A bare reading of this section explains that this provision does not intend to override the fundamental right to freedom of speech & expression, but it tends to protect the administration of justice from being injured.

Section 3 of the Act is also relevant as far as the interference with the administration of justice is concerned. This section provides that if a person publishes or disseminates any information without any reasonable ground to believe that the proceeding was pending before the court and if the material published is interfering with or obstructing the course of justice, that person would not be liable for contempt of court. Further, the explanation appended to this section states that the starting point in a pending criminal trial is only after filing of the

62 Apurva Rathee, *Article 19 (2) : "Reasonable Restrictions on Article 19 (1) (a)",* Law School Notes, (Sept.6, 2021, 6:48 PM), https://lawschoolnotes.wordpress.com/2017/04/13/article-19-2-reasonable-restrictions-on-article-19-1-a/

charge-sheet or *challan* or after the issuance of summons or warrant by the court. Therefore, it is evident from the perusal of this section that not much importance has been given to the pre-trial period as far as criminal contempt is concerned. There is very little restraint on the media as 'pre-trial publications' are considered immune from the liability of criminal contempt of court. So, it is only after issuing of the charge-sheet that the publications would be considered criminal contempt. However, the issue is whether this rule should be allowed to remain as it is, or there is a need to regulate such publications dealing with the accused or suspects.

The **17th Law Commission**, under the chairmanship of ***M. Jagannadha Rao*** in its **200th report**, recommended that the starting point of a pending trial should be from the time of arrest and not after the filing of charge-sheet so that the publications in the pre-trial stage do not affect the rights of the accused. The logic behind this recommendation was that since such publications subconsciously affect the judges, it may prejudice the case of the accused even during the bail proceeding. Such publications could also affect the trial, which would take place at a later period. The commission substantiated this recommendation by referring to the case of **A.K. Gopalan vs. Noordeen**[63] which held that a publication made after the 'arrest' of a person could be contempt if it was prejudicial to the suspect or accused. Through this case, the Supreme Court balanced the rights of the accused and the rights of the media for publication.

It may also be noted that the U.K. Contempt of Courts Act, 1981 also considers the date of arrest as the starting point of a pending criminal proceeding. It was asserted in the Bill of 2003 prepared by the New South Wales Law Commission that if a person is arrested, or the criminal proceedings are imminent, prejudicial publications will result in criminal contempt. This view has been upheld by various case laws in Scotland, Ireland, Australia, and the Law Commission Reports of these countries.

The authoritative judgment in **Hall vs. Associated Newspaper**[64] is followed in other jurisdictions as well and is the basis of the provision in the U.K. Act of 1981 for fixing 'arrest' as the starting point of a pending criminal trial. According to this judgment, once a

[63] A.K. Gopalan vs. Noordeen 1969 (2) SCC 734
[64] Hall vs. Associated Newspaper 1978 SLT 241 (Scotland)

person is arrested, he comes within the 'care and protection of the Court' as he has to be produced before the Court within 24 hours. This is also guaranteed under Article 22(2) of the Constitution of India. The justification for fixing arrest as the starting point of a trial is that, if a prejudicial publication is made after arrest referring to the person's character, previous conviction, or confessions, the person's case will be biased even in bail proceedings when the issues emerge concerning whether bail is to be granted or denied, or what conditions should be imposed, and whether there should be police custody or judicial custody. Such publications may also prejudice the case of the accused in general. Based on this, in England and other countries, *'arrest'* and *'imminent proceedings'* are treated as the starting point of a pending criminal trial.

Keeping these points in mind, the 17th Law Commission has made some recommendations to regulate the uncontrolled publication by media. Some of the recommendations are-

(i) The starting point of a pending criminal proceeding should be arrest and not filing of charge-sheet. Therefore, the explanation to Section 3 should be amended. Further, when such an amendment is made, it is not like no publications are permitted after arrest. Only those which are prejudicial publications should not be permitted.

(ii) Section 10A is to be added to the Act of 1971 so that if there is contempt of subordinate court, there is no need for a reference by the subordinate courts, and the High Court could be approached directly without consent of the Advocate General.

(iii) Section 14A is to be added to the Act of 1971 under which High Courts should be empowered to pass 'postponement orders as to publication' on the lines of Sec. 4(2) of the U.K. Act, 1981. Further, a postponement order should only be passed when a 'real risk of serious prejudice' is proved in the court.

(iv) Journalists need to be trained in certain aspects of the law relating to freedom of speech in Article 19(1)(a) and the restrictions which are permissible under Article 19(2) of the Constitution, human rights, law of defamation, and contempt of court.

- **Media Trial & public opinion**

Media possesses immense power to mould or influence public opinion, and with the growth of technology, it is now even capable of polarizing people's minds. The most accurate example of this is the polarization of Indian politics. Polarization is a dominant theme in Indian politics in recent years as it has led to the formation of the right-wing and left-wing press. There is increasing evidence to support that the media affect individuals' views and political behavior. With such pieces of evidence, it is only natural to think whether this might translate into an impact on political polarization. It would be naive to think that the media has sustained itself as a non-partisan entity, and it would be ironic to say that it exists without bias.

Another way by which media influences the public is by cultivating their thoughts and opinions. ***Prof. George Gerbner*** advanced the *'Cultivation theory'- a sociological and communications framework to examine the lasting effects of mass media, primarily television, on people.* "According to this theory, long-term exposure to the media shapes how the consumers of such media perceive the world and conduct themselves. The cultivation hypothesis states that the more television people watch, the more likely they are to view reality closer to television's depiction of reality. For many individuals, the distorted and partial reality portrayed on television represents what the world is really like."[65] Salman Khan's hit and run and blackbuck poaching cases can be considered as a good example to substantiate this theory. Despite him committing such heinous crimes, the media kept focusing people's attention on his charity forum. Through this, the media managed to make people sympathize with a poacher by portraying him as a decent human being whose life revolved around helping others. Eventually, this narrative worked in his favor in the courts as well.

This theory also forms the very basis of trial by media. Media trials often target the critical reasoning abilities of individuals, leading them to draw assumptions and inferences based on media publications. In the past decade, we have seen many cases of media trials where media goes out of its way to unearth information and disseminate it. Such hateful and derogatory programming by mainstream media often turns into libel/slander due to the recklessness of journalists. Trial by media can also polarize public opinion against the functioning of the judicial

[65] Ayesha Perera, *Cultivation Theory*, SimplyPsychology, (Sept. 6, 2021, 6:52 PM), https://www.simplypsychology.org/cultivation-theory.html

system by terming it as flawed or biased towards the accused. This happened in the Jessica Lal murder case. Following a nationwide public outcry against the acquittal of the accused by the trial court, the Delhi High court took up the case on a fast-track basis, ending in his conviction on murder charges. This shows how media trials can have a massive impact on the mindset of the people and can break their trust in the judiciary.

3.7 Conclusion

From this discussion it can be concluded that even though the media is considered the fourth pillar of democracy, and under Article 19(1)(a) of the Constitution of India, it has a right to freedom of speech; however, the media cannot be allowed to go beyond its domain under the garb of freedom of speech and expression to the extent of prejudicing the trial. Therefore, when the rights of equal weight clash, courts should evolve balancing techniques or measures based on re-calibration under which both the rights are given equal space in the constitutional scheme.

CHAPTER 4

Analysis of Media Intervention in some Prominent Cases & Gaps in the Existing System

4.1 Introduction

The relationship between a crime and mass media's perception about it has become essential to formulate the criminal justice system. Review of research literature suggests that mass media plays a crucial role in public policymaking and the media coverage of crime stories helps to set the agenda and reinforce support for punitive policies. "There is an interchange between media representations of crime, criminal behaviour, and the public policy on criminal justice system."[66] Therefore, this chapter will analyze the effects of media intervention in various cases and the courts' stand in such matters. This chapter also provides an illustrative list of flaws in the existing regulatory mechanism.

4.2 Salman Khan hit and run case (2002)

On September 28, 2002, Salman Khan's Toyota Land Cruiser crashed into the pavements at Bandra, killing one person and injuring four others and fled the scene. His bodyguard (Ravindra Patil), whom the Maharashtra Police had deputed for his protection, filed the First information report without any delay. Police took his blood samples which showed that he drank more than the permissible limits. Subsequently, the Bandra Police arrested him, but he was released on bail soon after. The Police booked him under various provisions of the Indian Penal Code, 1860, Motor Vehicles Act, 1988, and Bombay Prohibition Act, 1949.

In October 2002, he was charged under section 304 Part II of the IPC, but the charges were dropped later by the Bombay High Court. However, the Supreme Court rejected the High Court's

[66] S. Arulselvan, Role of Media in Making Public Policy on India's Criminal Justice System: A Study of News Reporting on Actor Salman Khan's Acquittal in A Murder Case, 14, GMJ, 1,1, (2016)

view and said it was too premature a finding and should not have been made at this stage. In 2013, he was charged before the Bombay Sessions Court, where he denied the charges, pleading not guilty, but he was convicted of culpable homicide and was handed a five-year jail sentence. He was also found guilty of offences (driving without a license and driving under the influence of alcohol) under the Motor Vehicles Act, 1988.

The Bombay High Court ruled in favor of his plea to be released on interim bail on the same day, consequently suspending his sentence. The principal witness, in this case, Ravindra Patil, was considered a 'wholly unreliable witness'. The High Court stated that he made improvements in his version when his statement was recorded, and even if his statement was to be considered partially reliable, there needs to be a corroboration of evidence which did not happen in this case because Ravindra Patil passed away in 2007 and was not available for cross-examination by the defense in the trial court. Citing these reasons, the Court allowed the appeal, ruling that the prosecution did not prove its case beyond reasonable doubt and acquitted Salman Khan of the charges.

The analysis of news reports regarding this case led me to believe that the media did not help in providing accountability and transparency in this case. Instead of holding Salman Khan accountable, the media took this case as an opportunity to gain TRP by sensationalizing the case. This case got massive media coverage, completely overshadowing other news. The leading newspapers in English and Hindi ran live pages with banner headlines and plenty of visuals and engaged the public in debates and discussions about the court's verdict. Popular news channel Times Now ran a countdown to Khan's sentencing, which came a couple of hours after the verdict was announced. Some news channels were even trying to airbrush his image by focusing on his charity forum and portraying him as a kind-hearted person.

The role played by the media was also discussed in the judgment where Justice A.R. Joshi observed, *"the Court is expected to be impervious to the pressure from the public and also from the media. For good reasons, the law of evidence has no place for the general public opinion as a factor that should weigh with the Court while deciding a case at hand. Probably because such opinion or such perception is often gathered based on the information/news constantly being told/broadcasted by the Media and other institutions. It often happens that a proposition that is repeatedly fed to the general public can achieve the status of truth. This is as far as the general*

public at large is concerned. However, this so called 'truth' i.e. the proposition is required to be proved before a Court of law and in which the established principles of law of evidence are required to be followed."[67]

4.3 Noida Double Murder Case (2008)

This case is also known as the Aarushi murder case, where a 14-year-old girl Aarushi Talwar and 45-year-old Hemraj, were found murdered. On May 16, 2008, Aarushi was found dead in her bedroom by her parents. Hemraj, who was then believed to be the prime suspect of the murder, was missing. However, the very next day, his dead body was recovered from the terrace. After this, the Police considered Dr. Rajesh Talwar (Arushi's father) as the prime suspect based on a theory that he found Arushi and Hemraj in a "compromising position" in her bedroom and killed them in a fit of rage.

In this case, the investigating authorities were highly criticized because they failed to secure the crime scene, due to which crucial forensic evidence was compromised. This led to a botched-up investigation, and the case remains unsolved because of a lack of sufficient evidence. When the case was transferred to CBI, it initially declared the parents innocent, but when the case was handed over to a new team by the CBI, they recommended closing the case because of crucial gaps in the evidence. However, Rajesh Talwar and Nupur Talwar were considered the suspects based on circumstantial evidence in the closure report. Based on that report, proceedings were initiated against the parents. In 2013, they were held guilty and were sentenced to life imprisonment by the Ghaziabad sessions court. After an appeal filed by them at the Allahabad High Court, they were acquitted in 2017 as there was insufficient evidence against them, and the prosecution could not prove its case beyond reasonable doubt.

The analysis of news reports of this case led me to the opinion that instead of bringing out the truth in this case, the media got involved in *yellow journalism*.[68] Leading English and Hindi news channels started illustrating their versions of the story through dramatic representational scenes of intimacy and murder. Mass media coverage was given to this case by highlighting the

[67] Salman Salim Khan vs. State of Maharashtra Cr. Appeal No. 572 of 2015
[68] *See*, Britannica, https://www.britannica.com/topic/yellow-journalism (last visited Sept. 20, 2021)

elements of illicit relationships, adultery, mystery, and honor killing in a bid to catch the public eye. "In show after show and article after article, the Talwars were demonized as decadent, immoral, unfeeling, unrepentant, scheming, corrupt, and resourceful persons. Before the Court could announce its verdict, the media had already pronounced the Talwars guilty, and thus, **so had the people**. Therefore, when a deranged vigilante within the court premises assaulted Rajesh Talwar with a meat cleaver inflicting serious injuries, bloggers applauded. At the same time, a leading columnist Shobha De wrote: "Tough luck, Talwar."[69]

The media stooped so low that it began casting aspersions on the character of a dead girl and her parents. Aggrieved by the role played by media in this case, Dr. Surat Singh, an advocate, filed a PIL in the Supreme Court, which took it very seriously. The Court reprimanded both the print and electronic media to be aware of the prejudicial reporting because it meddled with the right to defence of the accused. The Supreme Court ordered restraint on published material which may interfere with the investigation process in respect of all cases.

Also, Justice Katju said, *"we are not worried about ourselves. We have sufficiently broad shoulders but we are concerned about the reputation of people as was in Dr. Talwar's case. When trial court is seized of the matter, the media's role is restricted. Extreme caution and care in reporting such cases was required, as it is not only the reputation of a person but a person is held guilty even before the trial in the case is over….In this case, what is the positive evidence against them?"*[70]

The case took nine years to finish with just the first stage of appeal, and that too without any substantial outcome. During this time, the accused had spent a significant time in prison, their livelihoods have been brought to a grinding halt. They suffered pain and humiliation in a case where there is no eye witness and only circumstantial evidence. This is a classic case that depicts how media involvement in a case can have adverse effects on the rights of the accused and the administration of justice. Cases like this are an excellent story for the media but include, in

[69]Shohini Ghosh, *Mistrial by Media*, The Indian Express, (Sept. 22, 2021, 9:30 AM) https://indianexpress.com/article/opinion/columns/mistrial-by-media-aarushi-talwar-murder-case-4889249/
[70] Madabhushi Shridhar, *'Maligned by police and media?'*, The Hoot, (Sept. 24, 2021, 10:07 AM), http://asu.thehoot.org/media-watch/media-practice/maligned-by-police-and-media-4750

reality, a bereaved family and their search for answers and the truth. Their refusal to play out their grief before cameras or to not answer the endless questions of television anchors or commentators should not be construed as an admission of guilt or as a means to support wild theories but as a simple plea to be left alone to grieve in peace until the authorities professionally resolve the case.

4.4 Sunanda Pushkar Death Case (2014)

Sunanda Pushkar, the wife of a renowned politician Shashi Tharoor, was found dead in a hotel room in Delhi under mysterious circumstances on January 17, 2014. Shashi Tharoor was the one to inform the Delhi Police, after which her body was recovered and sent for postmortem. Initially, the reports claimed that it was a suicide. However, later reports mentioned that there were injury marks on the body and drug overdose might be the cause of death. Finally, by October 2014, a medical team examining her death concluded that the cause of death was poisoning. Delhi police filed an FIR based on this report, and a murder case was registered against an unknown person.

On the basis of the media publications of the case, I came to the conclusion that what was supposed to be professional and investigative journalism, the sensationalist media houses, reduced it to a public spectacle. Even before the investigation was complete, the media declared Shashi Tharoor as the murderer. Instead of finding out the real truth, cherry-picking of facts, twisting of statements, and disclosing half-baked truths were considered preferable by the media.

Statements and opinions expressed by the society, friends, and socialites who met the Tharoors at parties were given all the coverage by the television and print media. In contrast, the statements issued by Mrs. Tharoor's only son, her close friends, and others intimately connected to her were completely disregarded. This appears to have been for the simple reason that the information supplied by the latter group was too sedate and dull, forget relevant to the case. At the same time, those of the former group of people were more sensational and conveniently fit the agenda of the 24/7 news channels.

A well-known journalist launched a vicious media trial against Tharoor by conducting panel discussions and debates on his channel. At one point, he even released some audiotapes alleging that Shashi Tharoor and his assistant conspired to kill his wife. Aggrieved by such vilification, Shashi Tharoor filed a defamation suit against the journalist and his channel in the Delhi High Court. The Court observed that the right to silence of Shashi Tharoor must be respected during the pendency of the investigation. The Court further said that the journalist and his channel are free to state facts concerning the investigation but cannot declare Shashi Tharoor to be the murderer. This suit also raised the concern for a balance between free speech and trial by media.

Subsequently, in May 2018, Shashi Tharoor was charged with abetment to suicide and marital cruelty under sections 306 and 498A of the IPC. However, he refuted all the charges, and recently, on August 18, 2021, a Special Court in Delhi found him innocent and discharged him from all the charges.

This case shows how too much media involvement can prejudice the case. The media cannot declare anyone guilty or make any kind of unsubstantiated claims. The media must act cautiously while reporting on pending trials or matters under investigation. Freedom of expression is the hallmark of a democracy. However, at the same time, responsible journalism demands adherence to and upholding at least basic professional standards of ethics. At the bare minimum, these include accurate verification of facts and the separation of rumors, hearsay, and leaks from the actual relevant information.

4.5 Sushant Singh Rajput Death Case (2020)

On June 14, 2020, a famous Bollywood actor, Sushant Singh Rajput, was found dead at his residence in Mumbai. After arriving at the scene, Mumbai Police declared it as a case of suicide. His postmortem report also substantiated Police's claims by stating that the cause of death was asphyxia due to hanging. However, a turn of events occurred when Sushant’s father lodged an FIR with the Bihar Police. The FIR was filed against Rhea Chakraborty and six other people, including her family members, on the charges of abetment to suicide, wrongful restraint, wrongful confinement, theft, criminal breach of trust, and cheating. He also alleged that Rhea robbed his son and harassed him mentally. The Enforcement Directorate (ED), which

investigates financial crimes, also registered a money laundering case over transactions worth crores of rupees on the grounds of the complaint registered by Rajput's father. All of this led to the vilification of Rhea and her family by the media, and she was declared guilty even before the investigation was complete.

Suddenly, there was a huge public outcry over the incident, and this case became the biggest media trial in the history of Indian broadcast media as it was continuously covered for 2-3 months. The case got global attention and media coverage and set a wave of conspiracy theories that were entirely played out and telecasted on the Indian news channels, social media websites, newspapers, and world politics. Due to the widespread attention that this case got, it was later handed over to the CBI for investigation. Subsequently, the NCB, India's National Drug law enforcement agency, also joined the investigation when reports about drugs being involved in the case emerged.

Immediately after the incident, the news channels started live-streaming the case's developments without providing any break and forgetting other vital issues like covid-19, floods, and unemployment that had to be covered. While reporting this case, TV anchors donned the role of psychiatrists and openly debated Rajput's mental health by accessing his private medical records, which was in complete violation of his right to privacy. In this case, the media persons also became the investigating authority and interviewed several people on national television whose testimony could be relevant in the Court. Private messages and bank statements of the people involved in this case were analyzed and discussed on national television. Various conspiracy theories about drugs and money were also formulated to garner public attention.

This case also witnessed massive public engagement on social media. The public used social networking sites like Facebook, Twitter, Instagram, and Youtube to express their opinions. Some people even used these websites to publish unverified materials that created mass hysteria. Along with the trial by media, hate campaigns were launched on social media against the accused by the so-called crusaders of justice. This influenced people to a great extent and led everyone to believe that Rhea and her family were guilty even though there was no concrete evidence linking her to Rajput's death.

As per a report by the newspaper Hindustan Times, around 80,000 fake accounts were created across all social media platforms to derail the Mumbai Police investigation as their findings were not consistent with the agenda that was being propagated at the time. The posts made by those accounts were from India and other countries like Italy, Japan, Poland, Slovenia, Indonesia, Turkey, Thailand, Romania, and France.

All of this led to a PIL being filed in the Bombay High Court against the ongoing trial by media. The Court asked the media houses to exercise restraint when reporting on suicide cases, saying that media trial leads to interference and obstruction to the administration of justice. A bench of Chief Justice Dipankar Datta and Justice G.S. Kulkarni said that "some reportage by Republic TV and Times Now in the aftermath of the death of actor Sushant Singh Rajput were prima facie contemptuous."[71] They observed, "media trial leads to interference and obstruction to administration of justice and violates programme code under the Cable TV Network Regulation Act."[72] "Any reportage has to be in accordance with the norms of journalistic standards and ethics, else media houses stand to face contempt action."[73]

The Court also asked whether the current mechanism for self-regulation of the electronic media was enough to balance the right to freedom of speech and expression and the right of the accused to a fair trial and reputation. The Court in the present case remarked that "substantial damage has been caused to the reputations of the persons so-called involved. It takes years of hard work to build a reputation and with just one stroke it is brought from top to bottom. Without being punished, there is stigma on their forehead till the trial is completed, no matter if they are cleared of the charges. In the present case before us, there are all these youngsters and their reputation is being tarnished at this age. They have a whole life ahead of them, they have families. What will the impact on them be?"

[71] News 18, https://www.news18.com/news/movies/media-trial-hinders-justice-hc-on-sushant-death-case-coverage-3307574.html (last visited Sept. 25)
[72] Anindita Sanyal, *Sushant Singh Rajput Case:Some Reporting Against Mumbai Cops Contemptuous: Court on Sushant Case,* NDTV, https://www.ndtv.com/india-news/sushant-singh-rajput-case-some-reporting-against-mumbai-police-contemptuous-court-2354185 (Sept. 25, 2021, 4:30 PM)
[73] K.A.Y Dodhia, *Malicious reporting on SSR case: Bombay HC directs digital media to follow press council rules,* Hindustan Times, https://www.hindustantimes.com/india-news/malicious-reporting-on-ssr-case-hc-directs-digital-media-to-follow-press-council-rules-101610965032465.html (Sept. 26, 2021, 2:00 PM)

This case highlighted everything that is wrong with the media coverage of high-profile cases. In this case, the media crossed its limits and infringed the rights of all the people involved in this case. The events that played out in the media have opened a new debate on the role of the press, especially the 24/7 news channels in cases under investigation and unresolved trials before the Court. A lawful body was absent, especially in social and electronic media, which added fuel to the fire.

4.6 Flaws in the Existing Regulatory Framework

It is an undisputed fact that in a system that favors the elite, having unbiased media is essential for the delivery of justice. The Indian newspaper industry is witnessing a period of growth due to factors like improved technology that enables production at a larger scale, increasing rate of literacy, enhanced purchasing power of citizens, aggressive publishing, and digital media space.

However, with the development of the Indian media industry, there are also some flaws in the existing system which might be of concern. I have identified some of the flaws during the research on this topic which are discussed below.

- **Increasing Privatization of Media**

  The current media market trends show that there is an increasing cross-media ownership happening in India. Cross-media ownership refers to a situation where a single media producer owns different communication channels, including print, digital, television, and radio. This has led to an increase in the privatization of the media sector in India. Reporters Sans Frontiers (RSF) carried out a research project in India, Media ownership monitor (MOM), which dealt with various aspects of the media sector. It was found in this research that despite having one of the biggest media markets in the world, a handful of people own and control the media in India. Therefore, these results indicate that many media outlets do not necessarily translate into a pluralistic media landscape.

  The MOM analyzed 58 leading Indian media outlets with the largest audience shares. The research disclosed that the country's print media market is highly concentrated. Four major outlets – Dainik Jagran, Hindustan Times, Amar Ujala, and Dainik Bhaskar, capture three out

of four readers within the national Hindi language market. The regional language media markets showed similar results. The research also showed that one of the best-selling English newspapers in India, The Times of India, owns 40 other media outlets. Similarly, other major groups like the Essel group (owner of Zee media) and Hindustan Times have influence over more than one media platform.

Today, all over the world, corporate entities own several media platforms. For them, it is not just another way of earning profits and expanding their business, but also a way to exert influence and power. By investing in media channels, they pursue their economic interests. Most of the leading media houses are owned by large conglomerates that are still controlled by the founding families that invest in a vast array of industries other than the media. In India, the Reliance group has significant control over media channels. They own a media group, Network 18. Network 18, in turn, owns various news channels. Ownership of corporate firms restricts the ease and credibility of media. For instance, in 2013, Aakash Ambani, the son of the Chairman of Reliance Industries, was involved in a car crash that allegedly killed two people. However, very few media houses reported this incident, and out of those who reported it, some had to delete their reports later. The corporate influence over the news network did not allow facts regarding the case to be put out publically.

Such media ownership is dangerous for the functioning of a democracy, and it has completely altered the way media should function. Ideally, the media institution should remain independent from any fear, pressure, or external interference in their affairs. However, today's media groups are dependent on political parties and corporate entities for investment and thus, fear to report anything against them. All this has led to a rise in the commercialization of news, paid news, sensational news, and propaganda news. Thus, what the readers/viewers get is filtered and manipulative information. The rampant use of the internet added more to the misery.

The high concentration level results from considerable gaps in the regulatory framework to safeguard media pluralism and prevent media concentration. Neither specific means to measure nor thresholds to limit ownership concentration in print, television, and the online sector are in place. The patches of regulation that exist, do not seem to be implemented appropriately except for the radio market where India's state-controlled broadcaster, All

India Radio, has a nationwide monopoly on radio news. The laws in India do not regulate cross-media concentration either.

This issue has not been discussed appropriately. The I&B Ministry referred this issue to TRAI twice, in 2008 and 2014. The TRAI, in its consultation paper, recommended measures to regulate media ownership. One of the recommendations was that political and religious bodies, government institutions, and publicly funded bodies should not be allowed to own media groups as media plurality is necessary for building public opinion. Apart from India, cross-media ownership exists in many other countries as well. The US, the UK, Australia, and Canada have formulated laws to limit media ownership in their countries. Australia and Canada place a blanket restriction on the entry of a media entity into more than one or two media segments.

Another pressing issue that the media industry faces today is commercialization and the growing number of advertisements in print and electronic media due to increased private ownership. More than news content, newspaper columns are filled with advertisements. Instead of important news articles, these days, advertisements occupy the front page of leading newspaper dailies. This again decreases the readers' access to critical information.

- **Sensationalism of news**

In mass media, sensationalism is one of the kinds of editable tactics in which events and topics in news stories are presented in such a way that most readers and viewers get hooked on it. This style of news reporting motivates biased or emotionally charged opinions of events and may cause manipulation of the truth of a story.

TRP is the main factor behind the sensationalism created by the media. Every news channel tries to get high ratings every year. In a bid to increase their ratings, television channels turn stories into sensational scandals intending to earn a cut-throat edge over the others. One of the expected goals of sensational reporting is to increase or sustain viewership or readership. By doing this, the media outlets can keep their advertising rates higher to increase their profits based on the vast majority of viewership/readerships. Journalists and editors are often blamed for sensationalizing news stories by those whose reputation is harmed by such reporting. Mass media is often used as a tool for vengeance, defamation, victim and witness

interfering, and monetary or personal gain. Sensationalism has become a trend in media that has led to fake reporting, citizen journalism, and yellow journalism.

Last year, we got to see the ugly side of the Indian media. The media preferred to focus on the death of a prominent Bollywood actor rather than focusing on other pressing concerns like the coronavirus. Instead of reporting on real stories that require prompt attention and action by the state, the media focused on superficial and shallow news, only to use it as clickbait for more readers by presenting an exaggerated, hyperventilated, and over-the-top version of the events. Another example of sensationalist media coverage was seen when Bollywood legend *Sridevi* passed away. Instead of focusing on other news or the practicalities of the case, every news channel had its own story to offer. Accusations against family members, fabricated forensic reports, and over-the-top graphics followed by cheap headlines were broadcasted by the 24/7 news channels. The media did not view this as a death or as a loss for a family. For them, it was simply breaking news that had to be crisp and exciting. Even the most leading news channels gave into this domino effect, bowing down to the vicious cycle of glamorized news and viewership bait. Earlier, newspapers, journals, and magazines were unaffected by such competition, but now they too have *adopted these techniques to remain in the competition.*

The impacts of sensational stories can last for a significant stretch of time in the public eye and can change our view of the media as far as we might be concerned. When the facts of a story are overstated altogether for that specific newspaper or TV channel to get a higher rating, people, in general, can think that it is hard to comprehend the truth of what was covered. Other than filtering out stories to get to reality, the populace would likewise need to consider if the news they are getting is authentic.

The practice of presenting the news as sensationalist stories is not only deceiving to the public, but it has also threatened the security of the state on many occasions. For instance, the live coverage during the Kargil war in 1999 is considered inappropriate by many. Even though it helped the country get overwhelming diplomatic recognition, blunders like the blazing lights of camerapersons at the Indian Army camp drew the enemy's attention. It led to heavy firing in which four soldiers of the Indian Army were killed. Also, a renowned journalist who did the live coverage of the “secret” Tiger Hill operation is said to have given

away military locations that caused casualties on the Indian side and might have helped the enemy. In his book titled *'Kargil: Turning the tide,'* Lt. Gen. Mohinder Puri writes that the journalist might have unintentionally shared the Indian Army's plan with the enemy by doing live coverage of the war.

However, the media did not seem to learn from its past mistakes, and the same thing happened during the Mumbai 26/11 terrorist attacks in 2008. Due to the live coverage of the events, terrorists were quickly able to access all the broadcasting information and news feed covered by the media. Maybe few lives could have been saved if the media had restrained from the dissemination of sensitive information. The details about the attack that had taken place on the day and the plan of action and response of our country's security forces were all aired by the media in detail in the form of breaking news. This had a worse impact as the terrorists got to know that few of the people were hiding on the 19th floor of Hotel Taj, and it also revealed how the security forces were going to enter the building, which alerted the terrorists. Due to this unpleasant experience during the 26/11 Mumbai terror attacks when news channels broadcasted the NSG operations live, Information and Broadcasting Ministry was told to amend the program code in Cable Television Network Rule to avoid terror-related operations live coverage in the future.

Sensationalist news affects our lives every day without many even realizing it, but in reality, this practice is hurtful not just to the public but also to the journalism industry as it affects the credibility of the media.

- **Practicality of the Self-Regulation Mechanism**

The principle of self-regulation entails regulation by itself, where the media does not have a regulatory body above it. Hence, there is always a dilemma about who maintains the checks and balances in writing and publishing. The NBA is the self-regulatory body for news channels in India, funded by its member broadcasters. Currently, it has 27 members representing 70 channels. The NBA has constituted the News Broadcasting Standards Authority (NBSA) which adjudicates matters relating to violation of ethics and practices in news broadcasting. This authority has laid down standards for electronic media in order to ensure ethical practices in journalism. The powers of the authority include warning,

reprimanding, censuring, expressing disapproval against, and/or imposing a fine upon the delinquent broadcaster. NBSA can also recommend suspension/revocation of the license of such broadcaster to the concerned authority. However, the standards laid down by the authority apply to its member broadcasters only. Thus, limiting the jurisdiction of the NBSA is only to its members. This is the major limitation of NBSA.

Theoretically speaking, leaving the regulation to the media itself would generate the likelihood that it may subjugate regulatory aims to its own business goals. Cross-media ownership by big corporate companies has reached alarming proportions. For instance, in 2013, the leak of the *Radia tapes*[74] disclosed the shocking and unholy nexus between journalists and politicians, lobbyists and business groups. The PCI, through its Chairman, addressed this issue. However, no stringent measures were taken. Thus in India, there is no self-regulation in reality.

Every news channel, whether it is a member of the NBA or not, has flouted all norms, violated ethics and privacy rights, been explicitly partisan as they have indulged in fake news and propaganda news to suit their agendas. Besides reducing tragedy to a public spectacle, they race to secure higher TRPs and assert their supremacy over others. Thus, the private body like the NBA needs a more robust adjudicatory mechanism, and broader implications on broadcasters need to be made to regulate all broadcasters on an equal footing. Besides, the constitution of a similar association for the online news media would be at the cost of restricting the regulatory framework to the association members, and it may fall foul due to lack of clarity in ascertaining the online journalists.

Generally, the regulation of media can be categorized under four categories. The first category is the one where there is ***complete regulation***, and no freedom is given to the media. The government is free to check its contents and can ask for amendments in media reports. This sort of regulation is seen in Turkey, UAE, and China. The second category is ***co-regulation***, wherein a non-state regulatory system links up with state regulation similar to that of Australia. The third category is the ***statutory regulation***, in which the state has specified regulations administered and enforced through the statutes. In India, the Press

[74] *See*, Wikipedia, *'Radia Tapes Controversy'*, https://en.wikipedia.org/wiki/Radia_tapes_controversy (last visited Sept. 28, 2021)

Council Act, which constitutes the PCI, claims to be following statutory regulation. The fourth category of regulation is ***self-regulation*** which involves regulations being administered and enforced by the bodies themselves through internal policies.

Various democracies have propagated self-regulatory frameworks in order to avoid state intervention in the dissemination of news. Electronic journalism, if self-regulated, has various advantages like preserving editorial freedom, increasing flexibility, and is cost-effective. However, self-regulation could also be a menace for electronic journalism. Firstly, the idea that the media houses will comply more willingly with the association's regulations than those imposed by the statutory authorities seems somewhat weak. The association, which comprises of the executives of the member media houses, often face consequences of their actions. Secondly, the lack of supervision may lead to self-aid than self-regulation. The association may formulate rules for the protection of the media agencies that would be against the public's interest at large. Thirdly, the private nature of such associations may provide incentives for profit-making rather than working in the public interest.

Thus, self-regulation is a controversial matter and places requirements upon every level of the media institutions, on the journalists, on their editors and managers, on the approach of the media houses to the production of content, and the overall behavior of the industry.

- **No Legal Powers with the PCI**

The Press Council Act, 1978 regulates the print media in India that has established the PCI. The Council is a statutory authority and functions as a quasi-judicial body. It comprises of a Chairman who is appointed by a committee consisting of the Presiding Officers of the Rajya Sabha and Lok Sabha, and a person elected by the members of the Council. There are 28 other members other than the Chairman of the Council. These members include journalists, persons who own or carry on the business of management of newspapers, persons who manage news agencies, persons with special knowledge or practical experience in the field of education, science, law, literature, and culture, and five members of the Parliament.

The functions of the Council include adjudication of complaints against the press. It is statutorily empowered to take *suo motu* cognizance of those actions which are against journalistic standards. It has the power to summon witnesses, issue warnings, and admonish

the newspaper agency, editor, or journalist. However, the major limitation of the Council is that it does not possess the power to penalize any entity for violation of the guidelines. Thus, as stated by Justice Markandey Katju, *"The Press Council in its current form has no punitive powers and is hence akin to a toothless tiger."*[75] Thus, regulation of the media under the framework of the PCI is a fallacy due to the lack of adequate powers to penalize those who violate journalistic ethics.

These facts depict the incapacity of the Press Council of India. It cannot suspend the journalists for the unfair work they do. Presently, there is no qualification prescribed by the Press Council for journalists, unlike the Bar Council of India and Medical Council of India, which provides qualifications and guidelines for lawyers and doctors, respectively. These councils have the power to remove a member from the profession for professional misbehavior and infringement of professional principles. However, the Press Council does not have any such power apart from warning, reprimanding, or censuring the delinquent journalists. Also, the PCI can only deal with complaints against the print media and not the electronic media.

Due to the lack of powers, the government also does not need to comply with its recommendations. Neither is it representative of the views of the media, nor does it have any legal power to take any penalizing or remedial action against publishers providing false news. It has merely been an authority that brings out reports analyzing the behavior and working patterns of the media. These reports are published as government documents that are not adopted. Thus, it exists as a merely superficial body in its present form.

- **Lack of Media Accountability**

Media accountability is a phrase that refers to "the general belief that mass media has to be accountable to the public interest. This means media is expected to behave in a manner that promotes society's overall well-being."[76] The media sector in India lacks accountability because the PCI does not possess any substantial powers and only governs the print media.

[75] Poorvika Chandanam, Critical Analysis of the Regulatory Framework of "Digital journalism" in India, 4, JCIL, 335, 339
[76] Ashraf Sahil, Media and Accountability, Greater Kashmir, (Sept. 6, 2021, 7:05 PM), https://www.greaterkashmir.com/opinion/media-and-accountability

Even though there are complaints procedures in place, many cases keep awaiting their chance as the Council takes an inordinate time over its interventions.

On the other hand, electronic media works under the self-regulation mechanism with NBSA as the governing authority. However, the NBSA consists of the representatives of the member news channels, and they act as the adjudicatory authority in case of any complaints or grievance redressal. This is in complete violation of the principles of natural justice as *no one can be a judge in their own cause*. Besides, the NBSA has jurisdiction only over its members, so the other news channels work according to their own policies and are mostly unregulated. Therefore, in reality, the NBSA provides little to no accountability in the case of electronic media.

Any self-regulatory mechanism needs to be impartial, prompt, proactive, participatory, and above all, one to which all forms of mass media (print, electronic, online) are committed and accountable. Therefore, there is a clear need to re-look at the accountability systems across all forms of mass media.

- **Problems created by Online Journalism & Citizen Journalism**

The journalistic sphere has gone through radical changes and transformations in the past couple of decades, progressively adapting to contemporary global news-making trends. The traditional understanding of journalism as a profession has changed significantly, mainly because the digital media environment has brought new opportunities and challenges related to journalistic practice.

The internet has emerged as a particular branch of mass media, and it has brought new regulatory challenges in the field of public communication and challenges to our understanding of freedom of expression. The I.T. Act, 2000 was enacted in order to regulate cyberspace in India. Though the Act does not directly regulate the news sector, it can regulate the information published online through its provisions. Section 66A and Section 69A of the Act clearly illustrate this. While Section 66A was held unconstitutional by the Supreme Court in the case of ***Shreya Singhal vs. UOI*** [77] for being *"open ended, undefined, and vague",* the apex court held Section 69A of the Act to be constitutional. Section 69A

[77] Shreya Singhal vs. Union of India, (2013) 12 SCC 73

empowers the state to block online content in the state and public interest. This acts as some kind of regulation, but it depends on the government's subjective satisfaction, which might differ on a case-to-case basis.

With the rise of online journalism, the institutional press no longer possesses the exclusive means of reaching the public. Anyone can disseminate any type of information to the rest of the world. Ongoing journalistic profession transformations are also apparent in the case of emerging digital actors who identify themselves as journalists even though they lack the 'standard' professional training and institutional background completely. In pursuing their journalistic work, these new kinds of news producers have often irritated and blurred the traditional boundaries of the journalistic field.

From a regulatory point of view, there must not be absolute freedom in the case of online journalism, especially when anyone can publish articles online claiming to be a journalist. This increases the chance of violence promoted by words, i.e., promotion of extreme ethnic and religious passions, as well as problems with personal honor and dignity. There is also an increase in the low quality of public discourse on the internet since the distinction between journalists and everyone else has become artificial online. Social media companies that have become key institutions in the current public sphere need to take charge to overcome the hassles created by citizen journalism and need to be guided by the public norms to help foster a healthy and vibrant digital public sphere.

4.7 Conclusion

In light of the cases discussed in this chapter, I conclude that media intervention in such cases has interfered with the rights of the accused and sometimes even the victim and other people involved in the case and has obstructed the course of justice. Apart from that, due to the flaws in the existing system, self-regulation has become difficult. Additionally, political interference in the media can also be seen these days, which undermines its credibility.

Due to the catena of regulatory bodies and statutes, media regulation in India is not unified, creating much confusion. There are also issues surrounding the enforceability of decisions of

such bodies. Therefore, news media accountability is not effectively served by self-regulatory institutions that are diverse and lack powers of enforcement.

CHAPTER 5

Conclusion & Suggestions

The study began with a detailed description of the origins of freedom of speech and expression in England, USA, and India. Also, it gave an insight into the evolution of freedom of the press in these countries. In the US, freedom of the press is expressly provided by the constitution under the First Amendment. In contrast, in India, the judiciary has interpreted the freedom of the press to be implicit under Article 19(1)(a) in various landmark judgments. In the UK, freedom of the press came as a consequence of the lapse of the Printing Act of 1662. In a democratic society, freedom of speech and expression is available to the press, but that freedom is not absolute. In the case of these three countries, reasonable restrictions can be imposed on this freedom if it interferes with the course of justice. The freedom of the press does not give them the freedom to conduct media trials. The ill-effects of media trials and the need for a better regulatory system have been discussed through this study.

Media being one of the means of mass communication helps in disseminating information on a large scale. It plays an essential role in a democracy by keeping people educated regarding social, political, and financial activities. The media is expected to convey impartial news and to put out realities instead of making any judgment. However, as discussed in this study, the media attempted to twist realities and give its verdict even before the Court on many occasions. The Supreme Court of India had appropriately indicated this in **R. K. Anand's case**.[78] In this case, the Court believed that the ill-effects of media trials make a fair trial difficult. Similarly, in **Express Newspapers' case**[79], the Court observed that there is a chance of unrestrained freedom to turn into a permit prompting disorder and anarchy. Hence, the verdict emerging from trial by media interferes with the administration of justice and affects the rights of the accused.

[78] *Supra note 50.*
[79] *Supra note 31.*

The Indian criminal justice system rests on a fundamental principle of *innocent until proven guilty*. This means that an accused person brought before the Court is presumed to be innocent until proven guilty by the prosecution. However, in the case of trial by media, this principle is completely overlooked. There are specific procedures established by law to ensure a fair trial in Court, but these procedures are not followed in case of trial by media. This is also against the principle of the rule of law. The Supreme Court of India also expressed a similar view in **State of Maharashtra vs. Rajendra Jawanmal Gandhi**.[80] It stated that a trial by media or public agitation due to such a trial is contrary to the rule of law.

The study in chapter 3 reveals that along with the right to a fair trial, media trial also has potential effects on judges' subconscious mind, which further interferes with the proper administration of justice. The Supreme Court of India in, **In Re: PC Sen**[81] raised the concern about the impact of prejudicial remarks made by the media on the mind of judges. The Supreme court in **Reliance petrochemicals case**[82] observed that *"in what manner they are so influenced may not be visible from their judgment, but they may be influenced subconsciously."* The House of Lords in England also expressed the same view in **Attorney General vs. BBC**[83]. Though the judiciary has not elaborated on how media trials influence the judges, it has expressed concern about its potential effects on the judge's subconscious mind.

Trial by media also affects the right to privacy of the accused and almost everyone involved in the case. There is always a risk of an individual's private life being brought to the public sphere by media, bringing about an intrusion of privacy and personal space of an individual. Media trial likewise influences the reputation of all people associated with the case. This was very evident in the Sushant Singh Rajput case, where both the print and electronic media invaded the privacy of the accused, her family, and all the other people associated with the case. Furthermore, the media also influenced the reputation of the deceased and several other people by linking them to various conspiracy theories.

Trial by media also has other disturbing effects which go unnoticed, like the pressure it creates on the lawyers taking up the case of an accused by compelling them to give up such case due to

[80] State of Maharashtra vs. Rajendra Jawanmal Gandhi 1997 (8) SCC 386.
[81] In Re: PC Sen AIR 1970 SC 1821
[82] *Supra note 43.*
[83] *Supra note 58.*

the flak they receive from society. This will result in a trial without proper legal representation, which is against the idea of the right to a fair trial. This had happened to Mr. Ram Jethmalani, a renowned lawyer in India. His morality was questioned by the media when he appeared for the accused Manu Sharma in the Jessica Lal murder case.

Trial by media also amounts to contempt of Court. The Supreme Court of India and the High Courts have the powers to punish for their contempt under Articles 129 and 215 of the Indian Constitution. The Supreme Court of India in **AK Gopalan vs. Noordeen**[84] held that a publication made after the arrest of a person could be contempt if it was prejudicial to the suspect or accused. This continues to be the law even today as far as Articles 19(1)(a), 19(2), and 21 of the Constitution of India are concerned. Therefore, on this ground, the freedom of media can be restricted if it obstructs the due course of justice or lessens the prestige or authority of the Court. The Contempt of Courts Act, 1971 also provides that the courts are empowered to restrict the media from making any prejudicial publication during the pendency of criminal proceedings. The 200th Report of the Law Commission of India has made recommendations for amending the Contempt of Courts Act, 1971, so that it becomes more effective in curtailing prejudicial publications by the media.

However, the positive role played by the media in a democratic society cannot be ignored. It makes the government accountable for its acts by keeping the people informed about government-related activities. It promotes transparency and gives voice to people's opinions on various issues. A powerful and independent media can bring positive changes in society. Press freedom is essential to achieve all of this. However, at the same time, it is expected from the media that it does not derail from its path and get involved in TRP-driven news for monetary gains.

The independence of media is a topic of great importance in a democratic society. The media has to be free from state control to keep the public informed about the affairs of the state. Therefore, the self-regulation method is considered preferable. However, in the current scenario, the self-regulation method is not working anymore. It has posed various problems like fake news, paid news, unethical sting operations, trial by media, and breach of privacy. Additionally, the recent

[84] A.K. Gopalan vs. Noordeen 1969 (2) SCC 734

technological developments and the increase in 'online journalism' and 'citizen journalism' have led to a proliferation of online news media. Therefore, there is a need for reforms in the current regulatory mechanism.

Following are some suggestions which may help in reducing trial by media-

1) There is a need to make amendments in the Contempt of Courts Act, 1971, as recommended by the seventeenth Law Commission to prevent the media from making prejudicial publications. The starting point of a pending criminal trial should be from the 'date of arrest' and not from the 'date of filing of the charge sheet'. This will prevent the media from making any prejudicial publications. However, not all publications related to the case by media should be restricted.

2) In the case of data protection, our system should follow the policy of the German Press Council. In Germany, a person can complain to the press council if they believe that data pertaining to them has not been handled appropriately. Adopting a policy like this by the Indian Press Council will help protect the privacy of a person. Additionally, the editorial offices should mandatorily publish a guide with safety measures for data protection.

3) Amendments are needed under the current data protection bill, which gives the press and media unrestricted liberty to disseminate information they consider masses interested in. Such unrestricted liberty is against the right to privacy. The Parliament should add a provision in the bill making it mandatory for the media houses to show "what is in public interest" rather than "what the public is interested in".

4) There is a necessity for the training of young journalists in the profession. This can be done directly by the media houses in the form of workshops or seminars as part of the journalism course. New approaches need to be developed where students pursuing journalism should be informed about laws relating to media, working of the press, standards and ethics to be followed by the professionals.

5) In order to obtain a license for carrying out the profession, there should be a qualifying exam on the legal framework of media in India, which should cover guidelines, norms, and ethics to be followed by media professionals. It should be on the lines of AIBE (All India Bar Examination), which legal professionals clear to practice in a court of law in India. It will help the journalists know their rights, duties, and limitations regarding reporting and broadcasting news. This examination should be made mandatory for all journalists who are entering the media profession.

6) The PCI, which is a statutory body for regulating print media, should be given more punitive powers. Currently, under section 14 of the Press Council Act, the Council only has the power to warn, admonish or censure the newspaper or the news agency or the editor or the journalist. The Council also has the power to disapprove the conduct of the editor or the journalist if the journalistic standards or public taste has been offended by a newspaper or a news agency, or the editor or a working journalist has committed any professional misconduct. It is clearly visible from the current state of affairs that these powers are not enough to discourage the press from indulging in media trials. Therefore, PCI should be given sufficient powers to deal with such problems.

7) It has become imperative to statutorily define “digital journalists” and “digital news agencies”. “Offline” and “Online” news media should also be clearly defined and distinguished so they can be regulated in a better way.

8) The online news media could be regulated under the PCI by bringing amendments to the Press Council Act, 1978. There is a need for proper enforcement and adjudicatory mechanism with powers to place penal sanctions on the offenders. The Council should also formulate a separate code of conduct for online journalists.

9) Any regulation involves three major components- the legislation, the enforcement, and the adjudication. Currently, the NBA is self-regulated concerning all three components. However, there is a need to revamp the framework of the NBA without changing the method of regulation to protect the independence of media. Self-regulation may still prevail even though there is government interference in any of the three components discussed above. For instance, the government may establish standards of regulations but delegate enforcement to the regulatory body. This method of self-regulation is also followed in the UK.

10) It should be made mandatory for all the news channels to be a part of the NBA to widen the jurisdiction of NBSA. Additionally, the NBSA should have the power to suspend the license and impose heavy fines on those who violate the code of conduct.

11) Submission of an annual statement by the media outlets about compliance with the code of ethics to the regulator should be made mandatory as in the UK. This will help in upholding responsible and ethical journalism.

In addition to these suggestions, what is required is that the media should understand that it should refrain from any publication that may hinder the administration of justice and fair trial. It should be cautious while expressing its views and should know that trial by media is never appreciated. In conclusion, through this study, and more specifically through the analysis of the cases that witnessed media intervention, it can be stated that media trial interferes with the administration of justice and rights of the accused. Additionally, it is also concluded that there is a need for reforms in the current regulatory mechanism due to the flaws pointed out in Chapter 4 of this study.

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