
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

INDIAN MEDIA: FROM WATCHDOG TO LAPDOG¹**ABSTRACT**

Media is universally labelled forth pillar of democracy and also named as ‘watchdog’ since it checks and balances the power of the other three branches of government i.e., the legislation, the executive and the judiciary. However, the dissemination of fake news and misinformation through the mainstream media and deviation from the real issues of the country has resulted in a slow erosion of faith and confidence in the media. The present paper will analyse the constitutional position on the Freedom of Speech and Expression which is essential to the freedom of the press to discharge its responsibilities in honest and bona fide manner. Further, the paper will attempt to analyse how far can the justification from free speech withstand false and propaganda driven information disseminated by the mainstream news channels. The present paper will also discuss how through media trials; media houses are creating hindrance in the justice delivery system of the country. In the present era of social media, where the circulation of fake and fabricated news is its peak, the responsibility of media increases to provide credible news and maintain a strong democratic set up in the country.

Keywords: Media, Credibility, Media Trial, Fake News and Democracy

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CHAPTER- I
INDIAN MEDIA: FROM WATCHDOG TO LAPDOG

“The moment we no longer have a free press, anything can happen. What makes it possible for a totalitarian or any other dictatorship to rule is that people are not informed.”

– Hannah Andret

1.1 INTRODUCTION

Democracy is defined as the rule of the people which is backed by the three strong pillars i.e., legislature, executive and judiciary. However, an additional pillar has been created to strengthen the democracy known as ‘Media’. Edmund Burke considered media as the fourth pillar of democracy.²The functioning of media as a guardian of society not only maintains its credibility but also increases its influence.³ The power which media hold in present society is very vast as compared to other platforms and means. It is universally accepted that the only a free and independent media or press can endow citizens with a diversity of information and views on matters of public significance.⁴Media directly influence the mind and perspective of an individual and ultimately society in whatever way they want to. The main objective of taking media under the radar of fourth most important estate of the democracy is that it operates an additional check and balances on government. Its role as watch dog of the representatives of society, developing an ambience of answerability and providing an open forum for public debate, strengthens and befits the basic foundation of democracy. The role of media in free democratic country is very crucial and they both walk hand in hand. Presence of free media in any democratic nation is not only strengthens its administrative efficiency but also speed up the development.

From the inception, the contribution of media in the history of human civilisation can be witnessed. It always been a very crucial part of several social revolutions occurred all the world including India’s battle of independence. Regarding Indian newspapers, Thakur DuttSharma ‘Alok’ has said – “Two elements were mainly associated with the sunrise of journalism in India. First, criticism of the government and corruption; Second, the suppression of newspapers

² Pratiyush Kumar & Kuljit Singh, *Media, the Fourth Pillar of Democracy: A Critical Analysis*, 6 IJRAR-INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS, 370 (2019)

³ Yadav, V. (2020). *Media and Social Responsibility. Higher Education of Social Science*, 18 (2), 60-63. <http://www.cscanada.net/index.php/hess/article/view/11740>

⁴Meera Mathew, *Media Self- Regulation in India: A Critical Analysis*, ILL LAW REVIEW(2016)

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on behalf of the government.”⁵The recent decade has witnessed a greater collision between the interest of the media and common people. In the present era of globalisation in which the accessibility of media is available in each corner of the world, it somehow deviating from its social responsibility. The increased influence of media in current globalised world is nicely described by the words of Justice Learned Hand of the United States Supreme Court, he said “The hand that rules the press, the radio, the screen and the far spread magazine, rules the country”⁶In India, the unhealthy competition between various news agencies to gain higher TRPs and viewership have completely worsened the situation leading to a degraded quality of news followed by distortion of facts and unreasonable interference in the private life of individuals.⁷Media nowadays playing with the emotions of the society in order to take undue advantages and to make more money. It is the same media which was once the eye, ear, and mouth of society, but now it is shamming the society with its false and fabricated substance in the form news.⁸

I.2 RESEARCH DESIGN

RESEARCH QUESTIONS

- Has the Indian media completely lost its credibility?
- Whether to broadcast or publish news by the Indian press comes under the garb of Article 19 (1)(a) of the Indian Constitution?
- Has the Indian media been not imposed with any kind of restrictions while broadcasting any matter?
- Is the Indian media now making news on unnecessary subjects just to get the TRP?
- How Does Media Trial Hamper the Rights of the Victim and the Accused?
- Whether publications relating to suspects or accused from the date of their arrest should be regulated?
- Is Media Trial falls under Contempt of Court?
- Is mainstream media deliberately spreading communal disharmony in society?
- Is the Indian media misleading the people by hiding the important issues happening in the society?

⁵ Supra note 2, page no. 60.

⁶Right to Privacy in Sting Operations of Media

<http://odisha.gov.in/magazine/Orissareview/2013/may/engpdf/57-61.pdf>.

⁷Mohd. Aqib, Utkarsh Dwivedi. *Judiciary and Media Trial: A Need for Balance*. INDIAN J LAW HUM BEHAV. 155–161 (2019)

⁸Supra note 1, Media, the Fourth Pillar of Democracy: A Critical Analysis.

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RESEARCH OBJECTIVE

- To study the role of media as the fourth pillar of democracy
- To study the judicial pronouncements in which importance of free press have been upheld.
- To study the various factors through which Indian media is spreading communal disharmony and misleading people with fake news.
- To study the impact of deviated mainstream media from its social responsibilities.

STATEMENT OF PROBLEM

Indian media's inclination for high TRP and propaganda-driven news has resulted in the distribution of misleading news. The dissemination of fake news and misinformation through the mainstream media and deviation from the real issues of the country has resulted in a slow erosion of faith and confidence in the media.

RESEARCH METHODOLOGY

The present research is mainly a doctrinal research and analytical study. Keeping this in view, the researcher utilized the conventional method of using libraries consisting of primary sources. As study is doctrinal in nature, historical and doctrinal methods are adopted because it is not possible to study purely by experimental methods. The relevant material is collected from the Bare Acts, various text books, Case Laws, Commentaries, Books, News Paper Articles, E-Journals and class room teaching has been referred for the purpose.

HYPOTHESIS

Mainstream media actively participating in the dissemination of fake news or misinformation rather than acting as a 'watchdog' for reliable information. Through media trials, media houses are creating hindrance in the justice delivery system of the country. Factual distortion and deliberate deception for the sake of TRPs and profit has eroded the media's credibility and confidence in the public.

CHAPTERISATION

Chapter I: Introduction

Chapter II: Literature Review

Chapter III: Critical Analysis

Chapter IV: Conclusion

CHAPTER-II

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LITERATURE REVIEW

- Pratiyush Kumar & Kuljit Singh⁹ in their article *Media, the Fourth Pillar of Democracy: A Critical Analysis* discusses those democratic and civilized countries have always valued press freedom, which Edmund Burke referred to as the Fourth Pillar of Democracy. However, because of its negative consequences, the fourth pillar needs immediate restoration. Formerly known as the people's voice, the media has now become synonymous with lies, hate, propaganda, blackmailing, and other forms of deception. It is clear from its perception that the media's standard has degraded by leaps and bounds.
- Mohd Ayub Mir¹⁰ in his study *The Role of Media in Indian Democracy* examines that Democracy cannot succeed without the media or a free press. In this context, a democratic society needs the effective and diligent participation of a free press. It is the people's voice. It is critical to the development of a stable democracy. The media is regarded as the beating heart of a democratic society. It informs people in all countries of the world as an essential source of information.
- Vikas Yadav¹¹ in his paper *Media and Social Responsibility* analyse that the media and society are inextricably linked, and the media's position in promoting a better society is widely acknowledged. In everchanging circumstances, where societal changes have occurred, a shift in the media's working style is also witnessed. It has reaffirmed its social responsibility on several occasions by carrying out its obligations. However, the corporations that own the country's and world's media outlets have their own ambitions. To achieve this aim, they are abusing the media.
- Mohd. Aqib, Utkarsh Dwivedi¹² in their work *Judiciary and Media Trial: A Need for Balance* examines that the media should not supersede the judiciary's role. The media trial is clearly an unwarranted intrusion into the administration of justice. Judges start considering media coverage while making decisions, which is why in most high-profile cases, the verdict passed by the media becomes the final verdict in courts. It is necessary to strike a balance between press freedom and the right of a victim to a fair trial.

⁹Pratiyush Kumar & Kuljit Singh, *Media, the Fourth Pillar of Democracy: A Critical Analysis*, 6 IJRAR-INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS, 370 (2019)

¹⁰Mohd Ayub Mir, *The Role of Media in Indian Democracy*, 6 IJRAR (2019)

¹¹Yadav, V., *Media and Social Responsibility*. Higher Education of Social Science, 18 (2), 60-63 (2020). URL: <http://www.cscanada.net/index.php/hess/article/view/11740>

¹²Mohd. Aqib, Utkarsh Dwivedi, *Judiciary and Media Trial: A Need for Balance*, 5 INDIAN JOURNAL OF LAW AND HUMAN BEHAVIOUR, 156 (2019).

- Meera Mathew¹³ in her paper *Media Self- Regulation in India: A Critical Analysis* examines that in the sense of self-regulation, examines the media's vital position in disseminating news. The powers vested in the Press Council of India, which has been mocked for failing to fulfill its mandate. A system for resolving public grievances is needed. The media has been increasingly dependent on gaining popularity rather than providing real news in the public interest as a result of competition.
- Bibu V N¹⁴ in his study *New Media and Governance: Issues in Democracy and the Transiting Public Sphere in India* analyse the global shifts in governance and democratic practices that have resulted from the emergence of new information and communication technologies (ICTs). The emergence of digital media clearly presents both opportunities and challenges for contemporary governments and political figures outside of traditional power structures.
- Hadiya Khan and Pankaj Joshi¹⁵ in their study *Freedom of press: Pillar of democracy* examines that Freedom of Expression has always been stressed as a necessary foundation for a society's democratic functioning. For the last few decades, press freedom has remained a contentious topic in the democratic world. The democratic credentials of a nation are now judged by the degree of press freedom enjoyed in that state. All aspects of the country's social, political, economic, and cultural life are covered by the press in a detailed and impartial manner.

CHAPTER-III

ANALYSIS

3.1 HISTORICAL BACKGROUND- LAWS GOVERNING MEDIA IN PRE AND POST INDEPENDENT INDIA

In the history of India, the media has been perceived as powerful, patriotic and reliable in the socio, the financial and political environment of the country. Indian media was dynamic since the late eighteenth century with print media began in 1780, radio telecom started in 1927, and the screening of Auguste and Louis Lumière moving pictures in Bombay started during the July of 1895. Also, the enactment relating to media regulation can be followed back to the British

¹³Meera Mathew, *Media Self- Regulation in India: A Critical Analysis*, ILI LAW REVIEW 26 (2016)

¹⁴Bibu V N, *New Media and Governance: Issues in Democracy and the Transiting Public Sphere in India*, 6 AMITY JOURNAL OF MEDIA & COMMUNICATION STUDIES, 64 (2016)

¹⁵Hadiya Khan and Pankaj Joshi, *Freedom of press: Pillar of democracy*, 4 INTERNATIONAL JOURNAL OF LAW (2018)

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time. In 1799, The Censorship of Press Act was enacted by Lord Wellesley imposed strict press restrictions including pre-censorship. The act also imposed mandatory publication of names and addresses of printers, editors and publishers. These restrictions were relaxed under Lord Hastings, who had progressive views, and in 1818, pre-censorship was dispensed.¹⁶ In 1823, John Adams (then acting Governor-General) promulgated The Licensing Regulations Act under which without license using or opening press would fall under a penal offence. The primary target of these restrictions was Indian publisher and their newspaper. This act had forced Raja Rammohan Roy to stop the publication of his paper Mirat-ul-Akbar. The Press Act of 1835 or Metcalfe Act regarded as “liberator of the Indian press” repealed the 1823s obnoxious act and presented liberal press policies resulted into rapid increase of newspaper. The new Press Act (1835) required a printer/publisher to give a precise account of premises of a publication and cease functioning if required by a similar declaration.¹⁷ The Licensing Act, 1857 repealed the act of 1835 and made mandatory to seek license for printing the newspapers. The act also gives wide power to the government to prohibit publication and circulation of any newspaper or printed matter which deemed against the government. Then comes The Vernacular Press Act, 1878 was promulgated for the strict restrictions on the vernacular press and effectively penalize and repress seditious writing. To suppress the strong public opinion against the imperialistic policies of Lytton, compounded by terrible famine (1876-77), on the one hand, and lavish expenditure on the imperial Delhi Durbar, on the other, this act was passed.¹⁸ In 1908, The Newspaper (Incitement to Offences) Act gives power of seizure to the magistrate of those press property which is found to be the publisher of objectionable matters likely to incite violence. The Indian Press (Emergency Powers) Act of 1931 empowered the provincial governments to suppress the ongoing Civil Disobedience Movement. It was further enlarged in 1932 to embrace all activities intended to destabilize government authority.

Post-Independence Legislations and Commissions includes The Press Enquiry Committee of 1947 which was set up to analyse press laws in the light of fundamental rights formed by the Constituent Assembly. It suggested nullification of Indian Emergency Powers Act, 1931, alterations in the Press and Registration of Books Act, changes in Sections 124-A and 156-A of IPC, among others. The Press Commission under Justice Rajadhyaksha in 1954 recommended formation of All India Press Council, ban of crossword puzzle competitions, regulating

¹⁶THE HANS INDIA-<https://www.thehansindia.com/posts/index/Education-and-Careers/2015-03-13/Pre-independence-regulation-of-Indian-newspapers/137007> 7 (last visited April 18, 2021)

¹⁷Supra 1 at 371

¹⁸ Id

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advertisements in newspaper etc. The other legislations passed such as Delivering of Books and Newspapers (Public Libraries) Act, 1954; The Working Journalists (The Conditions of Services) and Miscellaneous Provisions Act, 1955; The Newspaper (Price and Page) Act, 1956; and The Parliamentary Proceedings (Protection of Publications) Act, 1960.¹⁹ Print media is governed by a statutory institution called the Press Council of India (PCI). It is a statutory, quasi-judicial body works formed by the aegis of Press Council Act of 1978 which is headed by the retired judge of Supreme Court. Further, the electronic media has to work in compliance of 'The central News Media Accreditation Guidelines. 1999' which says that if a media organization is held to have provided any false or fraudulent or forged details or documents the representative media organization shall be debarred from accreditation up to a maximum of five years but not less than two years, as decided by Central Press Accreditation Committee (CPAC).²⁰

As famous poet Akbar Ilahabadi said – “Do not pull, do not draw the sword, pull out the newspaper when the cannon is in competition”²¹, this expression is still very relevant in the present modern democratic society. Media is universally labelled forth pillar of democracy and also named as ‘watchdog’ since it checks and balances the power of the other three branches of government i.e., the legislation, the executive and the judiciary.²² In the present era of social media, where the circulation of fake and fabricated news is its peak, the responsibility of media increases to provide credible news and maintain a strong democratic set up in the country. The media should build a strong network of providing real news in social, political and economic matters by true analysis of the real ‘what’ and ‘how’.

3.2 JUDICIAL PRONOUNCEMENT: Free Press and Freedom of Speech and Expression

In U.S.A, the first amendment was passed to protect the free press. The view adopted by the U.S. Supreme Court is that freedom of the press includes more than merely serving as a “neutral conduit of information between the people and their elected leaders or as a neutral form of debate.”²³ The extent of democratic credibility of a state is judged today by the freedom which press enjoys in that nation. DOUGLAS, J. ,of the U.S Supreme Court hold the view that “acceptance by Government of a dissident press is a measure of the maturity of the

¹⁹Id

²⁰The central News Media Accreditation Guidelines. 1999

²¹ Supra note 2, *Media and Social Responsibility. Higher Education of Social Science*, page no. 61.

²²Shirley Biagi, *Media/Impact: An introduction to Mass Media*, 35 Wadsworth Publishing Company, Belmont (2006).

²³M.P Jain, *Indian Constitutional Law*, 16 LEXIS NEXIS BUTTERWORTH WADHWA, Nagpur, 576 (2011)

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nation.”²⁴The freedom of the press is shielded not just from direct encroachment by the State but also from any indirect interference. In the landmark judgment of *New York Times Co. v. United States*²⁵, known as ‘Pentagon Papers’ case. The court upheld the First Amendment, right to a free press against government restrictions. The U.S Supreme Court stated that, “Only a free and unrestrained press can effectively expose deception in government.”

In India, the notion of Freedom of the press originates from Article 19(1)(a)²⁶ of the Constitution and considered as “species of which freedom of expression is a genus.”²⁷The Supreme Court has laid down several judicial pronouncements which emphasize on freedom of press in a democratic nation. Hon’ble court in 1992 in the case of *Life Insurance Corpn. of India & ors. v. Prof. Manubhai D.*²⁸ Shah observed that;

“Freedom of speech and expression must be broadly construed to include the freedom to circulate one’s views by word of mouth, or in writing, or through audio visual media. Freedom to air one’s view is the lifeline of any democratic institution and any attempt to stifle, or suffocate, or gag this right would sound a death knell to democracy and would help usher in autocracy or dictatorship.”

Bombay High Court in a full bench judgment established the constitutional premise of the Right to Freedom Speech and Expression. The ruling exemplified the Supreme Court's precedents on the freedom to openly express one's view, including on the most contentious historical events, and affirmed the right to criticize.²⁹

In the landmark judgment of *Romesh Thappar v. State of Madras*³⁰, Patanjali Shastri, CJ hold the stand that;

“Freedom of speech and of press laid at the foundation of all democratic organization for without free political discussions no public education, so essential for the proper functioning of the process of popular government, is possible.”

Although the Indian constitution does not expressly guaranteed press freedom, the Supreme Court has consistently accorded it a vital status and settled a balance between free speech and free media. At the same time, the judiciary has held a close eye on any attempt by the media to infringe on an individual's rights. Pronouncing on the merits of a case that is pending in a court of law, either formally or inferentially. Alternatively, something that leads to the public's

²⁴*Terminiello v. Chicago*, 337 U.S. 1.

²⁵403 U.S. 713 (1971)

²⁶INDIA CONST. art. 19, cl. (1)(a).

²⁷*Sakal Papers v. Union of India*, AIR 1962 SC 305: (1962) 3 SCR 842.

²⁸(1992) 3 SC 637

²⁹*Shri Anand Patwardhan v. The Central Board of Film Certification*, 2003 (5) BomCR 58; 2004(1) MhLj 856.

³⁰1950 AIR 124

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negative view of the alleged accused or any move threatening his innocence.

Hon'ble Supreme Court in the case of Indian Express Newspapers (Bombay) Private Ltd. v. Union of India³¹ observed that;

“Freedom of press is the heart of social and political intercourse...The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

The right to freedom of speech and expression and the right to free press are inextricably linked, as observed in the landmark case of Prabhu Dutt v. Union of India.³²In the instant matter, because of the media's commendable efforts, two death row inmates were able to exercise their right to free speech. Ranga and Billa, who had been sentenced to death, were eager to be interviewed in this case. The Chief Reporter of the Hindustan Times was eventually allowed to interview them inside the Tihar Jail after the Supreme Court intervened. The court famously ruled that the right to know news and facts about government administration falls under the umbrella of press freedom. In addition, the court sensibly made a balance in this case. It went on to say that this right isn't absolute, and that it's subject to certain reasonable restrictions in the welfares of society and the person who provides the details. The media has the right to access all such information with the person's voluntary consent. In the words of Justice Learned Hand of the U.S Supreme Court,

“The hand that rules the press, the radio, the screen and the far spread magazine, rules the country.”

No right to freedom, no matter how precious, can be considered absolute, unlimited, or unqualified in all circumstances in a democratic society. The freedom of the press, like any other constitutionally protected right, must be exercised within reasonable limits. Excessive media coverage obstructs the courts' ability to provide justice and impacts accused, victims, convicted, and witnesses by invading their privacy rights. Therefore, press freedom and related obligations must go hand in hand to restrict the press from being a weapon of exploitation.

3.3 INDIAN MEDIA: LOST CREDIBILITY IN JOURNALISM

³¹AIR 1986 SC 515

³²AIR 1982 SC 6

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“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.”

-Justice Blackstone

The media markets have become extremely competitive as various media forms have evolved. Political and corporate houses are becoming proxies in the fight to promote business, personal and political agendas through their platforms, thanks to their increasing impact on mainstream media. It is constantly broadcasting and publishing unverified or false news, or propaganda, in the race to create news material for a 24*7 run news channel and the haste to be first in a world of ‘breaking news.’ As a consequence, the reality suffers the greatest loss. The basic principles of journalism, such as truthfulness, accuracy, objectivity, impartiality, fairness, and public transparency, are currently being compromised by the mainstream media. ‘Reporter without Borders’, an international non-profit, rated Indian media 142nd out of 180 countries in its study ‘The World Freedom Index 2020,’ which is an annual press freedom index. According to the study, “...the Indian media reeling under a Hindu nationalist government, which has time and again tried to gag journalists.”³³

I. FAKE NEWS

The World Economic Forum released a report³⁴ in 2014 that listed fake news or disinformation on the internet as one of the top ten global challenges. Prakash Javadekar, (Ministry of Information and Broadcasting) said that “false news is more dangerous than paid news.”³⁵ When US President Donald Trump coined the word “fake news”, it gained attention around the time of the 2017 US Election. There were also debates on how social media fake news affected the US elections and the Brexit vote. The word “fake news” has no widely accepted meaning. Fake news is a broad term with a variety of definitions and connotations.

According to the Press Council of India (PCI), fake news is a global threat, which describes it as “News, story, information, data, and report which is or are wholly or partly false”. As per The Ethical Journalism Network, fake news is “information that is likely to be perceived as news, which has been deliberately fabricated and is disseminated to deceive others into

³³Hamid Ansari, *Journalism and the Media’s crisis of credibility in the age of Strident Nationalism*, The Wire, (2019), <https://thewire.in/media/india-media-nationalism>

³⁴<http://reports.weforum.org/outlook-14/making-the-outlook-on-the-global-agenda-2014/>

³⁵ The Print, *Fake News more dangerous than Paid News* (2020), <https://theprint.in/india/fake-news-more-dangerous-than-paid-self-regulation-needed-says-ib-minister-javadekar/490080/>, last visited April 19, 2020

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believing falsehoods or doubting verifiable facts.”³⁶

Indian media's proclivity for sensationalism and propaganda-driven news has resulted in the distribution of misleading news. The dissemination of false news and disinformation through the mainstream media has resulted in a slow erosion of faith and confidence in the media. There have been numerous events in recent times where the mass media has played a role in this crisis. According to reports³⁷, social networking sites such as Facebook, Twitter, YouTube, and, especially, WhatsApp, have become popular mediums for spreading false news with no strict measures in place to monitor their material. However, according to a study done by the Non-profit and Mobile Association of India (IAMAI) and data journalism portal³⁸, Fake news on mainstream media, rather than Facebook or WhatsApp, can affect the public's minds. The study further discovered that fake news or disinformation has eroded confidence in the traditional media. And due to this lack of trust, people are taking a turn towards social media for the news. It was also discovered that newspapers remain one of the most common sources of news for people of all ages.

II. CORPORATIZATION OF MEDIA and TRP SCAM

In recent years, Indian media has become the ‘gatekeeper’ for various political parties and corporate houses. Corporate entry resulted in a profit-driven mentality, which obliterated the news media's neutrality first. Several news organizations began to report selectively and as “Power corrupts and absolute power corrupts even more”. Aside from that, instead of presenting viewpoints, they began imposing it. News which is TRP producing get played in repeated loops, while noteworthy news gets overlooked. Since Pratyusha Banerjee's suicide was telecast for TRP at the time, the floods in Assam did not receive the attention it deserved. The media has sunk so low that it is able to jeopardize national security and secrecy. Whether it's broadcasting the 26th of November or debating surgical strikes, there's always something to talk about. They've started blaming the IB, the Supreme Court, and even the Army in order to gain popularity and benefit. After the unfortunate death of Sushant Singh Rajput earlier this year, the media was riddled with conspiracy theories, vacillating between suicide and murder.

³⁶The EJN is a global association that brings together over 70 groups of writers, editors, press owners, and media service organizations from all over the world. <https://ethicaljournalismnetwork.org/>

³⁷Pooja Chaudhari, *Fake news shared on social media affects the whole world; This Crisis Needs to Be Addressed Urgently*, The Logical Indian (2017), <https://thelogicalindian.com/story-feed/awareness/fake-news-on-social-media/>

³⁸Rakesh Dubbudu, *People Below age 20 or 50 more susceptible to fake news*, Factly-IAMAI study, Factly, (2019), <https://factly.in/people-below-age-20-or-above-50-more-susceptible-to-fake-news-factly-iamai-study/>

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Simultaneously, turning a blind eye to the COVID-19 pandemic's imminent crisis.

When India ranks second on the list in terms of COVID-19 outbreak, its economy rate of -23.9 percent, the unemployment rate is standing around 23.5 percent, and approximately 200 migrant workers have died in the lockdown, the Indian media is constantly obscuring these issues by focusing on unnecessary subjects that either serve the government's Hindu nationalist agenda or deviate from the real issues of the society. The findings of a study that tracked 202 primetime debates from October 2018 to October 2019 were extremely unfortunate. The following debates took place:³⁹Criticising Pakistan: 79 debates: criticising opposition: 66, praising ruling government and PM Modi: 36, Ram Mandir: 14, Bihar flood: 3, Chandrayaan Mission: 2, Rape case against Swami Chinmayanand: 1, PMC Bank scam:1 and debate on issue like unemployment, economy, education, women safety, healthcare, Poverty, malnutrition, Farmer's issues, environment, mob lynching, environment remains zero.

The Broadcast Audience Research Council, via Hansa Research Group, one of BARC's vendors on interaction with panel homes, or "people's meters," exposed a fake TRP racket in October 2020. Channels have been accused of bribing some households to watch their shows in order to boost their TRPs. TRP (Television Rating Points) manipulation ring that included Republic TV, one of the country's most successful media outlets. Certain households were ordered to keep these channels on for an entire day in exchange for \$400-500 per month. Many illiterate households were asked to keep English outlets, according to the police, because the manipulation was mainly done for advertising revenue.

The validity of mainstream media is under great threat. Former Indian President Pranab Mukherjee recently stated emphatically that "discussion and dissension are crucial for a spirited democracy, and it must hold public institutions accountable for all their actions and inactions. There should always be room for the argumentative Indian, and not the intolerant Indian. The media must be the watchdog, the mediator between the leaders and the public".

III. MEDIA TRIAL

The media has now morphed into a "public court" and has begun interfering in free court proceedings. Media completely ignores the crucial difference between an innocent and a convicted person, putting the golden ideals of "presumption of innocence unless proven

³⁹Siddhant Dubey, *The Indian Tale of Lost Credibility in Journalism: Who to Blame?*(2020), <https://www.oxfordunimediasoc.com/blog/2020/11/8/the-indian-tale-of-lost-credibility-in-journalism-who-to-blame>, last visited April 20, 2020

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guilty” and “guilt beyond a reasonable doubt” on the line.⁴⁰In recent years, media trials have become an inextricable part of news reporting, often backed up with reenactments of crime scenes and sensational photographs, all justified in the sake of increased viewing and TRP. The media trial of a case that is currently pending before a court of law obstructs the delivery of justice and an unbiased trial in such a case. The Arushi murder case, Jessica Lal murder case, BMW accident case, Nirbhaya rape case, and Nira Radia case are just a few recent media prejudiced cases. There were also scams such as the 2G scam, the Commonwealth Games scam, and the Harshad Mehta stock market scam. Although these examples are from different fields, but they all have one thing in common: they are all influenced by the media.

The dissemination of news based on a biased opinion that is prima facie wrong and manifestly unjust defeats the intent and results in a breach of social and moral justice provided by the preamble of the Constitution. Factual distortion and deliberate deception for the sake of TRPs and profit has eroded the media's credibility and confidence in the public. Such deceptive practices undermine the justice system and act as a serious threat to the right to a fair trial, which is guaranteed fundamental right. If the media, for the purpose of sensationalizing, interferes with the principle of mala fide practices in the delivery of justice, it crosses the line and necessitates the application of reasonable restrictions. It is a well-established fact, in judicial proceedings, that sub judice matters ought not to be subjected to media trials as such coverage results in the travesty of justice.⁴¹ The Hon'ble Supreme Court in the case of State of Maharashtra v. Rajendra Jawnmal Gandhi⁴² observed that;

“A trial by press, electronic media or public agitation is the very antithesis of the rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and he is strictly to be guided by the rules of law.”

III.1 Media trial on some prominent cases in the recent times

- Sushant Singh Rajput case: The case is still under trial. However, the media has showed several conspiracy theories, which is even more damaging because the issue is now politicized as a result of the excessive media coverage. The sanctity and standards of journalism are being jeopardized, with potentially disastrous consequences. Intolerable

⁴⁰Mohd. Aqib, Utkarsh Dwivedi, *Judiciary and Media Trial: A Need for Balance*, 5 INDIAN JOURNAL OF LAW AND HUMAN BEHAVIOUR, 156 (2019).

⁴¹Saibal Kumar v. B.K. Sen, (1961) 3 SCR 460.

⁴² Maharashtra v. Rajendra Jawnmal Gandhi, CRIM APP. NOS 840 & 839 of 1997

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remarks were made at the alleged accused and her family even before the learned judges could make any statements about the evidence or the involvement of prime accused in the case.

These anchors-turned-experts play the roles of forensic experts, detectives, and judges at the same time. Another critical aspect of Sushant Singh Rajput's case is the violation of the Right to Privacy, which applies to both the deceased and the accused. The private life of the main suspect, has become a toy in the hands of the media. Her private chats with friends from 2017 are being shown on news channels. A few TV stations obtained the accused's call records and broadcast her WhatsApp messages.

- Sunanda Pushkar Case: Following Sunanda Pushkar's death on January 17, 2014, the media began their media trial, naming Shashi Tharoor as the murderer by revealing half-truths, cherry-picking evidence, and twisting statements. Shashi Tharoor filed a defamation case against a well-renowned media house in the Delhi High Court in 2017. The Journalist and his channel must acknowledge Shashi Tharoor's "right to silence" while the inquiry into Sunanda Pushkar's death is ongoing, according to the Court.

This isn't the first time that the media has gone too far. The Aarushi Talwar case started a pattern of invading people's privacy. Where a 12-year-old girl's private life became the media's trend for public ridicule. Immodest remarks, as well as a "love-angle" narrative and uncorroborated stories about the deceased, were made. The public display of a teen's life caused her family mental anguish and jeopardized their right to privacy and a fair trial.⁴³

III.2 LAW COMMISSION 200TH REPORT

Article 19(1)(a) enshrined in the Constitution of India guarantees freedom of speech and expression, while Article 19(2) allows for reasonable restrictions to be imposed by the legislation for a mentioned reason, including "contempt of court." While "administration of justice" is not mentioned in Art.19(2), interfering with the administration of justice is explicitly mentioned in the concept of 'criminal contempt'⁴⁴ in and Sec.3 thereof as constituting contempt. Thus, publications that intervene or attempt to interfere with the "administration of justice" are considered criminal contempt under Contempt of Courts Act, 1971, and if the

⁴³Rutvi Zamre, *Rhea Chakraborty's Media Trial Is an Extension of a Diabolic Celebrity Culture*, FEMINISM IN INDIA (2020), <https://feminisminindia.com/2020/09/18/sushant-singh-rajput-rhea-chakraborty-celebrity-culture-privacy/>

⁴⁴sec. 2 of the Contempt of Courts Act, 1971

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provisions of Act place reasonable restrictions on freedom of speech and expression in order to prevent such intervention, those restrictions are legitimate.

Currently, absolute protection is given to publications under section 3(2) of the Contempt of Courts Act, 1971, read with the Explanation mentioned, even though they prima facie interfere with the delivery of justice in a criminal case, if a charge sheet or challan is not filed or a summons or warrant is not issued by the date of publication. Only if a criminal case is currently pending, i.e., if a charge sheet or challan is filed or a summons or warrant is issued by the Court by the date of publication, will such publications be considered contemptuous.⁴⁵

Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971), the Law Commission's 200th Report, has proposed a law prohibiting the media from "publishing anything prejudicial to the interests of the accused in criminal proceedings from the time of arrest to investigation and trial." The report stated that; "Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice."

It has proposed amendments to the Contempt of Courts Act 1971. Currently, certain publications fall under the scope of contempt only after the charge sheet in a criminal case is filed, while it should be invoked from the moment of arrest. Another contentious suggestion is that the high court be given the power to order a print or electronic medium to delay publication or telecast of a criminal case. Y K Sabharwal, former Chief Justice of India expressed concern about the recent pattern of the media holding "trials" of cases before courts issue judgments and said:

"According to law an accused is presumed to be innocent till proved guilty in a court of law, and is entitled to a fair trial. So, it is legitimate to demand that nobody can be allowed to prejudge or prejudice one's case? Why should judges be swayed by public opinion?"

CHAPTER- IV

4.1 CONCLUSION

⁴⁵sec.3(2) of the Contempt of Courts Act, 1971

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“What difference does it make to the dead, the orphans and the homeless, whether the mad destruction is wrought under the name of totalitarianism or in the holy name of liberty or democracy?”

- Mahatma Gandhi

We live in the age of the internet, where there is an abundance of knowledge. The avalanche of false facts or disinformation is burying factual news. India currently lacks well-defined statutes and regulations to combat fake news, which opens up a new research field. One cannot argue that the media, more than any other pillar of democracy, has the ability to manipulate ideas and sway public opinion. Unfortunately, fake news and distorted information are being used by media to create encrypted information and agenda-driven reports that influence public sentiment. The way Indian media is dealing with society's wrath is undeniable. Mainstream media was once thought to be the most critical aspect for raising one's voice and being heard, but shifting values and money invested in it has severely harmed its reputation. In order to curb the negative elements of media, laws and regulatory bodies seem to be a bit flippant. The media has the ability to alter a person's perspective on what it reports. It has the ability to manipulate personal thought and change whole dynamics through people who experience different points of view from it. Due to recent events, it can take longer to re-establish media's credibility. However, the procedure must begin immediately. A check-and-balance approach to the current wave of fake news may be a realistic alternative for championing the cause of unbiased journalism, which is sine qua non in a democracy. The media should put an end to its habit of casting a nelson's eye over important issues.

In democratic societies like ours, the notion of the media as a protector of the public interest and a link between the ruling and the governed is profoundly rooted. In a democracy, the media has a significant role to play, as it has been envisioned as a forum for impartial knowledge and critical reasoned debate. It is high time for the media to understand and reflect on the root issue and consequences of allowing propaganda to flourish on its channel. Rather than coming from the government, the rules should come from media outlets or independent media organizations. As a result of government legislation, investigative media can be jeopardized. Consistent attempts must be made to restore trust by adhering to ethical and professional practices. To combat the threat of degraded media, all stakeholders—legislators, politicians, online intermediaries, mainstream media, and citizens—must take collective responsibility.

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4.2 RECOMMENDATIONS

- The Press Council Act of 1978 only covers print media, and it is necessary to expand its scope to include electronic media as well. If the television media is included in the Act, it will be subject to external control in addition to self-regulation.
- Certain amendments to the Contempt of Courts Act, 1971, are required to prevent the media from creating prejudicial publications and interfering with the administration of justice. The moment of 'arrest' can be used as the starting point for the "pendency of a criminal case." The 200th Law Commission Report also recommended it. However, this suggestion has yet to be adopted.
- There should be a minimum requirement for those who want to work in the media. The media persons should be informed about the laws governing the media as well as the limits placed on the media. This will assist them in becoming informed of their limits from the start of their professional careers.
- The "Press Council of India" (PCI), a legislative body, is responsible for developing and retaining print media standards. The Press Council of India Act of 1978 gives the PCI very restricted powers. The Act should be amended to give the PCI more authority to take action.
- Stringent laws should be made and cancellation of the licence should be allowed to any newspapers and media houses which telecast or publish the distorted information and fake news in order to breach public harmony.