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Defamation, Fake News and Media Ethics: Balancing Free Speech & Accountability

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ABSTRACT

“The media is the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power. Because they control the minds of the masses. - Malcolm X ”

Every coin has two sides and likewise media which evolved as a strong weapon also has positive and negative aspects. In the present times where “media is considered as fourth pillar of democracy and also age of digitalization” where media is easily reachable to all sectors of the society it has led to the magnification of some serious concerns like fake news which may lead to unrest and misinformation and defamation which contravenes with the fundamental right of person to lead to a reputed and dignified life.

In this scholarly discourse, the author intends to overview the concept of defamation and fake news while highlighting the role of media in it. The author further discusses mechanisms of defamation and fake news along with its impact on individual and society while throwing light on extent of “freedom of speech and highlighting the case studies”. The discerning analysis aspires not only to expound upon role of media in defamation and fake news but also to enrich with media ethics and regulations while focusing on the challenges still pertaining. The author concludes the paper by making suggestions and recommendations to address the challenge.

Keywords: Defamation, Fake News, Media, Freedom of Speech, Media Ethics

I. INTRODUCTION

“Every man is entitled to have his reputation preserved inviolate - William Blackstone ”

In the 21st century internet communication grows rapidly over the world, people can transmit information and communicative across the boundaries in a faster, easier and inexpensive way. With one click a user can post a message to bulletin board on the web or send a message by email to an enormous number of recipients globally. Defamation laws have developed over several centuries to provide recourse for people whose reputation are or are likely to be harmed by publication of information about them. Theoretically, the objective of defamation law is to

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balance between protection of person's reputation and freedom of expression. With the proliferation of internet, and its endless freedom to discriminate information of all kind new concerns and interpretation have inevitably arisen about conflicts between the right to speech and right to reputation.³

As the media revolution took place during early and late 2000s with introduction of Internet in India and people became much aware of their rights guaranteed under Constitution, there has been an increase of filing of defamation suits and unrevealing of fake news. Media now is accessible to each and every other individual which has caused people to use their freedom of speech in wrong senses.

The issue of defamation vis-à-vis the news media requires careful consideration. On the one hand, instances of fake sting operations or trial by media give credence to allegations of irresponsible journalism. On the other, threats of legal action with punitive damages under the laws of defamation lead to a 'chilling effect' on the publication of free and independent news articles and puts undue pressure on journalists and publishing houses.⁴

Although the press enjoys the freedom of speech and expression under Article 19(1) (a) of the Indian Constitution, defamation is a ground for a reasonable restriction to this freedom under Article 19 (2).⁵

II. THEORETICAL FRAMEWORK

(A) Concept of Defamation under Indian Law

Reputation is the most valuable asset that an individual holds in the society. It is not simply what an individual thinks of himself but what other's think of him. As reputation stands as a valuable asset it becomes essential that it gets protection by law. Therefore, any injury to reputation of a person amount to defamation and is an actionable under Indian Law.

Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him.⁶

"In general, there are two types of Defamation – Libel and Slander."

Libel- A libel is a publication of false and defamatory statement in some permanent form tending to injure the reputation of another person without lawful justification or excuse.

³ SHWETA CHHETRI, The Defamation in the Internet Age: Cyber Defamation , 4 IJLMH 1981, 1981 (2021)

⁴ HARISH KUMAR, Law of Defamation in India, 2 IJIIR 22, 24 (2017)

⁵ SHWETA CHHETRI, The Defamation in the Internet Age: Cyber Defamation , 4 IJLMH 1981, 1981 (2021)

⁶ W.E. Peel, J. Goudkamp, Winfield & Jolowicz on Tort 360 (Sweet & Maxwell, 19th edn., 2014).

Slander - A slander is false and defamatory, verbal or oral statement in transitory forms intending to injure the reputation of another without lawful jurisdiction or excuse. ⁷

Under Indian law there has been made no distinction between libel and slander and both of them are punished or compensated equally. Defamation in India is primarily governed by two statutes: the Indian Penal Code (IPC) and the Civil Law. Under the IPC, defamation is a criminal offense punishable with imprisonment and/or fine. ⁸

Defamation as Tort or Civil Wrong – In the law of torts, defamation refers to the publication of a false statement that harms the reputation of an individual or entity. It is a civil wrong that allows the aggrieved party to seek damages for the harm caused to their reputation. Defamation can occur through spoken words (slander) or written or published words or images (libel).⁹

To constitute defamation –

- The statement must be false.
- The statement must be defamatory in nature.
- The statement must be published i.e. communicated to third party either orally or in written form.
- The statement must not be privileged.

Defamation as Crime – Under Indian law, defamation is considered to be a crime and is punishable under Section 500 of Indian Penal Code. Section 499 defines defamation as -

Section 499: Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. ¹⁰

The explanations provided further under the section provides a much better understanding to what would amount to criminal defamation.

Section 500 IPC: Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. ¹¹

⁷ Mohd Aqib Aslam, Defamation And Media Law , Legal Services India, <https://www.legalserviceindia.com/legal/article-7095-defamation-and-media-law.html>

⁸ Defamation Laws and Media Trials, LawNotes (Nov 22, 2018), <https://lawnotes.co/defamation-laws-and-media-trials/>

⁹ Defamation Laws and Media Trials, LawNotes (Nov 22, 2018), <https://lawnotes.co/defamation-laws-and-media-trials/>

¹⁰ Indian Penal Code, 1860, No.45, Acts of Parliament, 1860 (India)

¹¹ Indian Penal Code, 1860, No.45, Acts of Parliament, 1860 (India)

From the above-mentioned theory, the essential elements to constitute defamation can be notes down as –

1. The statement must be defamatory
2. The statement must refer to Plaintiff
3. The statement must be published
4. The publication must be made by the defendant.

Defence Against Defamation¹² –

1. **Publication of true Statement-** “In India law, the statement must be in the welfare of public as well as true”.
2. **Impartial and Just Criticism-** “If defendant proves that whatever he published was impartial and just, then he will not be held responsible for defamation. But it is necessary that the criticism must be: In the public welfare, in good faith, just and balanced or merely an opinion”
3. **Privilege-** “Privilege means an excuse or immunity conferred by law on statement or communication made on certain occasions called privilege occasions”.
4. **Apology –** Sometime apology is also considered in the shape of defence. The amount of compensation may be reduced by the apology. But it is required that the apology must be: At the earliest opportunity, Absence of malice, and Free from any condition.

Concept of Fake News –

The University of Michigan Library has defined “fake news” as false news stories, meaning the story itself is fabricated and has no verifiable facts, sources or quotes. Sometimes these stories may be propaganda, intentionally designed to mislead the reader, or they may be “clickbait”. Simply, it means that some websites might want to increase the clicks and visitors they get, so they publish fake or sensationalised stories to attract attention. ¹³

The authors define fake news as: “fake news is a false news, [nonfactual (including fabricated, nonfabricated) exaggerated or disparaged] which can be disinformation or misinformation (published, communicated) or disseminated with help of any means.” The above definition includes ingredients of fake news as firstly false news, secondly nonfactual which can be fabricated, non- fabricated, exaggerated or disparaged thirdly which is either disinformation or

¹² Mohd Aqib Aslam, Defamation And Media Law, Legal Services India,

¹³ Ankita Deshkar, Amidst Lok Sabha elections, fake news, disinformation and fact-checking matter , IE, Apr 2, 2024

misinformation, fourthly it disseminated mostly on online platforms (which is also known as social media).¹⁴

Fake news in simple terms is a fabricated, false and misleading piece of information that is presented as a true news. The problem of fake news is pervasive that has a serious impact on the society, social harmony and even public security. With evolution of Internet in 21st century, the problem of fake news has expanded as there are various platforms that play a key role in dissemination of fake news. The advent of Digital technologies and social media brought digital revolution in the society but at the same time has led to a widespread problem of circulation of fake news. The social media handles like WhatsApp, Twitter, Facebook, Instagram are the key reason for the rapid spread of fake news. Fake news comes in various forms with different agenda to exploit the society. Some of the kinds include – Clickbait, Political Misinformation during elections, Health Misinformation, Rumors and hoaxes, Conspiracy theories, deepfakes, AI generated content etc.

Fake news can be classified into 2 categories – Harmful Fake News and Non-Harmful Fake News.

1. **Harmful fake news** – The fake news that are capable of causing severe harm to individual, community or society at large can be termed as harmful fake news. The spread of such news may result in public unrest, violence, health risk, economic damages, personal harm and defamation.

Example: Fake news on train from Bandra station to north India during COVID19 : During the lockdown in India, fake news was shared about starting a train from Bandra station to north India. Due to this fake news, thousands of migrant workers had gathered at the railway station which broke the law-and-order situation.¹⁵

2. **Non- Harmful fake news-** The news that is fake and untrue but does not lead to serious damage to any individual, community or public at large maybe termed as non-harmful fake news. The impact of such news is generally limited and mostly only lead to confusion or entertainment.

Example: Gold chadar offered by a devotee to Sai Baba Samadhi: A false image was shared claiming that a devotee offered a diamond-studded gold chadar to Sai Baba's shrine. Actually,

¹⁴ Anup Ramesh Rao Kawthalkar & Dr. Atmaram Shelke, Critical Analysis of Laws on Fake News in India , 6, JPPW, 8642, 8646 (2022)

¹⁵ Anup Ramesh Rao Kawthalkar & Dr. Atmaram Shelke, Critical Analysis of Laws on Fake News in India , 6, JPPW, 8642, 8647 (2022)

no such thing happened but it did not cause any harm to anyone.¹⁶

The main sources for the spread of fake news includes –

1. Social media platforms such as WhatsApp, Facebook, Instagram.
2. Fake news and websites blogs that are not authentic. These sites often copy the appearance of credible news organizations to deceive readers.
3. Biased news channels are often accused of showing the unverified content to support one side and degrade the another,
4. Deepfakes are the recent source that leads to spread of misinformation where an image, audio or video of a person is digitally altered so they appear to be someone else.
5. On some cases misleading advertisements being displayed on social media platforms claiming magical impacts results in spread of disinformation.

In today's world, a large portion of the Indian population is using various social media platforms to communicate with each other. In the absence of awareness of the authenticity of the content received and shared, many people knowingly or unknowingly share the unverified, unauthentic, misleading information, and fake news, which has caused many law and order problems in India.¹⁷

III. OVERVIEW OF ROLE OF MEDIA IN DEFAMATION AND FAKE NEWS

India is a developing nation which is constantly evolving with the spirit of development, of which progress is an integral part. In achieving the goal of development media plays a very important role. Starting from the days of Indian freedom struggle, the media or the press has played a very significant role in awakening of its spirit of independence.¹⁸ In the present times, media has emerged out as fourth pillar of democracy which acts as a watchdog monitoring the actions of the government and holding them accountable. The Media plays a significant role in disseminating information, holding government accountable and also in shaping public opinion.

Every individual of the country has been granted right to freedom of expression and speech under Indian constitution so is the media. Press which is one of the essential form of media is

¹⁶ Anup Ramesh Rao Kawthalkar & Dr. Atmaram Shelke, *Critical Analysis of Laws on Fake News in India*, 6, JPPW, 8642, 8648 (2022)

¹⁷ Anup Ramesh Rao Kawthalkar & Dr. Atmaram Shelke, *Critical Analysis of Laws on Fake News in India*, 6, JPPW, 8642, 8649 (2022)

¹⁸ ARSHID AHMAD SHEERGOJERI & LATEEF AHMAD SHERGUGREY, *ROLE OF MEDIA IN INDIAN DEMOCRACY*, 8, NAIRJC, 41, 41 (2022)

a medium of availing knowledge and spreading the vital information of events, developments, incidents of national interest to the whole nation and thus free and fair operation of the press makes the backbone of civil society which is capable of critical and independent thinking and forms its opinion about the country and the government after scrutinizing the facts of the situation wisely. Freedom of the press is implicit under Article 19(1)(a) of the Indian Constitution, which provides for the freedom of speech and expression under Part III (fundamental rights). It does not explicitly provide the term freedom of the press anywhere but it becomes quite clear from this Constituent assembly debate when Dr Bhim Rao Ambedkar replies to a question of Article 19 not including freedom of the press saying that the press is just another method of quoting an individual citizen and when anyone chooses to write in a newspaper, they are merely exercising their right of expression and thus, there is absolutely no need to separately mentions the freedom of the press.¹⁹

Although media stands as a strong pillar of democracy but under “the guise of freedom of speech and expression”, in several cases media has overstepped the boundary resulting in defamation and ruining reputation of a person. Another negative aspect of media that cannot be overlooked is politically motivated biased news and exaggeration which sometimes leads to spread of fake news ultimately defeating the objective of media to disseminate information that is true and necessary for public.

Article 19(1)(a) in no manner gives a license to cause damage to the reputation of a person in the name of freedom of speech and expression. Causing damage to an individual’s reputation is considered as defamation and is a stringent limitation to the right of freedom of speech and expression. No one is allowed to expose a person to hate, ridicule or contempt by means of any expression, signs or gestures. Defamation is considered as a very stringent act and therefore it is prohibited by the Civil Laws of Torts. Also, it is an offence under Section 499 of the IPC. As something is enshrined as wrong under two statutes, it is obvious that it has a defence under reasonable restrictions of Article 19(2) of the Constitution .

Mechanisms of Defamation & Fake News by Media:

- **Mechanisms of Defamation –**

Defamation by media simply refers to the publication or broadcasting of any information that injure the reputation of an individual, organization or groups. With rapid growth of press and

¹⁹ Anubhav Garg, The fourth pillar of Indian Democracy: Freedom of the Press, IPLEADERS (JUN 5, 2020) https://blog.ipleaders.in/the-fourth-pillar-of-indian-democracy-freedom-of-the-press/#What_is_Freedom_of_Press

it's associated rights, the number of defamation cases against media houses has witnessed a significant increase. Trial by media, TRP driven reports, paid news, invasive journalism, politically motivated biased news, misquoting, paparazzi culture are some of the mechanisms of defamation by media which has been discussed in detail.

1. **Trial by Media-** Trials are run by judicial bodies in order to decide a particular case. In a similar fashion, when the media, before the judgement of the court, runs such parallel trials in any manner, then such trials are known as media trials. Herein, the media acts like any investigative agency and covers the case thoroughly. In such trials, the media coverage directly portrays the accused as a criminal, which is a complete violation of the law. Any under-trial prisoner cannot be treated as a criminal until and unless proven guilty.²⁰ As result of such media trials, the right of the person accused by media house is hampered. They are denied their right of privacy, right to fair trial, right to have reputation, right to lead a dignified life, and also frame the individual negatively in eyes of public, ultimately injuring their reputation to such an extent that it cannot be restored as earlier.

In case of Sushant Singh Rajput, Rhea Chakraborty, the accused, was constantly followed by the media and was subjected to character assassination. She was in a relationship with the actor but was still accused of practising black magic on him. Constantly, her images and chats were published in the media. Media trials were run to such an extent that the Bombay High Court held that a media trial interferes with the administration of justice and could lead to obstructing the investigation and administration of justice.²¹

2. **Sensationalism & TRP Driven Reports-** Our present Indian Journalism is plagued by sensationalism and wrong reporting. Rather than making people aware of the on goings around the world, it focuses on presenting an exaggerated, distorted and perverted version of the most absurd an insignificant event. This is what is known as Yellow Journalism. The other major defect of the media is twisting of facts. Media often twists facts to make it look more controversial and interesting in order to gain maximum TRP. There are many instances of yellow journalism in India. The live coverage of Taj Mumbai terror attack at the cost of national security issues, extensive coverage of Aarushi murder issue at the cost of breach of privacy laws, extensive coverage of Nirbhaya rape issue at the cost of conducting a media trial and prejudice to the accused, and the list is endless.²²

²⁰ Kruti Brahmhatt, Media trials and its impact on society and judiciary, IPLEADERS (NOV 20, 2023) <https://blog.ipleaders.in/media-trials-and-its-impact-on-society-and-judiciary/>

²¹ Kruti Brahmhatt, Media trials and its impact on society and judiciary, IPLEADERS (NOV 20, 2023) <https://blog.ipleaders.in/media-trials-and-its-impact-on-society-and-judiciary/>

²² Rahul Parashar & Ayushi Sharma, Is Indian Media plagued by sensationalism? LEGALNOW (JUN 6, 2016)

3. Invasive Journalism & Paparazzi Culture-The paparazzi culture in India, similar to other parts of the world, has its own set of concerns and challenges. One of the main issues with the paparazzi culture in India is the lack of respect for personal boundaries and privacy. Paparazzi often go to extreme lengths to capture intimate moments or sensationalize the mundane activities of celebrities. They frequently invade private spaces, such as homes, restaurants, and even hospitals, to capture exclusive photographs. This behaviour not only violates the privacy rights of individuals but also puts them at risk of physical harm or emotional distress. Another problem is the constant pressure and harassment celebrities and their families face. It becomes difficult for individuals in the public eye to maintain a sense of normalcy and privacy when scrutinizing and documenting their every move.²³

4. Biased and Politically Motivated News- Unlike in the past when sections of India media could be identified with their ideological affiliations, the current Indian media suffers from a political affiliation that is undermining the freedom of the press and fair reporting. Headlines in mainstream media have seen a surge in connecting every incident of law-and-order breakdown to the office of the Prime Minister and a failure of the BJP current government in its first term. That's not to say that there is no bias in favour of the ruling BJP. Surely there is.²⁴ The case of the 2019 Lok Sabha elections saw biased reporting where certain channels were accused of airing content that defamed opposition leaders through distorted facts.

5. Misquoting - Misquoting by media simply refers to misjudging and misinterpreting the statements given by the individual during an interview or posted on their social media handle. Such misquoting misleads the public opinion and public may form negative narrative about the individual. One such example is of Bollywood actor Aamir Khan who during an interview said that his wife Kiran Rao had expressed concern about the state of the country, mentioning that she had thought of leaving India because of the perceived intolerance. Some media houses twisted the statement and made headline out of it as 'Aamir leaving India'? and others leading to framing of negative perspective about him and linking his statement to him being unpatriotic.

Aamir Khan later clarified and blamed media for misquoting his statement. He said – “I never said India was intolerant or I wanted to leave the country. I also understand the emotions

<https://medium.com/legalnow/is-indian-media-plagued-by-sensationalism-3f71a5929a0c>

²³ Rohit Mishra, Unveiling The Intrusive Lens: The Menace Of Paparazzi Culture In India, YOUTH KI AWAAZ (JUN 07, 2023) <https://www.youthkiawaaz.com/2023/06/unveiling-the-intrusive-lens-the-menace-of-paparazzi-culture-in-india/>

²⁴ Ravi Kant, Collective hypocrisy or selective bias: Why Indian media reports the way it does? MEDIUM (MAY 11, 2018) <https://legal-kant.medium.com/collective-hypocrisy-or-selective-bias-why-indian-media-reports-the-way-it-does-3df91f39e2c5>

of those who were hurt. I would like to say that my statement was misunderstood and to some extent media is responsible for it. I was born here and I will die here.”²⁵

- **Mechanisms of Fake News-**

In India, press and media plays an important role in shaping public opinions. Between dissemination of information and making public aware there stands a serious concern of spread of fake news. Fake news misleads the public and shape's public opinion in a negative and misguided manner which often leads to hatred, violence and serious consequences. Clickbait headlines, selective editing, fake social media trends amplified by news channels, unverified news reports and deepfakes are some of the mechanisms responsible for spread of fake news.

1. Sensationalism & Clickbait Headlines- A news headline provides a brief introduction to the news story and perhaps more importantly, lays emphasis on the focus and scope of the accompanying news article. Sensationalism involves creating exaggerated or misleading headlines to attract clicks, views, or readership. There is a growing fear that the line between traditional headlines, predatory clickbait and fake news is rapidly blurring.²⁶ During COVID-19 pandemic, in Mumbai as migrant laborers gathered at the Bandra Railway station near masjid, the mainstream media especially TV news channels sensationalized their gathering. Giving it a religious angle and spreading hatred against the Muslim community. The media here created a situation of misinformation resulting in different misinterpretations and thus the spread of fake news.²⁷

2. Selective Editing- Selective editing is one of the most common tactics used by media houses to spread misinformation or to promote TRP driven reports. It simply refers to the mechanisms where a part of entire speech, statement or interview is cut out or selectively edited to form such a news piece that could create sensation in the society. One such example is where Rahul Gandhi commented on the surgical strike of 2016 on PoK.

“After initially praising Prime Minister Narendra Modi for the surgical strike in Pakistan-occupied Kashmir on terror launch pads, Congress Vice-President Rahul Gandhi said this when the BJP started a campaign to highlight the surgical strike as Modi's achievement. However, his choice of sensational words attracted a lot of flak”.²⁸ His statement was directed at the Modi

²⁵ Never said India intolerant or wanted to leave country: Aamir Khan, The Economic Times (Jan 25 2016)

²⁶ Vivek Kaushal & Kavita Vemuri, Clickbait in Hindi News Media: A Preliminary Study, Proceedings of the 17th International Conference on Natural Language Processing, 85, 85 (2020)

²⁷ Ridhi Mittal, Fake news in times of COVID-19: role of media, IPLEADERS (NOV 25 2021) https://blog.ipleaders.in/fake-news-in-times-of-covid-19-role-of-media/#Instances_of_misinformation_in_the_pandemic

²⁸ Controversial political statements of 2016, The Economic times (Dec 26, 2016)

government but it was selectively edited and misinterpreted by several media houses which showed his statement as insult to the soldiers and Indian Army rather than critique of how the government was using the strikes politically.

3. Fake social media trends amplified by Media Houses – Fake social media trends often gain popularity over social media platforms like Twitter, Facebook, WhatsApp and Instagram, picking up of such trends by mainstream media leads to widespread of misinformation and fake news as outcome of which there is unrest and misinformation amongst the public at large.

“During COVID-19, there has been a sudden surge in Islamophobic hashtags and posts on different social media platforms accusing Muslims of purposefully spreading the virus. A new term, “corona jihad”, has been coined to describe this conspiracy. Videos showing Muslims spitting on vegetables and fruit, licking plates and smearing surfaces with their saliva are being circulated widely. Indian media launched a high-decibel campaign about the matter. One newspaper went as far as publishing a cartoon depicting the coronavirus as a terrorist in Muslim attire.”²⁹

4. Unverified News Reports – Unverified news reports are one of the major sources for creating panic and unrest in public. In order to gain TRP news reports are often published by media outlets without adequate fact-checking, relying on unsubstantiated sources, rumors, or social media posts. During the early phase of COVID-19, several media houses broadcasted the news of lockdown and curfew extension for indefinite time citing unnamed sources and without proper fact checking with government authorities. This led to a confusion and panic among the public leading to unrest and hoarding of essentials. The government has to issue clarifications regarding that such news is not true and verified and appeal to media that they shall stop publishing and broadcasting unverified content.

5. Deepfakes - Rapid advancements in artificial intelligence (AI) have ushered in a new era of technological disruption, with deepfakes emerging as a particularly concerning challenge for India's information integrity and public discourse. In recent Lok Sabha elections, fake clips showing Bollywood actors Aamir Khan and Ranveer Singh criticizing Prime Minister Narendra Modi were circulated widely. However, ultimately, it may be said that while there were instances of deepfakes being used for mudslinging, targeted political attacks and even spreading misinformation about exit polls, parties used technology largely for their own voter outreach

²⁹ Apoorvanand, How the coronavirus outbreak in India was blamed on Muslims, ALJAZEERA, (Apr 18, 2020)

and engagement and to overcome language barriers. Deepfakes were also used by parties to 'resurrect' their dead leaders to enhance the emotional connection with voters. In Tamil Nadu, an AI-generated voice message from former chief minister J. Jayalalithaa, who died in 2016, was circulated to criticise the current governing party, the Dravida Munnetra Kazhagam (DMK). The DMK in turn used AI-generated videos of their own deceased leader, M. Karunanidhi, to praise his son and current chief minister, M.K. Stalin.³⁰

IV. FREEDOM OF SPEECH & EXPRESSION V. DEFAMATION

India is a democratic country backed by and built on three main pillar of democracy that is Legislature, Executive and Judiciary but in present time democracy is lined and backed by fourth pillar of democracy that is Media. Media plays a vital role in shaping the opinions of individuals and also influencing and changing the narrative of public at large. Under Article 19 (1) (a) of Indian Constitution, every individual has been guaranteed Freedom of speech and expression. The Article states - All citizens shall have the right— (a) to freedom of speech and expression;³¹ followed by other freedoms. The article is not absolute and lays down the reasonable restrictions on the freedom – *“Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence”*.³²

Thus, Free speech allows people to express their beliefs and political opinions for the betterment of society and the state. As a result, it offers a system through which a suitable balance between permanence and social reform may be achieved. It is of crucial importance in a democratic setup as it improves a person's ability to participate in the decision-making process. Individuals' rights to self-development and satisfaction include the right to free expression, and therefore safeguarding freedom of expression is critical. Freed speech is truly vital in a democratic setup, especially accompanied by a free press. Great thinkers like Voltaire, George Orwell, Thomas Jefferson, and Calvin Coolidge have aptly expressed their views in favor of the freedom of the press. The press's right to freedom, which is implied in the right to free speech, is critical for political autonomy and democracy's efficient operation. The freedom of the press is a subpart

³⁰ Jaskirat Singh Bawa, From Misinformation To Fraud, The Alarming Rise Of Deepfakes In India, NDTV WORLD (JUL 17, 2024)

³¹ INDIA CONST. art. 19, cl. 1 (a)

³² INDIA CONS. Art. 19, cl (2)

of the bigger domain of freedom of speech and expression.³³

As media exercise their right of freedom of speech and expression, in many instances they overstep their boundaries leading to injury to the reputation of an individual, community or groups. The defamation laws provide a protective shield to the individuals against unjust harm to their reputation caused by actions of media.

Balancing Article 19 and Defamation -

The balance between the right to freedom of speech and expression and the risk of defamation by the media is a nuanced and critical issue, particularly in democratic societies like India. While freedom of speech is essential for democracy, the protection against defamation is crucial for safeguarding personal dignity and reputation.

- **Public Interest V. Malice** – One of the essential features of media is to protect the interest of public by delivering authentic information to them in order to make them aware and participative. Any speech, comment or criticism made with intent of public welfare and public interest is protected under Article 19 (1) (a). But if such speech, comment, investigative journalism or criticism is backed by ill motive and untrue information or baseless allegations then it crosses the boundary of Article 19 and enters into the category of defamation.

In *Subramanian Swamy v. Union of India*³⁴, *“it was noted by the Court that imputation can be treated as defamation only if it lowers the character of a person or their credit in the estimation of others either directly or indirectly. The Court in this case observed that truth can be taken as a defense in case of defamation only if the defamatory statement was made for the good of the public at large. Therefore, the Court gave its view that if a defamatory statement is not made for serving the public good but only to malign a person, the statement should not be constitutionally protected”*.³⁵

- **Fair Comment V. Malicious Comment** – Fair comment is one of the defenses under defamation which assists in striking a balance between freedom of speech and expression and risk of defamation. *“If any person expresses his/her views and opinion on the conduct of any other person who discharges any kind of public functions, he will not be liable for the act of defamation. The condition in regard to this is that such views and opinions should be made in*

³³ Tejaswini Kaushal, A Bird's Eye View of the Right to Freedom of Speech and Expression in India, MANUPATRA ARTICLES (Feb 16 2023) <https://articles.manupatra.com/article-details/A-Bird-s-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India>

³⁴ *Subramanian Swamy v. Union of India*, Ministry of Law & Ors., (2016) 7 SCC 221. (India)

³⁵ Nishtha Garhwal, Aspects of defamation in India with respect to *Subramanian Swamy v. Union of India*, IPLEADERS (Nov 20 2021) https://blog.ipleaders.in/aspects-of-defamation-in-india-with-respect-to-subramanian-swamy-v-union-of-india/#Decision_overview

good faith and with honesty. If it is made otherwise then the act will fall under the offense of defamation".³⁶ On the other hand malicious comment refers to any remark made with malicious intent to harm a person's reputation and without any solid backing of truth. They often involve distorted truths or misinformation.

In case *R. Rajagopal V. State of Tamil Nadu*³⁷, government sought to prevent the publication of autobiography of a convicted criminal Shankar on grounds that book maybe defamatory as it may contain criticism of police authority. The Court clarified "the book can be published even without getting due authorization from Shankar as this is the right to freedom and expression to publish a book that does not fall under the category of reasonable restrictions under Article 19(2). The publishers can't publish any secret information as that is violative of the right to privacy. The state has no right to prevent or stop the publication of the book but they have the remedy to file a case of defamation if the book contains any secret information that infringes their right to privacy".³⁸

- **Opinion V. Facts** – In any defamation case distinguishing between opinion and facts is a crucial step. Facts are the statement that are objective assertion about a certain thing which can be proved to be either true or false through evidence while opinion is a personal belief, view or thoughts of a person. Under defamation law, opinions are protected until and unless it is not presented as fact. Statements or facts that falsely accuse of someone does not fall under the shield of defense of defamation while opinion no matter how harsh unless has a underlying fact or imply a false fact is a defense against defamation.

In case of *S. Khushboo v. Kanniammal*³⁹, actress Khushboo made public comments on live-in-relationship and pre-marital sex attracting defamation suits against her. She approached High Court to quash the criminal proceedings initiated against her under Section 499,500,505 IPC and Section 4 and 6 of Indecent Representation of Women (Prohibition) Act. The Supreme Court held that there is no prima facie case of defamation in the present case. The court also found that the institution of the numerous criminal complaints against the Appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, it would be appropriate to grant the relief sought by the Appellant i.e., to quash all the complaints. In such

³⁶ Shubhamgi Upmanya, Defamation law in India, IPLEADERS (JAN 24 2020) https://blog.ipleaders.in/defamation-section-499-to-502-of-ipc/#Third_Exception_Fair_comment_on_public_conduct_of_public_men_other_than_public_servants

³⁷ *R. Rajagopal and Ors. v. State of Tamil Nadu*, 1994,6 SCC 632 (India)

³⁸ Shreya Pandey, *R. Rajagopal and Ors. v. State of Tamil Nadu*, 1994 SCC (6) 632: case study, IPLEADERS (JAN 28, 2022), <https://blog.ipleaders.in/r-rajagopal-and-ors-v-state-of-tamil-nadu-1994-scc-6-632-case-study/#Judgment>

³⁹ *S. Khushboo vs Kanniammal & Anr* (2010) 5 SCC 600 (India)

cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegation. Therefore, it is not the task of the criminal law to punish individuals merely for expressing unpopular views.⁴⁰

Misinformation V. Disinformation –

“Misinformation and disinformation are biggest short-term risks, while extreme weather and critical change to Earth systems are greatest long-term concern, according to Global Risks Report 2024. Concerns over a persistent cost-of-living crisis and the intertwined risks of AI-driven misinformation and disinformation, and societal polarization dominated the risks outlook for 2024. The nexus between falsified information and societal unrest will take centre stage amid elections in several major economies that are set to take place in the next two years.”⁴¹

While both misinformation and disinformation fall under the category of Fake News but the two terms differ from each other on basis of intent. Misinformation is a piece of information that is false or misleading but is shared without any malicious intent. On the other hand, disinformation is a fabricated and inaccurate piece of information that is shared with some malicious intent. In order to distinguish between misinformation and disinformation intent plays a significant role.

“Disinformation is content that is intentionally false and designed to cause harm. It is motivated by three factors: to make money; to have political influence, either foreign or domestic; or to cause trouble for the sake of it. When disinformation is shared it often turns into misinformation. Misinformation also describes false content, but the person sharing doesn’t realize that it is false or misleading. Often a piece of disinformation is picked up by someone who doesn’t realize it’s false and that person shares it with their networks, believing that they are helping”.⁴² During COVID-19 pandemic, a WhatsApp message claiming that drinking hot water and eating raw cloves of garlic could prevent the virus. This information was widely circulated but it was done without any malicious intent therefore it was merely a misinformation. On the other hand, during the farmers' protests in India, disinformation campaigns were run to either support or discredit the protests. Images of unrelated violent events were circulated, falsely claiming that they were part of the ongoing protests to either incite public anger or discredit the protestors.

⁴⁰ Nishant Singh Rawat, Case Study: S. Khushboo v. Kanniammal and Anr. LEGAL WIRES (Jul 12, 2024) <https://legal-wires.com/case-study/case-study-s-khushboo-v-kanniammal-and-anr/>

⁴¹ Global Risks 2024: Disinformation Tops Global Risks 2024 as Environmental Threats Intensify, WORLD ECONOMIC FORUM (JAN 10 2024) <https://www.weforum.org/press/2024/01/global-risks-report-2024-press-release/>

⁴² Clarie Wardle, Understanding Information disorder, FIRST DRAFT (SEP 22 2020) <https://firstdraftnews.org/long-form-article/understanding-information-disorder/>

V. CASES STUDIES

Defamation

- **Arnab Ranjan Goswami v. Union of India and others**⁴³

Facts of the case – ⁴⁴

- “Surrounding broadcasts aired on the 16th and 21st of April, 2020, several members of the Indian National Congress filed FIRs against Arnab Goswami in the states of Telangana, Rajasthan, Maharashtra, Jharkhand, Chhattisgarh and Madhya Pradesh among others”.
- “The broadcasts in question entailed Mr. Goswami talk about an incident popularly referred to as the Palghar Lynching. A mob brutally beat three people to death, two of whom were Sadhus i.e., priests in the Hindu religion. The horrific event allegedly happened in the presence of police personnel who just stood by and did nothing”.
- The matter gained national attention very quickly and was being reported by Arnab Goswami. In the presentation of the incident, he questioned Sonia Gandhi's silence on the issue at hand. Apart from this, he accused her of orchestrating the mob lynching. Arnab asked some pointed questions including whether Sonia Gandhi would have remained silent if Christian or Muslim religious leaders had been murdered in the place of the sadhus.
- This is when the petitioner alleges that a malicious and abusive series of actions were taken by the government. Prominently, complaints regarding violations of sections 500, 504, 506, 153 and 298 of the Indian Penal Code were filed by members of the INC in states where the governments were controlled by the INC.
- The interim order to a large extent went in favor of Arnab Goswami. He was to be shielded from coercion for three weeks from the date of the verdict. The order also stated that if Mr. Goswami makes a request for security at his workplace or residence, the Mumbai Commissioner of Police would have to grant him the same. The police were asked to assess the threat to Arnab's life and provide required protection.

⁴³ Arnab Ranjan Goswami v. Union of India and Others, (2020) 14 SCC 12 (India)

⁴⁴ Pavanraj R Hariharan, Arnab Ranjan Goswami v. Union of India 2020 14 SCC 12 - IRAC Analysis, LEGAL SERVICES INDIA https://www.legalserviceindia.com/legal/article-6991-arnab-ranjan-goswami-v-union-of-india-2020-14-scc-12-irac-analysis.html#google_vignette

Issue–

1. Whether the statements made by Arnab Goswami on live TV fall under the protective ambit of Article 19 (1) (a) or can be restricted as per the provisions under Article 19 (2)
2. Whether the Courts can consolidate the various similar FIRs under Article 32.

Judgement – ⁴⁵

The Court interpreted Article 19(1)(a) and said that although Freedom of Speech and expression is not absolute and it comes with certain restrictions, allowing a journalist to face multiple complaints and FIRs in multiple jurisdictions will have a ‘stifling’ effect on the exercise of freedom of the press. The court also stated that by doing such multiple FIR and complaints against the journalist not only destroy the journalist right to ensure an informed citizen but also affect the nations right to know.

The right which is exercisable by the common citizen under Article 19(1)(a) is at the same pedestal as of the journalist, it cautions both media and citizen are supplementary to each other. The court also said that chaining media for any particular purpose will defeat the core democracy and the 4th pillar of the India. The Court said that filling a multiple FIRs on the same incident and on the same offence leads to the intervention of the court in this matter and court will have to protect the right of citizen.

The court at the end as to protect the right of journalist quashed all the FIRs against Arnab Goswami as it is very difficult for a citizen to visit all the state and for the same offence and for the same cause of action.

- **Shashi Tharoor V. Arnab Goswami and republic TV**

Congress MP Shashi Tharoor today filed a civil defamation suit against Arnab Goswami and his newly-launched news channel Republic TV in the Delhi High Court claiming damages and compensation of Rs 2 crore for allegedly making defamatory remarks against him while airing news relating to the death of his wife Sunanda Pushkar. The Lok Sabha MP from Thiruvananthapuram has also sought a direction from the high court to restrain the TV channel from broadcasting any show relating to the death of his wife till the investigation is completed by the Delhi Police. The lawsuit filed through advocates Muhammad Ali Khan and Gaurav Gupta denounced the news, claiming that the recordings were released in a sensational manner so as to appease the viewers and created a non-existing controversy by maligning his public life

⁴⁵ Akansha Singh, Arnab Ranjan Goswami v. Union of India and others, LAWFOYER (JUL 30, 2022) <https://lawfoyer.in/arnab-ranjan-goswami-v-union-of-india-and-others/>

and public image. "It is not out of place to say that defendants (Goswami and TV channel) broadcast news reports and alleged expose' which were intended to lead the he viewers to believe that the deceased was murdered either by plaintiff (Tharoor) or at the instance of the plaintiff.⁴⁶

The Delhi High Court Thursday questioned Arnab Goswami for running a parallel investigation and trial in the Congress leader Shashi Tharoor's wife Sunanda Pushkar's death case and directed the journalist to be bound by his undertaking on showing restraint and bringing down the rhetoric while covering the matter. Justice Mukta Gupta said the court was not saying that anyone will gag the media but at the same time, sanctity of investigation must be maintained. "Please show restraint. Once the police investigation is going on in the criminal case, there cannot be a parallel investigation by the media," the judge said and remarked that people must take a course in criminal trial and then get into journalism. The high court referred to December 1, 2017 order in which it was stated that "Press cannot convict anyone' or insinuate that he/she is guilty or make any other unsubstantiated claims. Press has to exercise care and caution while reporting about matters under investigation or pending trial."⁴⁷

FAKE NEWS

- **Zee News and Anti National JNU Slogan –**

On the night of February 9, 2016, a group of students gathered on campus to mark the death of Parliament attack convict Afzal Guru, hanged in 2013. Soon afterwards, television channels aired video clips which appeared to show students shouting slogans that the government considered seditious. Kanhaiya Kumar, who was then president of the Jawaharlal Nehru Students' Union, was arrested, as were two fellow students, Umar Khalid and Anirban Bhattacharya. Weeks later, at least three of the videos that spurred their arrest were found to have been doctored. A producer for Zee News, one of the channels which circulated the videos, even resigned saying his "conscience has started to revolt".⁴⁸

The media's job is to report on events and interpret them. Yet, in the Jawaharlal Nehru University case, sections of the media went beyond being observers and inserted themselves in

⁴⁶ Shashi Tharoor files defamation suit against Arnab Goswami, Republic TV in High Court, THE ECONOMIC TIMES (May 26, 2017)

⁴⁷ Delhi High Court questions Arnab Goswami for running parallel investigation in Pushkar death case, asks to show restraint, DECCAN HERALD (SEP 10 2020) <https://www.deccanherald.com/india/delhi-high-court-questions-arnab-goswami-for-running-parallel-investigation-in-pushkar-death-case-asks-to-show-restraint-885515.html>

⁴⁸ Ipsita Chakravarty, 'Tukde, tukde gang': How the BJP has used misinformation in the JNU sedition case to stifle dissent, THE SCROLL (Jun 25, 2019) <https://scroll.in/article/927972/tukde-tukde-gang-how-the-bjp-has-used-the-jnu-sedition-case-to-stifle-dissent>

the story as actors. The media watchdog *Hoot* even accused the Hindi channel Zee News of “fueling state action” against the university’s students. Recounting how the Delhi police came to register the first information report against the students, the website noted: “The short point is that the police were present when the groups were clashing and shouting slogans, they stayed on the campus until the two sides dispersed, they saw no reason to register any complaint on the basis of the slogan shouting they heard. It is the Zee video which gave them actionable evidence. The implication is that Zee did their recording by being there in time for the action, did it at length, and showed the ‘anti-national’ parts the next day. How did the police come to know of the programme shown? It does not say. Did the channel bring it to their notice?”

Zee News was also accused of misrepresenting the slogans shouted by one of its producers who subsequently resigned in protest. He said that the slogan “long live Indian courts” was portrayed as “long live Pakistan”. It later emerged that Zee News, along with NewsX and Times Now, had gone so far as to air doctored videos of the slogans. While Zee News allegedly directed the police’s action, other channels played up unsubstantiated reports to smear the accused students. Umar Khalid, apparently because of his Muslim name, was particularly targeted, with NewsX calling him a “Jaish-e-Mohammad sympathiser” on the basis of an “Intelligence Bureau alert” that the agency later described as a “figment of someone’s imagination”. NewsX went on to claim that Khalid had visited Pakistan – an impossible feat given he did not have a passport. The ABP News website ran the unsubstantiated accusation of “Umar Khalid’s group” trying to “stick naked pictures of Hindu gods and goddesses”. Of course, none of the allegations were proved, or even pursued by the authorities.⁴⁹

- **Reporting of Sushant Singh Rajput’s Death Case**

⁵⁰The death of the actor Sushant Singh Rajput dominated television news coverage for several months. The Mumbai Police said it was a case of suicide, but subsequently Rajput’s family filed a complaint with Bihar Police accusing his former live-in partner Rhea Chakraborty of abetment of suicide and cheating. Three central agencies – the Central Bureau of Investigation, the Enforcement Directorate, the Narcotics Control Bureau – took up cases against her.

Republic TV led by Arnab Goswami was one of the major channel which was covering the case

⁴⁹ Shoaib Daniyal, From ‘tukde tukde gang’ to ‘urban Naxal’: How media trials enable the government to stifle dissent, SCROLL (Sep 01, 2018) <https://scroll.in/article/892466/from-tukde-tukde-gang-to-urban-naxal-how-media-trials-enable-the-indian-state-to-stifle-dissent>

⁵⁰ Is this investigative journalism?: Bombay HC on Republic TV’s reportage of Sushant Rajput’s death, SCROLL (Oct 22, 2020) <https://scroll.in/latest/976431/is-this-investigative-journalism-bombay-hc-on-republic-tvs-reportage-of-sushant-rajputs-death>

with minute details but also presented some facts without any concrete evidences. The Bombay High Court rapped Republic TV for its reportage on the death of Sushant Singh Rajput, and asked whether the channel suggestively pronouncing on the merits of the matter that is sub judice and building public opinion on arrests constituted “investigative journalism”, *Live Law* reported.

A bench of Chief Justice Dipankar Dutta and Justice GS Kulkarni was referring to the #ArrestRhea campaign run by the channel on Twitter against actor Rhea Chakraborty after Rajput’s death. “Is this part of investigative journalism? Asking the public about their opinion on who should be arrested?” the bench asked advocate Malvika Trivedi, the channel’s lawyer. It also asked the channel’s lawyer why Republic TV aired photos of the body and speculated on whether the actor’s death was a case of suicide or homicide, PTI reported. “The grievance is regarding #ArrestRhea,” the High Court said. “Why is this part of your channel news? “Republic TV was only highlighting those facts which were not otherwise brought on record,” the channel’s lawyer claimed. Trivedi claimed that it was the investigative reports of Republic TV that “brought to light the real facts” in Sheena Bora murder case and Sunanda Pushkar case. But the bench told Trivedi that “investigative powers are given to the police under the Criminal Code of Procedure”. “When a case is under investigation and the issue is whether it’s a homicide or a suicide and a channel is saying it is murder, is all this investigative journalism?” it asked. The High Court chastised the channel for sensationalising the actor’s death. “There are certain Suicide Reporting guidelines,” it pointed out. “There should be no sensational headlines. Don’t you have respect for the dead? It is so unfortunate.”

On September 3, the Bombay High Court asked the news channels to show restraint in reporting the case. When the matter came up before the court again on September 11, the court expressed surprise that there was no state control over electronic media.

On September 17, the Delhi High Court had directed media houses to exercise restraint after actor Rakul Preet Singh filed a petition against unsubstantiated reports linking her with a drug case, in which Rhea Chakraborty is a prime accused. Singh had argued that media reports are being run in contravention with the Ministry of Information and Broadcasting guidelines.

Before that, the Press Council of India had advised media organisations to adhere to journalistic standards, refrain from sensational reporting and not conduct a parallel trial in the investigation into Rajput’s death.

On October 12, top Bollywood filmmakers and producers filed a lawsuit in the Delhi High Court against “irresponsible reporting by certain media houses” around Rajput’s death. The

lawsuit was filed against Republic TV and Arnab Goswami and Pradeep Bhandari of the channel; and Times Now and its prominent anchors Rahul Shivshankar and Navika Kumar.

VI. IMPACT OF DEFAMATION AND FAKE NEWS

Media is considered as an important source of information dissemination and a tool for advocacy and activism. But at the same time proliferation of misinformation, fake news and defamatory content by media leaves a long-lasting impact on the individuals, society and the media itself. The influential media houses possess power to shape public opinions and also in holding the agencies accountable but misinformation spread by such media houses have contrary effect that could invoke violence, frame negative image and harm the reputation of an individual.

1. **Harms the Reputation of a Person** – The holy Bhagvad Gita rightly states that For a man of honour, defamation is worse than death. This holds true even in modern times where reputation is considered one of the most valuable assets one can possess. Reputation being the driving force behind human behaviour must be safeguarded and protected. Every Person has the right to live with dignity as provided under Article 21 of the constitution of India, and to live with dignity, reputation must remain unharmed. Reputation being a jewel for every person, needs to be protected .⁵¹ The spread of fake news or defamatory content by media against any individual or organization directly attacks their reputation and deprive them of their fundamental rights. Such defamation leaves a long-lasting impact on the reputation of the person in the society and even in his own family and also ruins his mental peace.

2. **Erosion of Public Trust in Media** – Media acts as a middleman between information and masses to ensure that information reaches to the masses accurately in order to make them well aware. The frequent instances of fake news by media and infringing of individual's personal space for making a captivating headline and stand out amongst different media channels has led to erosion of public trust in Media.

Edelman Trust Barometer studies people's trust in the government, media, business and non-governmental organisations in 28 countries. Trust in government, media and non-governmental organisations as institutions has dropped in India, says a survey released on the eve of the World Economic Forum in Davos. As many as 61% people said they trusted the media--compared to 66%

⁵¹ Satya Mule, Defamation laws in India – Protecting reputation and dignity, TIME OF INDIA, June 18, 2023.

last year. India, with a loss of 13 percentage point, was among the six countries with extreme trust losses for the four institutes .⁵²

3. Increase in Communal Tensions - Fake news often targets sensitive social issues like religion, caste, or nationality, which can exacerbate existing divides and fuel communal tensions. Misinformation can lead to violence, as seen in various mob lynching cases triggered by false news.

For instance, the violence in Manipur in 2023 as result of the clashes between the Kukis and Meiteis, which began on May 3 resulted in the loss of over 160 lives. Security agencies point to the rampant circulation of fake news and rumours as the root cause of the ongoing unrest in the state. Officials told ToI that fake news and misleading videos have played a significant role in inciting violence. For instance, the horrifying incident on May 4, where two women were paraded naked and assaulted in Kangpokpi district, occurred after a fake picture claiming a tribal murder in Churachandpur was circulated in Imphal valley. Security agencies' analysis has also shed light on the lack of control over fake or one-sided news, even in local newspapers, further exacerbating the situation. Reports suggesting possible attacks by members of the majority community have also fueled unrest in the state .⁵³

4. Undermining Democratic Principles- In context of Indian Democracy, fake news decimates all means to support the voters to make an informed and rational choice, by completely misinforming and misleading the voter with false, incorrect, biased and prejudiced information and in consequence retards and extinguishes the voter's ability to make an informed and rational choice, thereby infringing the voter's freedom of speech and expression and changing the complete complexion of the political landscape. The hazards of fake news do not end there. Fake news further gives an undue advantage to the candidate disseminating fake news in political communication and propaganda, over the candidate not relying on it, hence vitiating an equal contesting ground, which is indeed a violation of the fundamental right to equality. To add to its serious effects, dissemination of fake news comes for a price and considering its nature, the money spent on it, is not revealed as an election expense, which is mandated by the Conduct of Election Rules, hence violating it. The 2019 General Elections are a testimony to the fact, where social media platforms were favorably used not only to disseminate political agendas, ideologies,

⁵² Indians' trust in govt and media slips, Trump's US losing faith in institutions: Survey, HINDUSTAN TIMES, Jan 22, 2018.

⁵³ How fake news and videos inciting violence in Manipur, THE ECONOMIC TIMES, JUL 24, 2023.

manifestos, publicity campaigns, to garner a favorable public opinion, but also undermine the position of the opposition .⁵⁴

5. Legal and Financial Consequences for Media Outlets – The media houses themselves are not protected against the impact and consequences that may arise due to spread of defamatory content or misinformation. Propagation of fake news and defamatory content brings media in the light to face repercussions like defamation suits against them, fines and restrictions imposed by Court, loss of credibility and other consequences.

For instance, Former Supreme Court Judge, Justice P B Sawant, had sued Times Now for mistakenly displaying his photograph in a report on September 10, 2008, about a person (with a phonetically similar sounding name) allegedly involved in the multi-crore Provident Fund scam. A Pune trial court had decreed the suit for Rs100 crore against the TV channel. Times Now had appealed against the trial court verdict but Mumbai HC in September this year has asked the TV channel to first deposit 20 crore and provide 80 crores as bank guarantee and pre-condition for hearing the appeal. A bench of Justices G S Singhvi and S J Mukhopadhyaya declined to grant relief to petitioner Times Global Broadcasting Company Ltd. which owns the TV channel, saying there was no error in the high court's interim order. We find no reason to interfere with high court's order directing the petitioner to deposit Rs 20 crore and furnish bank guarantee for the rest, the bench said .⁵⁵

VII. MEDIA ETHICS & RESPONSIBLE JOURNALISM

Media is acting as a bridge between the state and public. It plays a role of informer, motivator or leader for healthy democracy at all levels. Ethics are the inner superintendent decent moralities, ideals and opinions that people use to analyses or interpret a situation and then decide what is the right way to behave. It is free to discharge their duties in the society but media needs to follow ethics in collecting and disseminating the news by ensuring objectivity and fairness in reporting of information to society. Media Ethics is concerned with how a moral media person should behave. The media ethics are values like trustworthiness, respect, responsibility, fairness, truth and self-restraint to be practiced by the media people voluntarily, to preserve and promote the trust of the people and to maintain their own credibility and not betray the faith and confidence of the people. Media ethics are important for proper broadcasting, avoiding misrepresentation of information, to avoid conflict of interest. In India, the Press Council of India has been given the authority to draft

⁵⁴ Abhishek Dua, IMPACT OF FAKE NEWS: AN INDIAN ELECTORAL PERSPECTIVE, 6, IJLS, 1, 4-5 (2023)

⁵⁵ SC asks Times Now to deposit Rs 100 crore before HC takes up its appeal in defamation case, TOI, NOV 15, 2011

a code of conduct for newspapers, news agencies and journalists in accordance with high profession standards. In 1968, The All-India Newspapers Editors Conference (AINEC) adopted a code of ethics. In 1976 the Parliamentary Code was enacted and Advertising Standards Council of India (ASCI) approved a Code of Self Regulations in 1985. In 1995, A Guide to Journalistic Ethics brought out by Press Council of India.⁵⁶ Some of the key principles of ethical and responsible Journalism include –

1. Truth & Accuracy
2. Caution against Defamatory content
3. Fairness and Impartiality
4. Humanity
5. Accountability
6. Fact Checking
7. Avoiding sensationalism

Key Principles of Media Ethics and its role in Prevention of Defamation and Combating Fake News

1. Accuracy and Fairness – Media acts as a source of information dissemination to the masses thus it is a moral and ethical obligation of the media to show the facts that are accurate and verified as audience believe and invest their faiths in whatever is shown by the media.

According to Journalistic Code of Media 2010 laid down by Press Council of India, the Press shall eschew publication of inaccurate, baseless, graceless, misleading or distorted material. All sides of the core issue or subject should be reported. Unjustified rumours and surmises should not be set forth as facts.⁵⁷ This principle plays a key role in preventing the defamation suits against the media houses and adhering to it prevents media from publishing defamatory content and also plays a significant role in combating the spread of fake news.

2. Pre- Publication Verification – Pre- publication verification refers to the process of analyzing and verifying the authenticity and accuracy of any information before publishing it in public domain and making it accessible nationwide.

Norms state that – On receipt of a report or article of public interest and benefit containing imputations or comments against a citizen, the editor should check with due care and attention its

⁵⁶ Dr.Geetali Tilak, THE STUDY AND IMPORTANCE OF MEDIA ETHICS, 11, IJDRBC, 448, 448 (2020)

⁵⁷ Press Council of India, Norms of Journalistic Conduct, 7 (2010)

factual accuracy apart from other authentic sources- with the person or the organisation concerned to elicit his/her or its version, comments or reaction and publish the same alongside with due correction in the report where necessary.⁵⁸ Therefore, pre-publication verification plays a significant role in avoiding the publishing of inaccurate or evidence lacking content.

3. Caution against Defamatory Writing – The Norms of Journalistic code 2010 comprehensively lays down the guidelines for preventing publication of defamatory content. It clearly states media shall refrain from publishing or broadcasting any content that is defamatory in nature unless after verification and due care there is sufficient evidence to believe such content and such content is for public benefit. It lays down restriction on publishing derogatory comments over a dead person as he cannot contradict or deny those allegations.

The Press has a duty, discretion and right to serve the public interest by drawing reader's attention to citizens of doubtful antecedents and of questionable character but as responsible journalists they should observe due restraint and caution in hazarding their own opinion or conclusion in branding these persons as 'cheats' or 'killers' etc.⁵⁹

4. Right to Privacy – The norms state that press shall respect the privacy of an individual and prevent the intrusion in an individual's personal space unless genuine public interest overrides the right of privacy. , however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the media, among others. Special caution is essential in reports likely to stigmatize women.⁶⁰

5. Headings not be sensationalized or provocative – Sensationalized headings are used by the media to attract more audience and win the rat race of TRP. The code calls for prevention of sensationalized or provocative headings. It states that headings and the content under it shall be related and justified. Headings containing allegations made in statements should either identify the body or the source making it or at least carry quotation marks .

The media, along with any other field, should not harm the ethical and socio-cultural aspects of the economy, but should encourage them. Therefore, through developing and finding solutions, the aim of the media is to inform, document, analyse, interpret, mediate and mobilize. A journalist writes whatever he observes the society. He publishes whatever is consumed in society by citizens who might be made up of different races, sects, categories and characteristics Therefore, a journalist should be very cautious and aware of his duties in advertising it to the present sensible

⁵⁸ Press Council of India, Norms of Journalistic Conduct, 8 (2010)

⁵⁹ Press Council of India, Norms of Journalistic Conduct, 9 (2010)

⁶⁰ Press Council of India, Norms of Journalistic Conduct, 12 (2010)

society when writing a report on any case. It must deliver such news as it serves a common function and fulfils the needs of major people as well. Any presentation or writing by a journalist should never have an effect on the beliefs, ideals, faith and practices of any part of any group of our society. Journalist writing should promote not only the maintenance of ‘social order’ but also, simultaneously, the achievement of social change .⁶¹

VIII. SUGGESTIONS

Balancing Article 19(1)(a) in line with increasing concern of defamation and fake news is a crucial task to be taken up. While freedom of press is an essential part of the democracy unverified information and defamatory content stands as a threat to reputation of a person and even misleads the public. The author would like to make the following suggestions to balance freedom of speech and expression and rising concern of defamation and fake news.

1. **Strengthening Legal Definitions** – The author suggests that a legislative act clearly defining the significant terms, their scope and extent shall be enacted. Such act should lay down the postulates that would amount to defamation by media and elements that would constitute fake news. The act shall contain the sufficient punishment in order to prevent media from publishing unverified and defamatory content. Such act should aim at establishing balance between Freedom of Press under freedom of speech and expression and Right to Privacy of an individual.
2. **Establishing Media Tribunals for Fast Disposal of cases** – A fast track media tribunal consisting of members from media and legal fraternity shall be established in order to promote effective hearing and disposal of cases related to defamation and fake news. Such tribunals shall play a significant role in expediting the resolution process, providing expert oversight and reducing use of defamation as tool of intimidation. Such tribunal will contribute in maintain the freedom if journalism while addressing the grievances effectively.
3. **Strict compliance to the Journalistic code** – “Norms of Journalistic code 2010” laid down by Press Council of India shall be implemented and adhered to in strict and real sense. The code lays down 42 principles and ethics and 10 guidelines for reporting on specific issues. The compliance to such ethics and guidelines shall be made mandatory in order to promote responsible journalism.

⁶¹ Vidisha Verma, An analysis of journalism in modern India, IPLEADERS (SEPT 19, 2021) https://blog.ipleaders.in/an-analysis-of-journalism-in-modern-india/#Responsibilities_of_Journalists

4. **Rigorous Fact Checking** – Before the publication of any matter that is sensitive and controversial, it shall be referred to an independent authority to check its accuracy and reliability. Each media house shall have such authority which shall regulate independently to prevent risk of spread of misinformation and preventing the legal consequences that may arise.
5. **Encourage Self Regulations** – Each media house shall adopt self-regulations in line with the ethical standards of journalism. Such regulations will assist media in maintaining their freedom and independence by policing itself and reducing the intervention of State therefore protecting their freedom. Such regulations will also promote accurate reporting as journalists will be bound by such regulations and it will hold them accountable.

IX. CONCLUSION

“Freedom of the press is essential to the preservation of a democracy, but there is a difference between freedom and license.” -Franklin D. Roosevelt⁶²

In a country like India, Indian media, a powerful entity, has been defined as the ***Fourth Pillar of Democracy***. Being one of the pillars of India’s democratic nation, Indian media has a huge responsibility to make the nation because it affects the political leanings of people and therefore enables them to make the right decision when choosing a government. Media plays a crucial role in the democratic life of the country’s citizens as it keeps people informed about the socio-economic and political state of affairs. The role of journalism is primarily, the **communication** of news, information, updation and education. In the contemporary world, Indian media has become a critical tool in the name of power and politics to give ***voice to the voiceless*** and to expose the face of the truth; amidst growing corruption, hatred, and violence in the name of power and politics. The media has a huge role in **shaping and broadening the horizon** of the perspective of the public as well as making them aware of the incidents happening in society daily. ⁶³

The Indian media, however, has been increasingly criticized for deviating from its role and objectives. Though the expansion of the media is desirable, many consider its increasing corporatization to be alarming. These concerns were further aggravated with the Indian media being eroded by the paid news syndrome, which undermines the basic confines of journalism. Additionally, the increasing media competition has resulted in reduced accuracy and credibility

⁶² Reet Balmiki, Freedom of the press: the desirability of external regulation, IPLEADERS (AUG 22, 2021) <https://blog.ipleaders.in/freedom-of-the-press-the-desirability-of-external-regulation/#Conclusion>

⁶³ Vidisha Verma, An analysis of journalism in modern India, IPLEADERS (SEPT 19, 2021) https://blog.ipleaders.in/an-analysis-of-journalism-in-modern-india/#Responsibilities_of_Journalists

and has shifted the focus from providing information fairly and truly to a biased manner to increase viewership and profits. Such bias could feature due to the media house becoming an ambassador of a corporate group or political party or exaggeration to make the story more appealing or by publishing stories from unreliable sources. In this process, the media is forgetting and overlooking its social responsibility .⁶⁴

The requirement of the hour is to revise the regulations in such a way that all lost grounds and failures can be effectively reinstituted. A number of outstanding bills, as well as the recommendation, must be passed as soon as possible. There must be a clear understanding of what issues will be addressed in the Press Council of India (PCI Act) laws and how they will be implemented efficiently. Furthermore, there must be a balance between freedom of expression and speech restrictions. Management and officials must ensure reporters and journalists freedom and protection so that they can cover the news without being influenced by political, governmental, or wealthy influential people and groups. The Press Council should develop ideas in collaboration with well-known journalism training institutes to ensure that journalists are well-versed in ethical practice. What remains now is for the government to put the Council's recommendations and guidance into action, which has the potential to make a significant difference in the system's correction.⁶⁵

⁶⁴ Reet Balmiki, Freedom of the press: the desirability of external regulation, IPLEADERS (AUG 22, 2021) <https://blog.ipleaders.in/freedom-of-the-press-the-desirability-of-external-regulation/#Conclusion>

⁶⁵ Akshita Gupta, Challenges faced by the Indian media with respect to media laws and ethics, IPLEADERS (OCT 7, 2021) <https://blog.ipleaders.in/challenges-faced-indian-media-respect-media-laws-ethics/#Conclusion>