

**IN THE HON'BLE SUPREME COURT OF INDIA  
ORIGINAL CIVIL JURISDICTION  
[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]**

**WRIT PETITION (CIVIL) NO.**

**OF 2020**

**IN THE MATTER OF:**

NILESH NAVALAKHA AND ANR

....PETITIONER  
(S)

**-VERSUS-**

UNION OF INDIA & ORS.

....RESPONDENTS

(KINDLY SEE INDEX)  
**PAPER BOOK**

**ADVOCATE FOR THE PETITIONER: PAI AMIT**

Filed on: 28.09.2020

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## PROFORMA FOR FIRST LISTING

### SECTION - PIL (W)

- Central Act: (Title): **Constitution of India**
  - Article: **32**
  - Central Rule: (Title): **NA**
  - Rule No (s): **NA**
  - State Act: (Title): **NA**
  - Section: **NA**
  - State Rule: (Title): **NA**
  - Rule No (s): **NA**
  - Impugned Interim Order: (Date): **NA**
  - Impugned Final Order/Decree: (Date): **NA**
  - High Court: (Name): **NA**
  - Name of Judges: **NA**
  - Tribunal/Authority: (Name): **NA**
- 

1. Nature of matter: **CIVIL**
2. (a) Petitioner/Appellant: **NILESH NAVALAKHA AND ANR**  
(b) Email ID: N.A.  
(c) Mobile Phone No.: N.A.
3. (a) Respondent: **UNION OF INDIA AND ORS**  
(b) Email ID: **NA**  
(c) Mobile Phone No.: **NA**
4. (a) Main Category Classification: 32  
(b) Sub Classification:
5. Not to be Listed Before: **NA**
6. (a) Similar disposed off matter with citation, if any, & case Details:- **No similar disposed off matter.**  
(b) Similar pending matter with case details:- **No similar pending matter.**
7. Criminal Matters: **NO**
  - (a) Whether accused/convict has surrendered: **NA**
  - (b) FIR No. and Date: **NA**

- (c) Police Station: **NA**
  - (d) Sentence Awarded: **NA**
  - (e) Period of Sentence Undergone (Including period of detention/ custody undergone): **NA**
8. Land Acquisition Matters: **NA**
- (a) Date of Section 4 Notification: **NA**
  - (b) Date of Section 6 Notification: **NA**
  - (c) Date of Section 1 Notification: **NA**
9. Tax Matters: State the tax effect: **NA**
10. Special Category (First Petitioner/Appellant Only):  
Senior Citizen/ 65 Years/ SC/ ST/ Woman/ Child/  
Disabled/ Legal Aid Case/ In Custody: **NA**
11. Vehicle Number (In case of Motor Accident Claim matters):  
**NA**



**PAI AMIT**

Advocate for the Petitioner

**Date: 28.09.2020**

**Place: New Delhi**

**SYNOPSIS AND LIST OF DATES**

The Petitioners, public spirited social activists, are constrained to approach this Hon'ble Court under Article 32 of the Constitution of India in public interest, *inter alia*, beseeching this Hon'ble Court to lay down and issue appropriate guidelines outlining the broad regulatory paradigm within which media houses, i.e., broadcasters and electronic media, can exercise their rights under Article 19(1), so as to judicially regulate the same. The instant petition also prays for the establishment of an independent, regulatory Tribunal/judicial-body, known as "**Media Tribunal**," to hear and expeditiously adjudicate upon complaint petitions against the Media-Businesses filed by the viewers/citizens.

It is submitted that the instant Petition, *inter alia*, raises important and substantial questions of law of national importance, which may be enumerated as follows:

1. Whether the news broadcasters/electronic media enjoy unfettered freedom, of a much higher degree than those enjoyed by the citizens of the Country and whether such freedom can only be subject to self-regulation?

2. Whether misinformation/fake news, hate speech, propaganda, paid news, communal, indecent, aggressive, derogatory, sensational, scandalous and disproportionate reporting, incitement, etc. are covered under the right to freedom of press, emanating from Article 19(1)(a)?
3. Whether regulation of the news broadcasters/electronic media would amount to curtailing the freedom of press or media, if the same is done within the parameters specified in Article 19(2)?
4. Whether the Article 21 of the Constitution envisages the Right of the Citizens to Free, Fair and Proportionate Media Reporting?
5. Whether there is a need for laying guidelines and setting up of a judicial regulatory mechanism in respect of media houses?

The principal issue before this Hon'ble Court is to bring about a balance between the right to freedom of speech and expression of the Media-Businesses and the competing right to information of the citizenry under Article 19(1)(a), right to reputation and the right to dignity under Article 21, as well as in the interests of preserving peace and harmony in the nation. At the very outset, it is submitted that the freedom of speech and expression enjoyed by the Media-Business is not unlimited, and subject to the restrictions imposed under Article 19(2). It is

submitted that the present petition is not to curb the fundamental rights of the Media-Business, but only to bring about some accountability for misinformation, inflammatory coverage, fake news, breach of privacy, etc. which the Media-Business has indulged in, only with the aim to further their business, and to bring about consequences for acting in a fashion that is contrary to constitutional goals and morality. It is submitted the exercise of power by the Electronic Media without any accountability is severely detrimental to the due process of law, and contrary to the rule of law.

**URGENT NEED FOR LAYING GUIDELINES AND SETTING UP OF A REGULATORY MECHANISM IN RESPECT OF MEDIA CORPORATES**

At the outset, it may be noted that this Hon'ble Court in **Writ Petition (Civil) No. 956/2020, Firoz Iqbal Khan v. Union of India & ORS** has expressed willingness to consider similar issues relating to the framing of guidelines for the regulation of the Media-Business.

This Hon'ble Court in **Vineet Narain v. Union of India, (1998) 1 SCC 226**, in similar circumstances and in the absence of any legislative framework gave detailed directions for setting up of an independent body "CVC" to supervise the CBI and also

provided for directions regarding tenure of the officers, etc. (*refer to para 58 of the judgement*).

Today, Electronic Media has become the most powerful medium with unprecedented influence over the minds of the people. The lack of accountability on the Electronic Media channels, which have the power and impetus to set the country ablaze with their hateful and fissiparous discourse. Over the last few years, Media Trials, hate speech, propaganda news, paid news, have become the order of the day, thereby impeding the right to a fair trial of victims and right to fair and proportionate reporting. It is submitted that reckless reportage by the Electronic Media without accountability can, by no stretch of imagination, be read into the right to freedom of speech and expression enjoyed by the Electronic Media.

Unbridled power is always dangerous, as also the saying goes, “Power corrupts; absolute power corrupts, absolutely.” The Electronic Media has become like an unruly horse, which needs to be tamed. However, the Ministry of Information and Broadcasting, Union of India, being the nodal ministry has totally failed in the discharge of its duties, in implementing the undertaking of the Electronic Media broadcasters, of

compliance with the Programme Code in Rule 6 of the Cable Television Rules, 1994. It is submitted that the Electronic Media Broadcasters are bound by the undertaking to comply with the Programme Code, which is made at the time of applying for permission to Uplink/Downlink their respective channels.

Instead of doing service to the nation and working in the public interest, of late, the media is afflicted with disseminating:

- i. Misinformation, Fake News and Propaganda,
- ii. Divisive and Schismatic Forces of Communalism, Ethnocentrism, Bigotry, Casteism, Linguism and Regionalism,
- iii. Indecent, Sleazy, Cheap, Sensational, Scandalous, Immoral, Inciting, Defamatory and Disproportionate Reports,
- iv. War-mongering,
- v. Superstitious, Violent, Backward and Public Disorder-inducing Attitudes,

all of which are well beyond the periphery and contours of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, and brazen misuse of the said right. Moreover, by the nature of the broadcast, the

Electronic Media is wholly negating the right to fair and proper information that is enjoyed by the citizenry.

Significantly, Article 51A of the Part IVA of the Constitution, provides the fundamental duties of every citizen, *inter alia*:

- “(a) **To abide by the Constitution** and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) **To cherish and follow the noble ideals which inspired our national struggle for freedom;**
- (c) **To uphold and protect** the sovereignty, **unity and integrity of India;**
- (e) **To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;**
- (f) **To value and preserve the rich heritage of our composite culture;**
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) **To develop the scientific temper, humanism and the spirit of inquiry and reform;**
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;”

and since the Media is made up of nothing but a body-corporate/group/aggregate of citizens, so the same is also a bounden duty of the Media, to uphold the duties fundamental to all citizens.

Thus, it is a constitutional duty of the Media, the State and of the citizen, to abide by the fundamental duties. Although, Article 51-A is not judicially enforceable by itself, it becomes judicially enforceable through a expanding interpretation of the Article 21, and any failure of the foregoing duties may well be considered and entertained as a Public Interest Litigation under Article 32.

Moreover, the nature of the reportage of the Electronic Media as enumerated hereinbefore, negates the fundamental rights of the citizenry at large, being Right to Live with Human Dignity, Right to Livelihood, Right to Education, Right to Know, **Right to Fair Information and Proportionate Media Reporting**, *et al*, as enshrined under Article 21 of the Constitution, apart from being antithetical to the citizen's rights guaranteed under Article 19(1)(a), which owing to the dominance of Electronic Media, becomes subsidiary and inconsequential, further falling under

the mischief of arbitrariness and hit by Article 14 of the Constitution.

In these circumstances, it has become imperative that this Hon'ble Court, as the ultimate *sentinel on the qui vive*, protects and balances the rights of various stake holders so that the fundamental rights of one class of stakeholders do not become subservient to the exercise of fundamental rights of the other class. It is submitted that this Hon'ble Court has time and again expressed that the rights of the many are to supersede the rights of the few. It is submitted that the right to freedom of speech and expression enjoyed by the Electronic Media Broadcaster cannot trump the right to fair information enjoyed by the citizenry.

**FREEDOM OF SPEECH AND EXPRESSION ENJOYED BY THE MEDIA IS NO DIFFERENT FROM THAT ENJOYED BY THE CITIZENS, WITH ALL REASONABLE RESTRICTIONS UNDER ARTICLE 19(2)**

There is no gainsaying that the Constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. Thus, the press is subject to the restrictions that are provided under the Article 19(2) of the Constitution. The power enjoyed by the news

broadcasters/electronic media is immense, and without any accountability to the law or the Constitution. It is submitted that untrammelled power is prone to abuse, something that is antithetical to the rule of law. Further, it is submitted that the restrictions on the Electronic Media must be placed at a higher footing than the common citizen, in view of the fact that the Electronic Media have a much larger reach, and are doing a public function by employing public airwaves.

Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, during Constituent Assembly debates on inclusion of the press in proposed Article 13 (Article 19) on freedom of speech and expression of the Draft Constitution, 1948, stated that press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The relevant portion is extracted hereunder, for convenience and ready reference:

**“7.65.168 B.R. Ambedkar:** *The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in*

*my judgment therefore no special mention is necessary of the freedom of the press at all.*

It is submitted that the strong demands to encode freedom of the press within Article 19 (1) (a), were defeated because the framers did not see the 'Press' as a separate category.

It is submitted that the Privy Council in ***Channing Arnold v. King Emperor AIR 1914 PC 116***, @ 117 has observed that:

"The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject".

Further, in ***Virendra v. State of Punjab, AIR 1957 SC 896***, this Hon'ble Court held that the freedom of press under our Constitution is not higher than that of an individual.

Further, this Hon'ble Court has categorically stated, that owing to the effect 'movies' have on people's minds, the same must be regulated and censored, if need be, in the

matter of **S. Rangarajan v. P. Jagjivan Ram, (1989) 2**

**SCC 574**, observing as:

“10. Movie doubtless enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movie and other modes of communication. The movie cannot function in a free marketplace like the newspaper, magazine or advertisement. Movies motivate thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The focussing of an intense light on a screen with the dramatizing of facts and opinion makes the ideas more effective. The combination of act and speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have an impact in the minds of spectators. In some cases, it will have a complete and immediate influence on, and appeal for everyone who sees it. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It is said: “as an instrument of education is has unusual power to impart information, to influence specific attitudes towards objects of social value, to affect emotions either in gross or in microscopic proportions, to affect health in a minor degree through sleep disturbance, and to affect profoundly the patterns of conduct of children.” (See Reader in Public Opinion and Communications, Second Edition by Bernard Berelson and Morris Janowitz, p. 390) The authors of this book have demonstrated (at pp. 391 to 401) by scientific tests the potential of the motion pictures in formation of opinions by spectators and also their attitudes. These tests have also shown that the effect of motion pictures is cumulative. It is proved that even though one movie relating to social issue may not significantly affect the attitude of an individual or

group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie relating to a social issue may not significantly affect the attitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instil or cultivate violent or good behaviour. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market-place just as does the newspaper or magazines. **Censorship by prior restraint is, therefore, not only desirable but also necessary.”**

It is submitted that though this finding of this Hon'ble Court was in the context of the cinematograph Act, it is more true for news broadcasters/electronic media. It is submitted that unlike a movie/film shown in a theatre, news broadcasters/electronic media have a reach into the houses of the people, giving them an untrammelled and unparalleled power to influence minds and ideas. That being so, it is submitted in a rule of law society, there can be no power exercised without accountability.

It is submitted that the news broadcasters and electronic media cannot claim immunity from the imposition of reasonable restrictions, and cannot claim to enjoy the fundamental rights

guaranteed under Article 19(1)(a), without being subject to restrictions under Article 19(2).

### **ROLE OF MEDIA IN POST-INDEPENDENCE INDIA**

In the pre-Independence era, the Media was a form of “service” to the cause of the people’s freedom, and was a great juggernaut of social change, reform and awakening, and acted as one of the greatest tools to mobilize the people and consolidate social consciousness for the freedom struggle. The Media of the pre-independence era was largely run and owned by freedom fighters and great personalities and heroes of our nation, such as Raja Ram Mohan Roy, Bal Gangadhar Tilak, Dadabhai Naoroji, Mahatma Gandhi, Jawaharlal Nehru, Dr. B.R. Ambedkar, et al.

While the press and the media continued in the pre-independence spirit, over time, with changes in the media and society, the news broadcaster and electronic media have used their power to only further their business interests. The Media has mutated from being a service, to being a business. Journalism mutated from being a Mission, to being a Profession. The Media came about from being owned by

benevolent and self-less freedom fighters, to being owned by profit-oriented big Business and Corporate Houses. With the passage of time, Media-Business became a monumentally competitive and cut-throat commerce, where sensationalism, sleaze and scandal have become the norm and Truth/Facts became subsidiary.

The existing bodies for the regulation of media such as the Press Council of India which is a statutory body and the News Broadcasting Standards Authority, a self-regulatory organization, issue standards which are more in the nature of guidelines. It is relevant to note that the broadcaster enters into a contractual obligation with the Government, to comply with the Programme Code and the Advertising Code specified in the Cable Act and the Cable Rules. It is submitted that any broadcaster that does not comply with this undertaking is liable to be proceeded against, including by cancellation of the permission to uplink/downlink.

It is with utmost respect submitted that over 1000 television channels use the airwaves which is public property, but there is no organised and effective regulatory mechanism to regulate/adjudicate the challenges posed by the broadcasters.

Moreover, as aforementioned, despite using public airwaves, the Broadcasters are not accountable for the broadcast.

This Hon'ble Court in **Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal (1995) 2 SCC 161** examined the lacuna in the area of broadcasting regulation and directed the establishment of an autonomous broadcasting authority to control and regulate the broadcasting media.

#### **SELF REGULATION BY MEDIA CANNOT BE THE ANSWER**

It is pertinent to mention, that under the Indian Constitutional setup, it is solely the Judiciary which enjoys the privilege of 'self-regulation,' being Independent and conferred with the same status by the Constitution itself. Thus, equating the Media-Business with the Judiciary, in terms of the privilege of 'self-regulation' directly strikes upon the Independence of the Judiciary and rattles and shakes the very foundations of the Indian Constitutional Scheme and the Democracy, and the same goes against every notion and canon of law and justice prevailing in India. It is notable, that despite being self-regulated even this Hon'ble Court is not immune from clutches

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of law and are amenable to regulations under “**Judges (Inquiry) Act, 1968.**”

Despite there being no restrictions provided for in the First Amendment to the US Constitution, the Hon’ble Supreme Court of the United States, in *Brandenburg v. Ohio*, 395 U.S. 444 (1969) has held that free speech can be restricted the same is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. It is submitted, in India, even though free speech is not unlimited, even this test is not applicable to the news broadcasters/electronic media as of today, since there is a lack of regulatory control. It is relevant to mention the quote of the father of the Nation Mahatma Gandhi here: “*An uncontrolled pen serves but to destroy.*”

The self-regulation theory evolved by toothless and powerless bodies like the NBA, is nothing but sham and farcical, which abuses the *bona fide* privilege conferred upon the media as the “Fourth-Pillar, and is in effect a myth.

At the cost of repetition, it is submitted that the Media is simply a Business, albeit one which is one of the most powerful structures of Power in itself, and thus, the same must be regulated by constitutional norms and principles, because the

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Democratic Principle expounds that all structures of power must be regulated for the good of all and to preserve the doctrine of Equality as enshrined under Article 14 of the Constitution of India, which is the golden track on which the Constitution runs, otherwise the same shall descend into arbitrariness and corruption. It is submitted that the whole self-regulatory process makes the Electronic Media Broadcaster a judge in his own case, thereby completely negating the rule of law enshrined in our Constitution. This is more so because the broadcast by the Electronic Media is not only the exercise of right to freedom of speech and expression of the broadcaster, but is a means to the right to information enjoyed by the citizenry, and therefore the exercise of the right must be done responsibly.

Importantly, the Media was only accorded the status of “fourth pillar” because of the “role” it played. Now, since its role has changed, from *Service to Business*, and from Mission to Profession, in such circumstances, it cannot mechanically be referred to as the Fourth Pillar, to avert all judicial attempts at regulating the Media-Business. It cannot be termed as the ‘Fourth Pillar’ if it does not raise the people’s issues and acts as

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the voice of the voiceless, instead only acts as a TRP-hunting, profit-mongering machine.

In the present day, the judicially unregulated Media-Business is able to be used by politicians, police officers and other public officials who wish to put out propaganda to advance their own interests and influence public opinion. A hunger for “leaks” and “scoops” (which sometimes precipitates the events which they predict) and some journalists’ relationship with the sources who provide them with information, can make it difficult for the media to maintain its independence and a critical stance. Searches for motivation, and even checks for accuracy, may suffer as a result. For example, over the last few months, errant police personnel who have been involved in encounter killings of purported criminals have been projected as heroes, despite the act being a complete negation of the rule of law by the errant police personnel exhibited with the full power of the State. Further, the bane of fake news has led to a misinformation epidemic, plaguing the citizenry.

**REGULATION DOES NOT MEAN CENSORSHIP OR CURTAILMENT OF FREEDOM OF PRESS**

It is submitted that Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned<sup>1</sup>. It is hence submitted that Regulation” means regulation in public interest and not contra public interest. The expression “regulation” cannot possibly be read as contra public interest but in the interest of the public. (**see Haryana SEB v. Suresh, (1999) 3 SCC 601**).

It may not be incorrect to state that the media in India has unfortunately has been playing a disproportionate role in shaping public perceptions of politics, electoral outcomes and the way power is exercised.

This Hon’ble Court in **Cricket Assn. of Bengal** (*supra*) held way back in 1995, that an autonomous broadcasting authority, independent of the government, to control all aspects of the operation of the electronic media was desirable and much needed.

It is, therefore, submitted, that in the circumstances, it is picturesque, that it is necessary and imperative for this Hon’ble Court to frame guidelines to regulate the news broadcasters and electronic media, in the absence of an effective legislative

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<sup>1</sup>*State of U.P. v. Hindustan Aluminium Corpn.*, (1979) 3 SCC 229.

mechanism for checks and balances on the exercise of the right of freedom of speech and expression by the news broadcasters; And further, to constitute an Independent Committee, headed by sitting or retired Judges, to *inter alia*, recommend to the Central Government for establishment of an independent, regulatory Tribunal/body “**Media Tribunal**” to hear and expeditiously adjudicate upon complaint petitions against the Media Business, Corporates and Journalists, filed by the viewers/citizens, to regulate the broadcasting and media sector, and covering the multifarious segments of the Media, i.e., electronic, print and digital. It may also prescribe and impose sanctions where the laws of the land have been violated. It is submitted that the object is not to curb the freedom of the media, but to bring some accountability to the broadcaster, i.e. Electronic Media.

It is submitted, that the Union of India and the State Governments, must assume the role of the Police, to impose penal sanctions under the prevailing laws, and so as to work in tandem with the Media Tribunal so constituted, under recommendations by the Independent Committee of retired Judges of this Hon’ble Court.

It is further submitted, that in the light of the aforesaid facts and submissions, the matter(s) and issue(s) raised herein, need to be decided and dealt with at the earliest.

In the circumstances adumbrated hereinbefore, the instant Public Interest Litigation has been filed.

**LIST OF DATES**

1885	<p>The earliest enactment of was the Indian Telegraph Act, 1885. This Act gave power to Government to control the establishment, maintenance and working of wireless apparatus.</p> <p>—Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs.</p> <p>The Government's continued monopoly over radio and television derives from this Act. This Act, as amended by Act 15 of 1961. 1961 act defined telegraph as —any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds for</p>
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	<p>intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or hertzian waves, galvanic electric or magnetic means.</p>
07.04.1914	<p>The <i>Privy Council in <b>Channing Arnold v. King Emperor AIR 1914 PC 116</b></i> has observed that the freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject.</p>
1930	<p>In 1930, the broadcasting was placed under the direct control of the Government of India. A service designated as the Indian State Broadcasting Service began broadcasting</p>
1933	<p>The Indian Wireless Telegraphy Act, 1933 was enacted to deal with the possession of wireless</p>

	<p>apparatus and radio receivers which were not covered by the Telegraph Act, 1885 The new Act made the possession of a radio set without a licence an offence.</p>
1936	<p>In 1936, the Indian State broadcasting service came to be called the All India Radio. In 1937, All India Radio was transferred from the Department of Labour to the Department of Communications in the Government of India</p>
1941/1947	<p>In 1941, the Department of Information and Broadcasting came into existence. After Independence, in 1947, it became the Ministry of Information and Broadcasting.</p>
	<p>Before Independence, the British Government had decided to give the Governments of princely states the right to construct and use transmitters and to regulate and impose fees in respect of the construction and use of transmitters and receiving apparatus in the province or State. (see section 129 of</p>

	Government of India Act, 1935)
1.12.1948 and 02.12.1948	The Constituent Assembly of India debated Article 13 (Article 19) on freedom of speech and expression of the Draft Constitution, 1948) on 1 December 1948, 2 December 1948.
1950	Constitution of India came into force and freedom of speech and expression become fundamental right under Article 19(1)(a).
1951	In 1951, the government felt that there was a need to introduce a Press Bill which would be free from the objectionable features of the 1931 Act and be in consonance with the constitution of free India. After Independence, the restrictive regulations were either done away with or suitably modified and codified to meet the urges of a free Press in a free country
1952	Cinematograph Act, 1952 came into force, bringing into place an apparatus for the censorship of films. This Act of 1952, dealt with

	<p>two separate matters: (a) The examination and certification of films suitable for public exhibition, and (b) Regulation of cinemas including their licensing. The Section 3 of the Act created the Censor Board or the Board of Film Certification. Any film intended for public exhibition was required to get a certificate from the Board Sanctioning the film for restricted or unrestricted viewing. The guiding principles for certification of films under the Act are an echo of the restrictions under Article 19(2)</p>
04.07.1966	<p>The first Press Commission recommended the setting up of a Press Council ‘to safe guard the freedom of the press’ and ‘to encourage the growth of the sense of responsibility and public service among all those engaged in the profession of journalism’. The Press Council Act was passed by the Parliament in 1965 and the Press Council was set up on 4th July, 1966. However, the Press Council was made the victim of emergency and the Press Council Act, 1965</p>

	<p>was repealed with effect from 1st January, 1976.</p> <p>The reason was cited to abolish the Press Council that it was not able to carry the functions to achieve the objects for which the Council was established.</p>
	<p>The Press in India was until recently the only medium not under the direct control of government and in a position to evaluate critically the implications of national policies.</p> <p>The Indian Press is almost entirely privately owned and has been free in all the decades since 1947, except for an interregnum of nineteen months, between June 1975 and January 1977, when Indira Gandhi, as a prime minister, imposed the internal emergency and, among other things, suspended Press freedom.</p>

	<p>The government appointed the 1952 and 1978 Press Commissions to inquire into the Press laws and other developments affecting the Press and its operations. State attitudes towards the Press in the post-independence period varied somewhat between the large, metropolitan Press and the provincial Press.</p>
1965	<p>That the sole statutory, quasi-judicial body set up for media regulation in the India is the Press Council of India while it aims to preserve the freedom of the press and maintain and improve the standards of press in India, it has no way of imposing punishments or enforcing its directions for professional or ethical violations.</p>
1975	<p>In 1975 there was apparently abuse of television by the Government. This led to a political demand for the autonomy of television. After the emergency ended, Government commissioned a white paper titled –White Paper on the Misuse of the Mass Media during the Emergency. This</p>

	<p>was presented to parliament in August 1977 and around the same time in 1977, a working group was constitute to look into autonomy for Akashvani and Doordarshan with in the Government framework.</p>
1978	<p>The Press Council Act, 1965 was enacted by the Parliament, so as to bring about accountability of the Press.</p>
1982	<p>The Advisory Committee, headed by Mr. G. Parthasarathi, on Official Media attached to the Ministry of information and Broadcasting, issued “News Policy for Broadcast Media” in May, 1982.</p>
1990	<p>The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 came into existence in September 1990 and came into force with effect from 15th September 1997. The Act sought to free Akashvani (All India Radio) and Doordarshan from direct control of the Government and provides for establishment of an autonomous corporation for electronic media.</p>

1994	The Cable Television Network Rules, 1994 were enacted under the Cable Television Networks (Regulation) Ordinance, 1994. The Programme Code of the Cable Television Network Rules lays down restrictions on the content of both programmes and advertisements that can be shown on cable TV
March 25, 1995	Cable Television Networks (Regulation) Act, 1995 came to be enacted.
2009	Sub Committee of PCI submitted a report to show how corruption in media undermines democracy.
30.07.2010	PCI released its "Report on Paid News" on 30.07.2010 wherein one of the major recommendations is to amend the Press Council Act to bring electronic media under the jurisdiction of the PCI and also to empower PCI.
2011	The Union Ministry of Information & Broadcasting, framed uplinking/downlinking guidelines as per existing policy guidelines, via

	<p>which the permissions for uplinking, and/ or downlinking of satellite TV channels are issued to Broadcasters by MIB on the basis of their applications, aafter receiving the permission for uplinking of satellite TV channels from MIB.</p>
15.11.2013	<p>The Sub-committee of PCI submitted a report on issues related to Paid News and sought for constituting of the Statutory body viz., Media Council having eminent persons as its members to look into all media contents both from print media and electronic media (TV as well as Radio) with powers to take strong action against the defaulters.</p>
	<p>The Broadcasters established regulator is expected to watch over news broadcasts that violate the NBA's code of ethics and broadcasting standards. It is submitted that the aforesaid authority is not a statutory authority and has been ineffective.</p>
	<p>It is submitted that NBF has no grievance</p>

	resolution mechanism. It is submitted that the Respondent No. 4 is apparently an association of over 50 news channels.
27.09.2020	Hence, this writ petition.

**IN THE SUPREME COURT OF INDIA**

**[EXTRA ORDINARY WRIT JURISDICTION]**

**WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2020**

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA R/W  
ORDER XXXVII, RULE 12(1) (D) AND (2) OF SUPREME COURT OF  
INDIA RULES, 2013)

**[PUBLIC INTEREST LITIGATION]**

**IN THE MATTER OF:**

1. **MR. NILESH NAVALAKHA** PETITIONER NO. 1  
AGE: 44 YEARS,  
OCC: BUSINESSMAN  
SOCIAL ACTIVIST  
ADDRESS :620, PENTAGON,  
SHAHU COLLEGE ROAD,  
PARVATI, PUNE-411009.
  
2. **MR. NITIN MEMANE** PETITIONER NO. 2  
AGE: 52 YEARS  
OCC: CIVIL ENGINEER  
SOCIAL ACTIVIST  
S/O, BHUJANGRAO M. MEMANE  
ADDRESS: B 701, GERA EMERALD  
CITY NORTH, KHARADI, PUNE-411014.

VERSUS

1. **UNION OF INDIA** RESPONDENT  
THROUGH THE SECRETARY/JOINT NO. 1  
SECRETARY ( P&A )  
MINISTRY OF INFORMATION AND  
BROADCASTING, ROOM NO 552, A  
WING, SHASTRI BHAWAN,  
NEW DELHI-110001.  
**EMAIL:** [jspna-moib@gov.in](mailto:jspna-moib@gov.in)
  
2. **PRESS COUNCIL OF INDIA** RESPONDENT  
THROUGH THE SECRETARY, NO. 2  
1<sup>ST</sup>, 2<sup>ND</sup> & 3<sup>RD</sup> FLOOR, SOOCHNA BHAWAN,  
8, C.G.O. COMPLEX, LODHI ROAD, NEW  
DELHI- 110 003  
**EMAIL:** [SECY-PCI@NIC.IN](mailto:SECY-PCI@NIC.IN)

3. **NEWS BROADCASTERS ASSOCIATION** RESPONDENT  
THE SECRETARY GENERAL NO. 3  
MANTEC HOUSE,  
C-56/5, 2<sup>ND</sup> FLOOR,  
SECTOR 62,NOIDA - 201 301  
**EMAIL:** [nba@nbanewdelhi.com](mailto:nba@nbanewdelhi.com)
4. **NEWS BROADCASTERS FEDERATION** RESPONDENT  
3-B, GG-2 BLOCK, VIKASPURI, NEW DELHI NO. 4  
110018 (INDIA)  
**EMAIL:** [nbf@newsbroadcastersfederation.com](mailto:nbf@newsbroadcastersfederation.com)
5. **NEWS BROADCASTING STANDARDS** RESPONDENT  
**AUTHORITY** NO. 5  
TH SECRETARY  
C/O NEWS BROADCASTERS ASSOCIATION  
MANTEC HOUSE, C-56/5, 2ND FLOOR,  
SECTOR 62,  
NOIDA - 201 301  
**EMAIL:** [authority@nbanewdelhi.com](mailto:authority@nbanewdelhi.com)
6. **THE PRESS TRUST OF INDIA LIMITED** RESPONDENT  
TH. AUTHORISED REPRESENTATIVE NO. 6  
4, PARLIAMENT STREET,  
NEW DELHI - 110 001.  
**EMAIL:** [dgmadmin@pti.in](mailto:dgmadmin@pti.in)

**TO,**

**HON'BLE THE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF  
THE SUPREME COURT OF INDIA;**

**THE HUMBLE PETITION OF THE  
PETITIONERS, ABOVE-NAMED,**

**MOST RESPECTFULLY SHOWETH: -**

1. The Petitioners, both public spirited social activists, are constrained to approach this Hon'ble Court under Article 32 of the Constitution of India in public interest, *interalia*, beseeching this Hon'ble Court to frame guidelines to regulate

the news broadcasters and electronic media, in the absence of an effective legislative mechanism for checks and balances on the exercise of the right of freedom of speech and expression by the news broadcasters.

2. That Petitioner no. 1 is a reputed filmmaker/producer and has produced nine films containing social issues and has received National Awards for three of his films, namely, 'Shala', 'Fandry' and 'Anumati'. Petitioner is also a social activist, and is actively involved in various Social Causes, and has been vocal about several social issues pertaining to causes of the downtrodden sections of the society. The Petitioner being a noble, upstanding and upright citizen of this country has been relentlessly working towards upholding the Rule of Law. The Petitioner has raised concerns with the authorities (Respondent No. 1) in with respect to the falling standards and unfair reporting by several news channels. The Petitioner has also filed a PIL seeking postponement/restrain on publishing of reports by Media by way of Media Trials and Parallel investigations in celebrity actor's mysterious death case. The aforesaid matter is pending before the Hon'ble Bombay High Court.
3. That Petitioner no. 1 is law abiding citizen of country and believes in an independent and fearless media as the fourth pillar of our democracy, at the same time is concerned with falling standards of journalism and propaganda news.

Petitioner expects that journalists to be fair to all sides, neutral and to provide diverse points of view. However what can be seen is that "pure" news has more or less disappeared and that the personal ideology of the editor or proprietor often shapes news this process has also led to media losing its credibility among people. The details of Petitioner,

Copies of PAN card,  
AADHAR card and bank account details have been enclosed  
along with the **vakalatnama**.

4. That Petitioner No. 2, a law abiding citizen of India, is a Civil Engineer by profession, and is also a social activist. The Petitioner has done P.G. Diploma from School of Government, MIT, Pune and is Member of Advisory Board of the same. He is the Chairman of Kharadi Residents Association and was instrumental in making Kharadi Societies' tanker, free from Water Mafia. He had organised the Akhil Bharatiya Sahitya Sammelan, Solapur, 2006 and the Akhil Bhartiya Sahitya Sammelan, 2014, Saswad, Pune. The details of Petitioner,

Copies of PAN card, AADHAR card and bank account details have been enclosed along with the **vakalatnama**.

5. That Respondent No. 1 is Ministry of Information and Broadcasting. It is submitted that Respondent No. 1 is the

concerned wing for all matters related to regulation of content telecast on private satellite TV channels and transmitted/re-transmitted through cable television network in terms of the Programme and Advertisement Codes prescribed in the Cable Television Networks (Regulation) Act, 1995 and the Cable Television Networks Rules, 1994 framed there under. Every broadcaster through various Policy Guidelines has been mandated to follow the Programme and Advertisement Code prescribed under the Cable Television Networks (Regulation) Act, 1995 and Rules framed thereunder.

6. That Respondent No. 2 is the It is a statutory, quasi judicial authority functioning as a watchdog of the press, for the press and by the press. It adjudicates the complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively. The present Council functions under the Press Council Act, 1978. Press Council is a mechanism for the Press to regulate itself
  
7. That Respondent No. 3 is The News Broadcasters Association (NBA) represents the private television news & current affairs broadcasters. It is the collective voice of the news & current affairs broadcasters in India .It is an organization funded entirely by its members. The NBA has presently 26 leading news and current affairs broadcasters (comprising 70 news and current affairs channels) as its members. The NBA

presents a unified and credible voice before the Government, on matters that affect the growing industry.

8. That Respondent no. 4 News Broadcasters Federation is an independent body set up by the News Broadcasters. Its task is to consider and adjudicate upon complaints about broadcasts. It is submitted that on 09.11.2019, NBSA the self-regulatory authority had ordered English news channel Republic TV to air an unconditional apology for previously undermining NBSA's authority in a different ethical violations case. Not only did it not comply, but an alternate "self-regulatory" body named News Broadcasters Federation. It is submitted that NBF no grievance resolution mechanism. It is submitted that the Respondent No. 4 is apparently an association of over 50 news channels.
9. That Respondent No. 5 News Broadcasting Standards Authority is an independent body set up by the News Broadcasters Association. Its task is to consider and adjudicate upon complaints about broadcasts.
10. That Respondent no. 6 is Press Trust of India. Press Trust of India is a non-profit sharing cooperative owned by the country's newspapers.
11. It is submitted that since all the news broadcasters are members of Respondent No. 3 and 4 respectively, none of the

broadcaster are required to be made parties in the present *lis* in individual capacity.

12. It is submitted that there is no civil, criminal, or revenue litigation involving the Petitioners which has or could have a legal nexus with the issues involved herein. It is further stated that the Petitioners are preferring the present Petition are larger public interest and have no personal interest.
13. It is submitted that the instant Petition, *inter alia*, raises important and substantial questions of law of national importance, which may be enumerated as follows:
  - I. Whether the news broadcasters/electronic media enjoy unfettered freedom, of a much higher degree than those enjoyed by the citizens of the Country and whether such freedom can only be subject to self-regulation?
  - II. Whether misinformation/fake news, hate speech, propaganda, paid news, communal, indecent, aggressive, derogatory, sensational, scandalous and disproportionate reporting, incitement, etc. are covered under the right to freedom of press, emanating from Article 19(1)(a)?
  - III. Whether regulation of the news broadcasters/electronic media would amount to curtailing the freedom of press or media, if the same is done within the parameters specified in Article 19(2)?
  - IV. Whether the Article 21 of the Constitution envisages the Right of the Citizens to Free, Fair and Proportionate Media Reporting?
  - V. Whether there is a need for laying guidelines and setting up of a judicial regulatory mechanism in respect of media houses?

14. **BRIEF FACTS LEADING TO FILING OF THE PRESENT PETITION IS AS UNDER:**

- i. In 1885 the earliest enactment of was the Indian Telegraph Act, 1885. This Act gave power to Government to control the establishment, maintenance and working of wireless apparatus. —Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs.
- ii. The Government's continued monopoly over radio and television derives from this Act. This Act, as amended by Act 15 of 1961. 1961 act defined telegraph as —any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds for intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or hertzian waves, galvanic electric or magnetic means.
- iii. On 07.04.1914 *Privy Council in Channing Arnold v. King Emperor* AIR 1914 PC 116 has observed that the freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute his privilege is no other and no higher. The range of his assertions, his criticisms or his

comments is as wide as, and no wider than that of any other subject.

True copy of the judgement of the Privy Council in Channing Arnold v. King Emperor AIR 1914 PC 116 is annexed hereto and marked as **ANNEXURE P-1 [pages 76-88]**

- iv. In 1930, the broadcasting was placed under the direct control of the Government of India. A service designated as the Indian State Broadcasting Service began broadcasting
- v. The Indian Wireless Telegraphy Act, 1933 was enacted to deal with the possession of wireless apparatus and radio receivers which were not covered by the Telegraph Act, 1885. The new Act made the possession of a radio set without a licence an offence.
- vi. In 1936, the Indian State broadcasting service came to be called the All India Radio. In 1937, All India Radio was transferred from the Department of Labour to the Department of Communications in the Government of India.
- vii. In 1941, the Department of Information and Broadcasting came into existence. After Independence, in 1947, it became the Ministry of Information and Broadcasting.

- viii. Before Independence, the British Government had decided to give the Governments of princely states the right to construct and use transmitters and to regulate and impose fees in respect of the construction and use of transmitters and receiving apparatus in the province or State. (see section 129 of Government of India Act, 1935)<sup>1</sup>
- ix. The Constituent Assembly of India debated Article 13 (Article 19) on freedom of speech and expression of the Draft Constitution, 1948) on 1 December 1948, 2 December 1948.

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#### Broadcasting

129. (1) The Federal Government shall not unreasonably refuse to entrust to the Government of any, Province or the Ruler of any Federated State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler-

(a) to construct and use transmitters in the Province or State;

(b) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State:

Provided that nothing in this subsection shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

(2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as maybe imposed by the Federal Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

(4) If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the Governor-General in his discretion.

(5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquility of India or any part thereof, or as prohibiting the imposition on Governments or Rulers of such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment.

True copy of the relevant excerpts of the CAD dated 1 December 1948, and 2 December 1948 is annexed hereto and marked as **ANNEXURE P-2 [page 89-157]**

- x. In 1950 Constitution of India came into force and freedom of speech and expression become fundamental right under Article 19(1)(a).
- xi. In 1951, the government felt that there was a need to introduce a Press Bill which would be free from the objectionable features of the 1931 Act and be in consonance with the constitution of free India. After Independence, the restrictive regulations were either done away with or suitably modified and codified to meet the urges of a free Press in a free country.
- xii. In 1952 Cinematograph Act, 1952 came into force, bringing into place an apparatus for the censorship of films. This Act of 1952, dealt with two separate matters: (a) The examination and certification of films suitable for public exhibition, and (b) Regulation of cinemas including their licensing. The Section 3 of the Act created the Censor Board or the Board of Film Certification. Any film intended for public exhibition was required to get a certificate from the Board Sanctioning the film for restricted or unrestricted viewing. The guiding principles for certification of films

under the Act are an echo of the restrictions under Article 19(2).

- xiii. The first Press Commission recommended the setting up of a Press Council 'to safe guard the freedom of the press' and 'to encourage the growth of the sense of responsibility and public service among all those engaged in the profession of journalism'. The Press Council Act was passed by the Parliament in 1965 and the Press Council was set up on 4th July, 1966. However, the Press Council was made the victim of emergency and the Press Council Act, 1965 was repealed with effect from 1st January, 1976. The reason was cited to abolish the Press Council that it was not able to carry the functions to achieve the objects for which the Council was established.
- xiv. The Press in India was until recently the only medium not under the direct control of government and in a position to evaluate critically the implications of national policies. The Indian Press is almost entirely privately owned and has been free in all the decades since 1947, except for an interregnum of nineteen months, between June 1975 and January 1977.
- xv. The government appointed the 1952 and 1978 Press Commissions to inquire into the Press laws and other developments affecting the Press and its operations.

State attitudes towards the Press in the post-independence period varied somewhat between the large, metropolitan Press and the provincial Press.

- xvi. In 1965 the sole statutory, quasi-judicial body set up for media regulation in the India is the Press Council of India while it aims to preserve the freedom of the press and maintain and improve the standards of press in India, it has no way of imposing punishments or enforcing its directions for professional or ethical violations.
- xvii. In 1975 there was purported abuse of television by the Government. This led to a political demand for the autonomy of television. After the emergency ended, Government commissioned a white paper titled –White Paper on the Misuse of the Mass Media during the Emergency. This was presented to parliament in August 1977 and around the same time in 1977, a working group was constitute to look into autonomy for Akashvani and Doordarshan with in the Government framework.
- xviii. In 1979 the committee proposed the setting up of a trust named Akash Bharati or the National Broadcasting Trust. The Akash Bharati Bill declared that the trust was to be the –trustee of the national interest for radio and television and shall uphold the

collective right of the Indian people to freedom of speech, expression and communication through broadcast media. This Bill was introduced in Parliament but lapsed after the dissolution of Lok Sabha in 1979.

- xix. In 1982, the Advisory Committee, headed by Mr. G. Parthasarathi, on Official Media attached to the Ministry of information and Broadcasting, issued “News Policy for Broadcast Media” in May, 1982. The true copy of the News Policy for Broadcast Media is annexed as **ANNEXURE P-3 [pages 158-179]**
- xx. In 1990 the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 came into existence in September 1990 and came into force with effect from 15th September 1997. The Act sought to free Akashwani (All India Radio) and Doordarshan from direct control of the Government and provides for establishment of an autonomous corporation for electronic media.
- xxi. The Cable Television Network Rules, 1994 were enacted under the Cable Television Networks (Regulation) Ordinance, 1994. The Programme Code of the Cable Television Network Rules lays down restrictions on the content of both programmes and advertisements that can be shown on cable TV.

True copy of the Cable Television Network Rules, 1994 is annexed hereto and marked as **ANNEXURE P-4 [pages 180-198]**

- xxii. On 25.03.1195 Cable Television Networks (Regulation) Act, 1955 came to enacted.

True copy of the Cable Television Networks (Regulation) Act, 1955 is annexed hereto and marked as **ANNEXURE P-5 [pages 199-210]**

- xxiii. On 01.04.2010 Sub Committee of PCI submitted a report to show how corruption in media undermines democracy. PCI released its "Report on Paid News" on 30.07.2010 wherein one of the major recommendations is to amend the Press Council Act to bring electronic media under the jurisdiction of the PCI and also to empower PCI. True copy of the report of PCI dated 30.07.2010 is annexed hereto and marked as **ANNEXURE P-6 [pages 211-233]**

- xxiv. The Respondent No. 1 has framed uplinking/downlinking guidelines as per existing policy guidelines, via which the permissions for uplinking, and/ or downlinking of satellite TV channels are issued to Broadcasters by MIB on the basis of their applications, after receiving the permission for uplinking of satellite TV channels from MIB.

True copy of the Uplinking/Downlinking Guidelines as on 2011 is annexed hereto and marked as **ANNEXURE P-7 [pages 234-241]**

- xxv. On 15.11.2013 the Sub-committee of PCI submitted a report on issues related to Paid News and sought for constituting of the Statutory body viz., Media Council having eminent persons as its members to look into all media contents both from print media and electronic media (TV as well as Radio) with powers to take strong action against the defaulters. True copy of the subcommittee report dated 15.11.2013 is annexed hereto and marked as **ANNEXURE P-8 [pages 242-243]**
- xxvi. It is submitted that the News Broadcasting Standards Disputes Redressal Authority, a self-regulatory body is set up by the 14-member NBA (representing 30 channels). The Broadcasters established regulator is expected to watch over news broadcasts that violate the NBA's code of ethics and broadcasting standards. It is submitted that the aforesaid authority is not a statutory authority does not get any powers from Constitution of India or any statute emanating from the Constitution. True copy of the Code of Ethics & Broadcasting Standards and Regulations is annexed

hereto and marked as **ANNEXURE P-9 [pages 244-256]**

- xxvii. On 09.11.2019, NBSA the self-regulatory authority had ordered English news channel Republic TV to air an unconditional apology for previously undermining NBSA's authority in a different ethical violations case. Not only did it not comply, but an alternate "self-regulatory" body named News Broadcasters Federation. It is submitted that NBF has no grievance resolution mechanism.
- xxviii. That this Hon'ble Court in **Writ Petition (Civil) No. 956/2020, Firoz Iqbal Khan v. Union of India & ORS** has expressed its willingness to consider framing of guidelines for regulation of the Media-Business.
- xxix. The Petitioner no. 1 submits that he has moved the Bombay High Court by means of his PIL STM No. 92252/2020, Nilesh Navalakha & ors. V. Union of India & ORS., for postponement of the reportage and media trials in the Sushant Singh Rajput-death case, and *inter alia*, for the Media-Respondents to be directed to adhere to the tenets of the Programme Code of the Union of India (I&B Ministry).
- xxx. The Petitioner's herein, have moved this Hon'ble Court by means of instant writ petition in public interest, so

as to address the larger issue of Judicial Regulation of the Media, which has no bearing or relation to the petition filed by him pending in the Bombay High Court, and the matters in both the petitions are totally different and distinct.

15. That, the Petitioners are *beseeking* this Hon'ble Court to lay down and issue appropriate guidelines outlining the broad regulatory paradigm within which media houses, i.e., broadcasters and electronic media, can exercise their rights under Article 19(1), so as to judicially regulate the same. The instant petition also prays for establishment of an independent, regulatory Tribunal/judicial-body, known as "**Media Tribunal**," to hear and expeditiously adjudicate upon complaint petitions against the Media-Businesses filed by the viewers/citizens.
16. That, this Hon'ble Court in ***Vineet Narain v. Union of India, (1998) 1 SCC 226***, in similar circumstances and in the absence of any legislative framework gave detailed directions for setting up of an independent body "CVC" to supervise the CBI and also provided for directions regarding tenure of the officers etc (*see para 58 of the judgement*).
17. That, today, Electronic Media has become the most powerful medium with unprecedented influence over the minds of the people. The lack of accountability on the Electronic Media

channels, which have the power and impetus to set the country ablaze with their hateful and fissiparous discourse.

18. That, over the last few years, Media Trials, hate speech, propaganda news, paid news have become the order of the day, thereby impeding the right to fair trial of victims and right to fair and proportionate reporting. It is submitted that reckless reportage by the Electronic Media without accountability cannot be the reading of the right to freedom of speech and expression enjoyed by the Electronic Media.
19. That, unbridled power is always dangerous, as also the saying goes, "Power corrupts; absolute power corrupts, absolutely." The Electronic Media has become like an unruly horse, which needs to be tamed. However, the Ministry of Information and Broadcasting, Union of India, being the nodal ministry has totally failed in the discharge of duties, in implementing the undertaking of the Electronic Media broadcasters, of compliance with the Programme Code in Rule 5 of the Cable Television Rules, 1994. It is submitted that the Electronic Media Broadcasters are bound by the undertaking to comply with the Programme Code, which is made at the time of applying for permission to Uplink/Downlink their respective channels.
20. Instead of doing service to the nation and working in public interest, of late, the media is afflicted with disseminating:

- i. Misinformation, Fake News and Propaganda,
- ii. Divisive and Schismatic Forces of Communalism, Ethnocentrism, Bigotry, Casteism, Linguism and Regionalism,
- iii. Indecent, Sleazy, Cheap, Sensational, Scandalous, Immoral, Inciting, Defamatory and Disproportionate Reports,
- iv. War-mongering,
- v. Superstitious, Violent, Backward and Public Disorder-inducing Attitudes,

all of which are well beyond the periphery and contours of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, and a brazen misuse of the said right. Moreover, by the nature of the broadcast, the Electronic Media is wholly negating the right to fair and proper information that is enjoyed by the citizenry.

21. That, significantly, the Article 51A of the Part IVA of the Constitution, provides the fundamental duties of every citizen, *inter alia*:

- “(a) **To abide by the Constitution** and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) **To cherish and follow the noble ideals which inspired our national struggle for freedom;**
- (c) **To uphold and protect** the sovereignty, **unity and integrity of India;**
- (e) **To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or**

**sectional diversities; to renounce practices derogatory to the dignity of women;**

- (f) **To value and preserve the rich heritage of our composite culture;**
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) **To develop the scientific temper, humanism and the spirit of inquiry and reform;**
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;”

and since the Media is made up of nothing but a body-corporate/group/aggregate of citizens, so the same is also a bounden duty of the Media, to uphold the duties fundamental to all citizens.

22. That, thus, it is a constitutional duty of the Media, the State and of the citizen, to abide by the fundamental duties. Although, Article 51-A is not judicially enforceable by itself, it becomes judicially enforceable through a expanding interpretation of the Article 21, and any failure of the foregoing duties may well be considered and entertained as a Public Interest Litigation under Article 32.
23. That, needless to say, for the purpose(s) of plenary and inherent powers and jurisdiction of this Hon’ble Court under Article 32 and Article 142 of the Constitution, the Media is well covered under the definition of ‘State’ under Article 12, squarely falling within the “Public Function Test,” as laid

down by this Hon'ble Court in a plethora of cases. The role of the Media corporations is comparable to the sovereign functions because of their mass-reach and pervasive control over the lives of individuals and having immense power of shaping their lives, having direct control over the content/news/"facts" being disseminated, and being heavily relied upon by the nation's populace for information, which eventually moulds their thoughts, opinions and ideas.

24. That, what is more, the nature of the reportage of the Electronic Media as enumerated hereinabove, negates the fundamental rights of the citizenry at large, being Right to Live with Human Dignity, Right to Livelihood, Right to Education, Right to Know, **Right to Fair Information and Proportionate Media Reporting**, *et al*, as enshrined under Article 21 of the Constitution, apart from being antithetical to the citizen's rights guaranteed under Article 19(1)(a), which owing to the dominance of Electronic Media, becomes subsidiary and inconsequential, further falling under the mischief of arbitrariness and hit by Article 14 of the Constitution.
25. That, this Hon'ble Court has time and again expressed that the rights of the many are to supersede the rights of the few. It is submitted that the right to freedom of speech and expression enjoyed by the Electronic Media Broadcaster cannot trump the right to fair information enjoyed by the citizenry.

26. That, in these circumstances, it has become imperative that this Hon'ble Court, as the ultimate *sentinel on the qui vive*, protects and balances the rights of various stake holders so that the fundamental rights of one class of stake holders do not become subservient to the exercise of fundamental rights of the other class.
27. That, it may not be incorrect to state that the Ministry of Information and Broadcasting, Union of India has the nodal ministry has failed in the discharge of its duties and holding media houses accountable for breach of the program code framed by it. That, it is crucial to foresee and understand the consequences of paid, fake, and biased news which is all unreliable news. The respected Ministry of Information and Broadcasting, Union of India, which is the trustee of airwaves, presumably has blindfolded itself just like King Dhritrashtra of Mahabharata who knew that his children, the Kauravas, were in the wrong and perpetrating evils, but he did not reprimand, censure or stop them.
28. That, it is pertinent to mention, that the press does not enjoy unfettered freedom, of any degree higher than that enjoyed by the citizens. There is no gainsaying that the Constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. Thus, the press is subject to the restrictions that are provided under the Article 19(2) of the Constitution. The

power enjoyed by the news broadcasters/electronic media is immense, and without any accountability to the law or the Constitution. It is submitted that untrammelled power is prone to abuse, something that is antithetical to the rule of law.

29. That, most members of the Constituent Assembly welcomed the inclusion of the right. However, conflict emerged around the provision in the Article that placed restrictions on the right: while some members opposed the mention of restrictions on the right, others supported it. Members who opposed the restrictions argued that:
  - i. There is no point in having a right to freedom of speech and expression in the presence of restrictions.
  - ii. Putting restrictions on the freedom of speech and expression was a British practice.
  
30. That, during the debates around Draft Article 13 (Article 19, Constitution of India, 1950):
  - i. Shri Damodar S Seth, proposed an amendment which sought to spell out “*freedom of the press*” along with the other freedoms. He noted while one might argue that press freedom might be *implicit* in freedom of speech and expression: “*the present is the age of the Press and the Press is getting more and more powerful today. It seems desirable and proper, therefore, that the freedom of the Press should be mentioned separately and explicitly.*”
  - ii. Shri. KT Shah was another strong proponent of freedom of the press. He wanted to insert “*freedom of speech and expression; of thought and worship; of press and*

*publication*". He pointed out that several countries underwent 'constitutional struggles' to ensure freedom of the press. Further, he implied that freedom of the press is explicitly guaranteed where '*liberal constitutions prevailed*'. Shah insisted that leaving this out, as described by another member, was a "*black Act*"

iii. He further noted:

*"To omit it altogether, I repeat, and I repeat with all the earnestness that I can command, would be a great blemish which you may maintain by the force of the majority, but which you will never succeed in telling the world is a progressive liberal constitution, if you insist on my amendment being rejected."*

31. That, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, after a long debate on inclusion of the press in the Article stated that press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The relevant portion is extracted hereunder for convenience:

**"7.65.168 B.R. Ambedkar:** *Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K. T. Shah, that the fundamental rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.*

32. That, the strong demands to encode freedom of the press within Article 19 (1) (a), were defeated because the framers did not see the 'Press' as a separate category. The Privy Council in **Channing Arnold v. King Emperor AIR 1914 PC 116**, @ 117 has observed that:

*"The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject".*

#### **ROLE OF MEDIA IN POST-INDEPENDENCE INDIA**

33. That, in the pre-Independence era, the Media was a form of "service" to the cause of the people's freedom, and was a great juggernaut of social change, reform and awakening, and acted as one of the greatest tools to mobilize the people and consolidate social consciousness for the freedom struggle. The Media of the pre-independence era was largely run and owned by freedom fighters and great personalities and heroes of our nation, such as Raja Ram Mohan Roy, Bal Gangadhar Tilak, Dadabhai Naoroji, Mahatma Gandhi, Jawaharlal Nehru, Dr. B.R. Ambedkar, et al.
34. That, in the pre-independence period, the Media/Journalism was rooted in a Vision of Social Change, Awakening and Reformation and Consolidation and Mobilization of the Struggle for India's Freedom, and worked with the said Mission.

35. That, while the press and the media continued in the pre-independence spirit, over time, with changes in the media and society, the news broadcasters and electronic media have used their power to only further their business interests. The Media has mutated from being a service, to being a business. Journalism mutated from being a Mission, to being a Profession.
36. That, further, the Media came about from being owned by benevolent and self-less freedom fighters, to being owned by profit-oriented big Business and Corporate Houses. With passage of time Media-Business became a monumentally competitive and cut-throat commerce, where sensationalism, sleaze and scandal have become the norm and Truth/Facts became subsidiary.
37. That, significantly, free speech cannot be without regulation or consequence, especially when Article 19(1)(a) is subject to restrictions in Article 19(2), to be imposed reasonably. It is relevant to note that the spread of misinformation or falsities by the news broadcasters and electronic media fall foul of the right to information of the common citizens which is also recognised and guaranteed under Article 19(1)(a).
38. That, for a full bird's eye view of the matter, the prevailing legal regime as constituting the present regulatory framework

is germane and the same is being gainfully delineated as follows:

**PRESENT REGULATORY FRAMEWORK**

35.1 The regulatory regime presently governing the media sector is contained under the Prasar Bharti Act 1990 and the Cable Networks Act 1995 and the rules framed thereunder. The institutional structures and government bodies regulating the sector include the Ministry of Information and Broadcasting (MIB) (Respondent No. 1) and the Prasar Bharti. These government bodies have been entrusted with the activities of governance through the issue of guidelines, policies and rules and the granting of licences for the broadcasting and electronic media sector.

**Uplinking/Downlinking Guidelines as on 2011**

35.2 As per existing guidelines, the permission for satellite TV channels are granted under two categories viz. “News and Current Affairs TV channels” and “Non-News and Current Affairs TV channels”. The guidelines provides following definitions of these two categories of channels respectively:

a. “A News & Current Affairs TV channel means a channel which has any element of news & current Affairs in its programme content.”

and

b. “A Non-News & Current Affairs TV channel means a channel which does not have any element of

News & Current Affairs in its programme content

5. GENERAL TERMS & CONDITIONS ....

...

**5.2 The company shall comply with the Programme & Advertising Codes, as laid down in the Cable Television Networks (Regulation) Act, 1995 and the Rules framed there under.**

- 35.3 As per existing policy guidelines, the permissions for uplinking, and/ or downlinking of satellite TV channels are issued to Broadcasters by MIB on the basis of their applications. Accordingly, a satellite TV channel uses the uplink spectrum (**air waves**), satellite transponder, and the downlink spectrum for transmitting the signals of TV channels from broadcaster to distributors of TV channels.
- 35.4 The existing bodies for regulation of media such as the Press Council of India which is a statutory body and the News Broadcasting Standards Authority, a self-regulatory organization, issue standards which are more in the nature of guidelines. It is relevant to note that the broadcaster enters into a contractual obligation with the Government, to comply with the Programme Code and the Advertising Code specified in the Cable Act and the Cable Rules. It is submitted that any broadcaster that does not comply with this

undertaking is liable to be proceeded against, including by cancellation of the permission to uplink/downlink.

35.5 Over 1000 television channels use the airwaves which is public property, but there is no organised and effective regulatory mechanism to regulate/adjudicate the challenges posed by the broadcasters.

35.6 What is matter of that the provisions of the programme code which fixes atleast some accountability does not govern the media and media is governed by the self-regulated broadcasting code.

35.7 This Hon'ble Court in **Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal (1995) 2 SCC 161** examined the lacuna in area of broadcasting regulation and directed the establishment of an autonomous broadcasting authority to control and regulate the broadcasting media.

**THE PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) ACT, 1990**

35.8 The Prasar Bharati Act aims at bringing the Government electronic media under the control of an antonymous organisation. The Act sought to free Akashwani (All India Radio) and Doordarshan from direct control of the Government and provides for establishment of an

autonomous corporation for electronic media. The Act established a Broadcasting Corporation of India that is known as Prasar Bharat.

**THE CABLE NETWORKS ACT, 1995**

- 35.9 The principal purpose of the Cable Networks Act was to introduce regulatory certainty to the cable market that had emerged in the early 1990s.
- 35.10 The statement of objects and reasons declared that cable TV constituted a ‘cultural invasion’ as cable programmes were predominantly Western and alien to Indian culture and way of life. It declared that the lack of regulation had resulted in undesirable programmes and advertisements being shown to Indian viewers without any censorship.

***Cable Television Networks (Regulation) Act, 1995***

*[Act 7 of 1995]*

*[March 25, 1995]*

*An Act to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto*

*Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—*

**Prefatory Note—Statement of Object and Reasons.**—There has been a haphazard mushrooming of cable television networks all over the country during the last few years as a result of the availability of signals of foreign television networks via satellites. This has been perceived as a “cultural invasion” in many quarters since the programmes available on these satellite channels are predominantly western and totally alien to our culture and way of life. Since there is

no regulation of these cable television networks, lot of undesirable programmes and advertisements are becoming available to the viewers without any kind of censorship.

2. It is also felt that the subscribers of these cable television networks, the programmers and the cable operators themselves are not aware of their rights, responsibilities and obligations in respect of the quality of service, technical as well as content-wise, use of material protected by copyright, exhibition of uncertified films, protection of subscribers from anti-national broadcasts from sources inimical to our national interest, responsiveness to the genuine grievances of the subscribers and a perceived willingness to operate within the broad framework of the laws of the land, e.g., the Cinematograph Act, 1952, the Copyright Act, 1957, Indecent Representation of Women (Prohibition) Act, 1986.

3. It is therefore, considered necessary to regulate the operation of cable television networks in the entire country so as to bring about uniformity in their operation. It will thus enable the optimal exploitation of this technology which has the potential of making available to the subscribers a vast pool of information and entertainment.

4. The Bill seeks to achieve the above objects.

35.11 The Sections 5 and 6 of the Act deal with advertisement code and programme code. All cable services should be in conformity with the codes. The down linking Guidelines issued by Ministry of information and Broadcasting, Government of India in 2005 seeks to bind broadcasters to certain provisions of the Cable Television Networks (Regulation) Act, 1995, namely the programme code and the advertisement code.

Statutory Violations and Offences

35.12 Sections 16, 17 and 18 of the Act deal with offences under the Act. They lay down punishments for any act which is in contravention with the provisions of the Act.

**CABLE TELEVISION NETWORK RULES, 1994:**

35.13 The Rules were enacted under the Cable Television Networks (Regulation) Ordinance, 1994. The Programme Code of the Cable Television Network Rules lays down restrictions on the content of both programmes and advertisements that can be shown on cable TV. These restrictions are laid down in Section 6 of the Rules.

35.14 The broadcaster cannot carry any channels prohibited by the MIB. The Broadcaster has to ensure that its facilities are not used for transmitting any objectionable or obscene content, messages or communication inconsistent with the laws. The use of the facility or service for anti-national activities would be construed as an offence punishable under the Indian Penal Code and applicable laws and it will result in the immediate termination of the License. It is submitted that Respondent No.1 (MIB) under the Cable Act has authority to prohibit the transmission or reception of programmes for violation of the programme code.

- 35.15 The sole statutory, quasi-judicial body set up for media regulation in the India is the Press Council of India. While it aims to preserve the freedom of the press and maintain and improve the standards of press in India, it has no way of imposing punishments or enforcing its directions for professional or ethical violations.
- 35.16 The powers of the PCI are restricted in two ways: (1) The PCI has limited powers of enforcing the guidelines issued. It cannot penalize newspapers, news agencies, editors and journalists for violation of the guidelines. (2) The PCI only overviews the functioning of press media. That is, it can enforce standards upon newspapers, journals, magazines and other forms of print media. It does not have the power to review the functioning of the electronic media like radio, television and internet media.

#### **SELF-REGULATORY FRAMEWORK OF NEWS CHANNELS**

- 35.17 The news channels are governed by mechanisms of self-regulation. One such mechanism has been created by the News Broadcasters Association. The NBA has devised a Code of Ethics & Broadcasting Standards to regulate television content. The News Broadcasting Standards Authority (NBSA), of the NBA, is empowered to warn, admonish, censure, express disapproval and fine the broadcaster a sum upto Rs. 1 lakh for violation

of the Code. The NBA has presently 26 leading news and current affairs broadcasters (comprising 70 news and current affairs channels) as its members. The NBA presents a unified and credible voice before the Government, on matters that affect the growing industry.

35.18 The News Broadcasting Standards Disputes Redressal Authority, a self-regulatory body is set up by the 14-member NBA (representing 30 channels). The Broadcasters established regulator is expected to watch over news broadcasts that violate the NBA's code of ethics and broadcasting standards. It is submitted that the aforesaid authority is not a statutory authority does not get any powers from Constitution of India or any statute emanating from the Constitution. It is submitted adjudicating of any grievance by the aforesaid authority is clearly in realm of being judge of its own case.

35.19 Not all the news broadcasters are its members, it is submitted that decisions if any made by the aforesaid authority will be binding on its members and not such broadcaster who are members of IBF. It is matter of great concern that the members of the Association are governed by News Broadcasting Standards Regulations which only on an complaint to see if there is any

violation of the Code of Conduct being Code of Ethics & Broadcasting Standards.

35.20 On 09.11.2019, NBSA the self-regulatory authority had ordered English news channel Republic TV to air an unconditional apology for previously undermining NBSA's authority in a different ethical violations case. Not only did it not comply, but an alternate "self-regulatory" body named News Broadcasters Federation. It is submitted that NBF has no grievance resolution mechanism so far. It is submitted that the Respondent No. 4 is apparently an association of over 50 news channels.

35.21 The News Broadcasting Standards Disputes Redressal Authority (Respondent No. 5), a self-regulatory body is expected to watch over news broadcasts that violate the NBA's code of ethics and broadcasting standards. It is submitted that the aforesaid authority is not a statutory authority does not get any powers from Constitution of India or any statute emanating from the Constitution. It is submitted adjudicating of any grievance by the aforesaid authority is clearly in realm of being judge of its own case. The News Broadcasting Standards Authority (NBSA), of the NBA, is empowered to warn, admonish, censure, express disapproval and fine the broadcaster a sum upto Rs. 1 lakh for violation of the Code.

35.22 That, what is more, there are several other small/big news channels which are neither members of NBA or NBF and thus, continue to air or broadcast anything in the garb of free speech.

35.23 That, the liberty and pleasure of self-regulation or governance enjoyed by the Media has been deceitful. It is submitted that the NSBA and other authorities have miserably failed in promoting public accountability and fairness in news reporting.

35.24 That, Press Council of India has on several occasions has also recommended to amend the Press Council Act to bring electronic media under the jurisdiction of the PCI and sought for constituting of the Statutory body and also to empower PCI to take strong action against the defaulters.

### **SELF-REGULATION VS JUDICIAL REGULATION**

39. That, self-regulation by media can never be the answer. Under the Indian Constitutional setup, it is solely the Judiciary which enjoys the privilege of 'self-regulation,' being Independent and conferred with the same by the Constitution itself. Thus, equating the Media-Business with the Judiciary, in terms of the privilege of 'self-regulation' directly strikes upon the Independence of the Judiciary and rattles and shakes the very foundations of the Indian Constitutional Scheme and the Democracy, and the same goes against every

notion and canon of law and justice prevailing in India. It is notable, that despite being self-regulated even this Hon'ble Court are not immune from clutches of law and are amenable to regulations under "**Judges (Inquiry) Act, 1968.**"

40. That, the news broadcasters and electronic media cannot claim immunity from the imposition of reasonable restrictions, and cannot claim to enjoy the fundamental rights guaranteed under Article 19(1)(a), without being subject to restrictions under Article 19(2). It is relevant to note, that while there is some method of censoring and screening of cinematograph films, there is absolutely none to censor and screen the broadcasters.
41. That, this Hon'ble Court in **S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574**, has categorically stated:

*"10. Movie doubtless enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movie and other modes of communication. The movie cannot function in a free marketplace like the newspaper, magazine or advertisement. Movies motivate thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The focussing of an intense light on a screen with the dramatizing of facts and opinion makes the ideas more effective. The combination of act and speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have an impact in the minds of spectators. In some cases, it will have a complete and immediate influence on, and appeal for everyone who sees it. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It is said: "as an instrument of education is has unusual power to impart information, to influence specific attitudes towards*

*objects of social value, to affect emotions either in gross or in microscopic proportions, to affect health in a minor degree through sleep disturbance, and to affect profoundly the patterns of conduct of children.” (See Reader in Public Opinion and Communications, Second Edition by Bernard Berelson and Morris Janowitz, p. 390) The authors of this book have demonstrated (at pp. 391 to 401) by scientific tests the potential of the motion pictures in formation of opinions by spectators and also their attitudes. These tests have also shown that the effect of motion pictures is cumulative. It is proved that even though one movie relating to social issue may not significantly affect the attitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie relating to a social issue may not significantly affect the attitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instil or cultivate violent or good behaviour. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market-place just as does the newspaper or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary.”*

42. That, despite there being no restrictions provided for in the First Amendment to the US Constitution, the Hon’ble Supreme Court of the United States, in *Brandenburg v. Ohio*, 395 U.S. 444 (1969) has held that free speech can be restricted the same is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
43. That, in India, even though free speech is not unlimited, even this test is not applicable to the news broadcasters/electronic media as of today, since there is a lack of regulatory control. It

is relevant to mention the quote of the father of the Nation Mahatma Gandhi here: “*An uncontrolled pen serves but to destroy.*”

44. That, it goes without saying, that self-regulation theory as was evolved by toothless and powerless bodies like the NBA, are nothing but sham and farcical, which abuses the *bona fide* privilege conferred upon the media as the “Fourth-Pillar” and in effect a myth.

#### **MEDIA AS THE “FOURTH ESTATE” / “FOURTH PILLAR”**

45. That, the describing of journalists and the news outlets *for* which they work, the broadcasters and the Media, in general, as the members of the Fourth Estate is an acknowledge of their influence and status among the greatest powers of a Nation State. The expressions “fourth-estate” or “fourth-pillar” go back centuries, when they applied to any unofficial group that wielded public influence, including, **the mass of common-folk – the public.**
46. That, the earliest known user of the said expression, designating **the ordinary people** as the “fourth-estate,” was the English author and magistrate Henry Fielding (1707-54) writing, under the pseudonym of *Sir Alexander Drawcansir, Knt. Censor of Great Britain*, in *The Covent-Garden Journal* of Saturday, 13th June, 1752:

*“It may seem strange that none of our political Writers, in their learned Treatises on the English Constitution, should take Notice of any more than three Estates, namely, King, Lords, and Commons, all entirely passing by in Silence that very large and powerful Body which form **the fourth Estate** in this Community, and have long been dignified and distinguished by the name of **THE MOB.**”*

47. That, the Scottish Historian, Thomas Carlyle in his ‘On Heroes, Hero-Worship, and The Heroic in History’ (1841), attributed the origin of the said expression, as applied to **the press**, to the Anglo-Irish Statesman and Philosopher, Edmund Burke, who supposedly used it to refer to the parliamentary reporters, as:

*“Does not, though the name Parliament subsists, the parliamentary debate go on now, everywhere and at all times, in a far more comprehensive way, out of Parliament altogether? **Burke said there were Three Estates in Parliament; but, in the Reporters’ Gallery yonder, there sat a Fourth Estate more important far than they all.**”*

48. That, four years earlier, Carlyle had used the phrase in his *French Revolution* (1837) : *“A Fourth Estate, of Able Editors, springs up, increases and multiplies; irrepressible, incalculable.”* This way, Carlyle saw the press as instrumental to the birth and growth of democracy, spreading facts and opinions and sparking revolution against tyranny.
49. That, in India, the press had also served as a great tool to unite the mass consciousness against the oppression of the British Raj and, largely owned, controlled and run by the foremost of our freedom fighters, was one of the highest forms of service to the cause of India’s tryst with freedom.

50. That, however, unfortunately, after independence the Press, or so to say, Media – the broadcast media, in particular, was taken over by the Corporates and Business Entities and soon degenerated and corrupted into a cut-throat, commercial enterprise, centred around TRPs, ratings, viewership and profit-making; thereby making the original and true purpose of Media in a democracy, subservient, thus, soiling and debasing its nature and character as the “*fourth estate*.”
51. That, significantly, the Media of today, as we witness everyday is, inter alia, marred by and is a super-spreader of divisive and schismatic forces of communalism, ethnocentrism, bigotry, casteism, linguism and regionalism, apart from being scourged by sensationalism, scandal, misinformation, hatred and war mongering, cheapness, sleaze, superstition, backwardness, criminality and open mockery of the basic ethos of our Constitution and this is completely in teeth of Article 19(2).
52. That, it may not be incorrect to state that the Corporate/Business-Media of today is in no way deserving of the hallowed laurel of the “*fourth estate*,” as it is no way concerned with and is totally indifferent to the actual issues of the people, such as fiscal stability, joblessness, healthcare infrastructure, economy, education infrastructure, governmental and executive accountability, public order and safety, social reform, developing scientific temper, amplifying

the voices of the voiceless, women empowerment, technological advancement, upliftment of the weaker sections of the society, encouraging brotherhood, strengthening national unity, etc.

53. That, on the other hand, the Corporate/Business-Media of today thrives on fake, concocted and fabricated issues, completely oblivious to and far detached from the problems and issues of the ordinary people and this clearly forms of part of the restrictions under 19(2).
54. ~~That~~, the Media was only accorded the status of “fourth pillar” because of the “role” it played. Now, since its role has changed, from Service to Business, and from Mission to Profession, in such circumstances, it cannot mechanically be referred to as the Fourth Pillar, to avert all judicial attempts at regulating the Media-Business. It cannot be termed as the ‘Fourth Pillar’ if it does not raise the people’s issues and acts as the voice of the voiceless, instead only acts as a TRP-hunting, profit-mongering machine.
55. That, the judicially unregulated Media-Business is able to be used by politicians, police officers and other public officials who wish to put out propaganda to advance their own interests and influence public opinion. A hunger for “leaks” and “scoops” (which sometimes precipitates the events which they predict) and some journalists’ relationship with the

sources who provide them with information, can make it difficult for the media to maintain its independence and a critical stance. Searches for motivation, and even checks for accuracy, may suffer as a result. For example, over the last few months, errant police personnel who have been involved in encounter killings of purported criminals have been projected as heroes, despite the act being a complete negation of the rule of law by the errant police personnel exhibited with the full power of the State. Further, the bane of fake news has led to misinformation being spread amongst the citizenry

56. That, the context of the above, it places an extra responsibility on the journalist, as both the journalist and the source have a mutual interest: both want a headline. Yet if the journalist is so indiscriminating that the perspective taken serves the purposes of the source, then true independence is lost, and with it the goes the right to claim the special privileges and considerations which are usually claimed by the media because of its claimed independence and “watchdog” role, as the “Fourth Pillar”. If the independence and the role are lost, so is the claim to special consideration.
57. That, regulation (of the Media) does not mean censorship or curtailment of freedom of press, instead, regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned<sup>2</sup>. It is hence submitted that

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<sup>2</sup>*State of U.P. v. Hindustan Aluminium Corpn.*, (1979) 3 SCC 229.

Regulation” means regulation in public interest and not contra public interest. The expression “regulation” cannot possibly be read as contra public interest but in the interest of the public.

**(see Haryana SEB v. Suresh, (1999) 3 SCC 601**

58. That, it is submitted that Regulation has three components:
- i. legislation, that is, defining appropriate rules;*
  - ii. enforcement, such as initiating actions against violators; and*
  - iii. adjudication, that is, deciding whether a violation has taken place and imposing an appropriate penalty.*
59. That, the media in India has unfortunately has been playing a disproportionate role in shaping public perceptions of politics, electoral outcomes and the way power is exercised. The News media-business is facing a serious crisis of credibility. Robbed of authenticity, reliability and credibility, the media will cease to matter to large numbers of people except as a source of cheap entertainment and titillation. That being so, the whole purpose of the protection of free speech guaranteed under the Constitution gets defeated.
60. That, this Hon’ble Court in **Cricket Assn. of Bengal** (*supra*) has considerably widened the scope and extension of right to freedom of speech and expression and held that the government and private parties has no monopoly on electronic media and under Article 19 (1)(a) a citizen has the right to telecast and broadcast to the viewers through electronic media. This Hon’ble Court categorically noted that the,

**'airwaves are public property'** and their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights.

61. That, this Hon'ble Court further holds that Article 19(1)(g)-the right to trade and conduct business - but broadcasting, being a means of expression and therefore covered by Article 19(1)(a), **could not be monopolized, whether by the government or private companies..**
62. That, the Petitioners respectfully submit without prejudice to the intentions of the Respondent No. 1 that Ministry has hardly intervened or taken any action against any of such channels as may be guilty of brazen, deliberate and blatant flouting and violations of its own Programme Code, Rules or the Laws of the Land. The said Ministry has either exercised its powers selectively or has reduced itself to a mere, mute spectator.
63. That, the media is often termed as the watchdog, since it acts as a check and balance on the exercise of power of the three branches of government i.e., the executive, the legislature and the judiciary. It is, however, submitted that to monitor the watchdog, there is no proper authority.
64. That, the media being in the occupation of gathering and circulating information is supposed to hold dominant position,

a position that makes it very responsible and answerable to public at large.

65. That, it is imperative that the news television channels adhere to the elements of news and current affairs in their program content, it is also important that the news channels show fair and 'fact-checked' news.
66. That, citizens have a right to access free, independent media and that is precisely why India needs an exclusive regulatory body and specific statutory laws for news television channels. This Hon'ble Court in **T Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161** had directed the government to set up an independent autonomous authority which would free *Prasar Bharati* from the shackles of government control and ensure conditions in which the freedom of speech and expression could be meaningful and effectively enjoyed by one and all. This Hon'ble Court categorically held that the fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2) of the Constitution. (see para 122 of the judgment).
67. That, the paid news, propaganda news, false and misreporting, biased news is undermining our democracy since the functioning of media has a direct impact on the citizens, government and the society. The fact of paid news is

acknowledged by the Press Council of India (PCI) long ago when it conducted a study of the widespread practice of “paid news” in India in 2010. In its report, the PCI stated that paid news is “a pervasive, structured and highly organized practice” in Indian newspapers and other media outlets, where news space and favorable coverage is exchanged for money.

68. That, the PCI also acknowledged other forms of paid news including “private treaties” between media companies and corporate entities, wherein a non-media company transfers certain shares of the company to the media company in lieu of advertisement space and favourable coverage.
69. That, instead of discharging the responsibility of being informative about the unreliable news being spread on social media, most news channels have been competing with social media while creating and circulating such unreliable news including fake news, paid news and agenda driven news.
70. That, the content being aired on most news channels today makes it easy to infer that the NBA’s ‘Code’ is essentially ineffective. The office bearers and members of all such self regulatory associations include the office bearers of leading news channels, leaving no room for ambiguity that the self-regulatory mechanism fails to be an effective, reliable and trustworthy regulation. Adding to all these problems is the non-unification of the self-regulatory news media regulations

in India, since the presence of multiple self-regulatory bodies has led to issues over the enforceability of decisions.

71. That, the absence of regulation and lack of control over the content of news television channels is the primary reason for the content and credibility crisis of the Indian television news industry. One of the primary effects of the absence of a statutory regulatory body to regulate the content of news channels in India is that viewers are in a conundrum as to what content is reliable.
72. The NBSA's code of ethics and broadcasting standards is limited to member news channels. This effectively means that out of the nearly 400 permitted satellite news channels in the country, NBSA can only adjudicate on matters relating to its 27 member broadcasters and their 77 channels.
73. That, this Hon'ble Court in larger public interest can legislate or frame judicial guidelines to fill the vacuum in the laws in a particular field temporarily provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.
74. That, this Hon'ble Court in ***Vineet Narain v. Union of India, (1998) 1 SCC 226***, gave exhaustive directions to enhance the efficiency of the Central Bureau of Investigation (CBI) and even directed that the Central Vigilance Commission be given statutory status.

75. That, this Hon'ble Court in Vineeth Narain (*supra*) also observed, "Where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field."
76. That, the instant petition comprises of matter which seeks interpretation of the ambit, expanse and scope of the right to freedom of speech and expression, envisaged under Article 19(1)(a) and limitations prescribed under 19 (2) of the Constitution, and the determination of such questions of laws as to whether the freedom of press, which emanates from the said Article, is wider and more potent than the freedom of speech and expression of an ordinary individual/citizen, emanating from the same Article. This, coupled with the substantial relook and possible diffraction from the ratio of the Constitutional Bench of this Hon'ble Court in the ***Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603*** deserves the consideration of a Constitutional Bench of this Hon'ble Court.
77. That, this Hon'ble Court in Nivedita Jha vs State of Bihar & Ors: SLP(C) NO.24978 of 2018 (Muzzafar Nagar Shelter Home case) has also expressed its desire to evolve a mechanism for

enforcement and implementation of the statutory provisions and guidelines.

78. That, as regards the issue of constitution of a **Media Tribunal/Statutory Judicial Body**, several High Courts<sup>3</sup> all over the country are seized with the said issue, one of which has even placed it before a Full-Bench of the High Court. In the circumstances, the Petitioners beseech this Hon'ble Court, taking due note and cognizance of the same, to settle it once and for all, by a Constitution Bench of this Hon'ble Supreme Court.
79. That, the present Petition raises an issue which is writ large and seeks to fix accountability on broadcasters who under the guise of the freedom of press and exploiting such rights without ever being held accountable.
80. That, in exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases. (***see para 51 of Vineet Narain (supra)***).

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- i. Peoples Movement Against Sexual Assault (PMASA) vs Department of Women and Child Department, State of Karnataka & Ors. Writ Petition No. 6301 of 2017 pending before the High Court of Karnataka at Bangalore;
- ii. Shakeel Ahmed and Ors. vs. Suwarna News 24 x 7 and Ors.: Writ Petition No. 13677 of 2012 pending before the High Court of Karnataka at Bangalore
- iii. Lucknow Bench of the Allahabad High Court Dr. Nutan Thakur vs Union of India Writ Petition No. 9976 of 2013.
- iv. High Court of Kerala K. Biju vs. Union of India and Others. Writ Petition (Civil) No. 21336 of 2013 pending before the High Court of High Court of Kerala

81. That, the framing of judicial guidelines and holding the media business accountable would strengthen the system, ensure fair coverage of news stories, ethical conformity, higher standards and less yellow journalism, while also keeping the need for government interference at bay.

### **SUGGESTIONS FOR FORMULATING GUIDELINES**

82. The Petitioners for the convenience of this Hon'ble Court, are making the following suggestions, which may be considered by this Hon'ble Court while framing guidelines and issuing necessary directions:

- 1) A '**Media Tribunal**' on the lines of NGT, or the Motor Vehicles Accidents Tribunal, etc. must be set up for the **judicial regulation** of the Media; as opposed to executive regulation thereof, as the same would do more harm than good.
- 2) A committee of retired Judges of the Hon'ble Supreme Court must look into the existing legislative framework and suggest rehauling, revision and strengthening of the same.
- 3) The said committee may/should also recommend to the Central Government the creation of a Judicial Tribunal, being the **Media Tribunal**, on the lines of CVC, NGT, to look into complaints against the Media, in cases of violation of the Programme Code or violations of other laws (eg. IPC, SC/ST Act, etc.) during broadcast, or otherwise.

- 4) The tribunal so constituted must have a mechanism for both physical and e-filing of the complaint petitions, against the Media by the viewers/citizens, as in the case of NGT, NHRC, etc.
- 5) This Hon'ble Court must consider the setting up a **Monitoring Panel** appointed by this Hon'ble Court, helmed by sitting or retired Judges of this Hon'ble Court, or such persons of high regard as this Court deems fit, to monitor and regulate the Media, so as to enable implementation and adherence of the guidelines as may be laid by this Hon'ble Court, to fill the judicial-regulatory vacuum, until the establishment and constitution of "**Media Tribunal**" under a statutory enactment.
- 6) The Media-Persons/Journalist/Anchors must state facts and facts only, and all formulation of opinion(s) thereon, must be left upon the viewers/citizens.
- 7) In any case, whenever, a Journalist/Anchor has to give any opinion based on the facts of the particular 'news item/article,' **he/she must specifically and explicitly state that the same is his own opinion** and that they take full responsibility for the same.
- 8) The Hon'ble Court must lay down and emphasize the principle of '**Proportionate Reporting**' in matters of broadcast and coverage, i.e., issues of national, international and public importance, for eg., issues relating to economy, healthcare, education, environment, public order, women rights, farmer and agrarian issues, etc., must be given due and proportionate coverage and TV-time,

and it must be ensured that a singular issue doesn't hog the limelight 'disproportionately'.

- 9) Ours being a developing country, the key and special function of broadcasting must be the coverage of Development, its meaning, achievements and obstacles. The coverage must encompass a wide range of developmental activities – economic, technological, social and cultural. It should not be confined to mere statements and plans, but their significance must also be explained.
- 10) The style and method of news reporting, the theme, conduct and pattern of the programmes, should reflect and reinforce the fundamental and root principles on which national policies are based, such as, unity, territorial integrity, brotherhood, national integration, secularism, maintenance of public order, upholding human dignity and the prestige of the Parliament, State Legislatures and the Judiciary.
- 11) There must be adequate representation and coverage of all areas and cultures of India, so as to inculcate a sense of we-feeling, belongingness and mutual affection among all the pluralistic peoples of the country, including, the North-Eastern, Southern, Western, Northern and Eastern States.
- 12) The Anchors/Journalists must call scholarly and non-political persons, for eg. professors, scientists, engineers, academicians, doctors, experts of their particular fields, etc. in TV-debates on multifarious social and public issues, instead of representatives of various political parties who engage in mindless

quibbling and mudslinging; so as to ensure that the Media becomes a tool of information and social education, awareness and upliftment, rather than an arena for political pig-fights.

- 13) The Anchors/Journalists, in any case, must give equivalent and adequate speaking time to every panellist and be respectful and courteous towards them all.
- 14) The Anchor/Journalist must refrain from making the show self-centred and ranting in monologues or be biased towards or against certain panellists.
- 15) The Anchor/Journalist must maintain neutrality at all times, and at no point should state his opinions (without explicitly stating that it's his own opinion), thereby leaving the formulation of opinions wholly upon the audience.
- 16) It must be ensured that Media Studios act as temples of information and knowledge, and raise the issues of the people and act as a "watchdog" of the democracy, always tending to have a constructively critical relationship with the Government, in keeping with the Media's role as the "Fourth-Estate" or the "Fourth-Pillar" of Democracy.
- 17) The Hon'ble Court must unequivocally and emphatically lay down, that the role of the Media in a democracy, **is supposed to act as a second-opposition**, apart from the political opposition, **and be the voice of the voiceless**, to always fight for the real issues of survival that the people are confronted with on a daily basis, in keeping with

the Constitutional Scheme of India as a Welfare State.

- 18) In order to ensure responsible reporting, the Hon'ble Court must direct the Government to acquire certain stakes in all the Broadcasting networks, so as to fix a greater the liability upon the Government in case of any reporting which violates any of the laws of the land.
- 19) The Hon'ble Court must censure the Media as to the showing of sensational, sleazy and scandalous programmes, which must be abhorred at all costs.
- 20) The system of TRPs which leads to a cut-throat and unprincipled rat-race among the media channels, in the unholy quest for ratings and TRPs, and thereby lure advertisements, investment and profits, must be outlawed.
- 21) The TRP System must be substituted with an Award-System, on the lines of National Awards, etc., to be conferred for heads such as 'Most Informative News Channel,' 'People's Voice Award,' 'Best Anchor: People's Voice,' 'Best Investigative Journalist,' etc., judged by an independent panel of senior, retired and ex-journalists and luminaries, and persons having special and practical knowledge in matters of Literature, Science, Art and Social Service.
- 22) The ownership/share-holding framework of the Broadcasting Network or Media Channels must be prominently published on the website of the respective broadcasting/media network/channel.

- 23) The revenue model of the Media/Broadcasting Company/Network must be published on the website, *inter alia*, detailing the advertisements and the quantum thereof, as received from the Government.
- 24) There must be sensitivity counselling of the Journalists and the persons-in-charge of the Media Networks, so as to get well versed with the pluralistic, diverse and vulnerable nature of our society and the wide plethora of cultures, faiths and belief-systems.
- 25) There must be social-impact assessment conducted by every channel to estimate and account for the sociological harm/damage which a particular program might create, before running such programs; and the said impact assessment reports must be mandatorily maintained and kept safe.
- 26) There must be minimum, educational eligibility criteria to become an anchor/ journalist/reporters, and the same with all the educational qualifications and degrees of the journalists must be displayed on the website of the respective media channels.
- 27) The freelance media, particularly the digital media, i.e., youtube/web-journalists, etc. must be mandatorily registered as a Media-Portals with the I&B Ministry, so as to be subject to the same liabilities and checks as the electronic media.
- 28) The Persons-In-Charge of the Media Channels, along with the Journalists and the News Anchors,

must be well-versed with the Programme Code framed under the Cable Television Networks (Regulation) Act, 1995, and for the same, the main tenets of the Programme Code must be displayed on the TV Channels, as disclaimers or otherwise as running-flickers during the ongoing shows.

83. That, in the circumstances, it has become imperative that this Hon'ble Court as the ultimate *sentinel on the qui vive* protects and balances the rights of various stake holders so that the fundamental rights of one class of stake holders do not become subservient to the exercise of fundamental rights of the other class.
84. It is, therefore, submitted, that in the circumstances, it is picturesque, that it is necessary and imperative for this Hon'ble Court to frame guidelines to regulate the news broadcasters and electronic media, in the absence of an effective legislative mechanism for checks and balances on the exercise of the right of freedom of speech and expression by the news broadcasters; And further, to constitute an Independent Committee, headed by sitting or retired Judges, to *inter alia*, recommend to the Central Government for establishment of an independent, regulatory Tribunal/body "**Media Tribunal**" to hear and expeditiously adjudicate upon complaint petitions against the Media Business, Corporates and Journalists, filed by the viewers/citizens, to regulate the broadcasting and media sector, and covering the multifarious

segments of the Media, i.e., electronic, print and digital. It may also prescribe and impose sanctions where the laws of the land have been violated. It is submitted that the object is not to curb the freedom of the media, but to bring some accountability to the broadcaster, i.e. Electronic Media.

85. It is submitted, that the Union of India and the State Governments, must assume the role of the Police, to impose penal sanctions under the prevailing laws, and so as to work in tandem with the Media Tribunal so constituted, under recommendations by the Independent Committee of retired Judges of this Hon'ble Court.
86. It is further submitted, that this Hon'ble Court is the country's last hope and the nation's saviour. It is humbly beseeched, that this Hon'ble Court, and in the light of the aforesaid facts and submissions, the matter(s) and issue(s) raised herein, need to be decided and dealt with at the earliest.
87. That, the petitioners have not filed any similar petition/case previously before this Hon'ble Court or before any other High Court.
88. That, this Hon'ble Court has the jurisdiction to entertain the present Writ Petition. This writ petition is made bona fide and in the interest of justice and the Petitioners have no other efficacious remedy left other than approaching this Hon'ble Court.

89. That, the Petitioners crave leave of this Hon'ble Court to amend or alter the grounds at the appropriate stage, as and when required.

**GROUNDS**

90. That, the Petitioners have no other equally efficacious and alternative remedy, except to invoke the jurisdiction of this Hon'ble Court under Article 32 of the Constitution, *inter alia*, on the following grounds:
- a. For that an unregulated media which promotes hate speech and fake news is antithetical to the exercise of the rights under Article 19(1) and is also a gross violation of the mirror right of citizens under Article 19(1) of **Right to Fair Information and Proportionate Media Reporting**, read with Article 21 of the Constitution.
  - b. FOR THAT, the principal issue before this Hon'ble Court is to bring about a balance between the right to freedom of speech and expression of the Media-Businesses and the competing right to information of the citizenry under Article 19(1)(a), right to reputation and the right to dignity under Article 21, as well as in the interests of preserving peace and harmony in the nation.

- c. FOR THAT, the freedom of speech and expression enjoyed by the Media-Business is not unlimited, and subject to the restrictions imposed under Article 19(2).
- d. FOR THAT, the present petition is seeking framing of appropriate guidelines by this Hon'ble Court outlining the broad regulatory paradigm within which media houses can exercise their rights under Article 19(1). The instant petition also prays for establishment of an independent, regulatory Tribunal/body “**Media Tribunal**” to hear and expeditiously adjudicate upon complaint petitions against the Media-Businesses filed by the viewers/citizens.
- e. FOR THAT, the present petition is not to curb the fundamental rights of the Media-Business, but only to bring about some accountability for misinformation, inflammatory coverage, fake news, breach of privacy, etc. which the Media-Business has indulged in, only with the aim to further their business, and to bring about consequences for acting in a fashion that is contrary to constitutional goals and morality. It is submitted the exercise of power by the Electronic Media without any accountability, is severely detrimental to the due process of law, and contrary to the rule of law.

- f. FOR THAT, that this Hon'ble Court has time and again expressed that the rights of the many are to supersede the rights of the few. It is submitted that the right to freedom of speech and expression enjoyed by the Electronic Media Broadcaster cannot trump the right to fair information enjoyed by the citizenry.
- g. FOR THAT the restrictions on the Electronic Media must be placed at a higher footing than the common citizen, in view of the fact that the Electronic Media have a much larger reach, and are doing a public function by employing public airwaves
- h. FOR THAT, over the last few years Media Trials have become the order of the day. These media trials not only have a prejudicial effect on the rights of the accused but also the very concept of media trial is an anathema to the administration of justice. Media has become like an unruly horse, which needs to be tamed. However, Ministry of Information and Broadcasting, Union of India has the nodal ministry has totally failed in its discharge of duties and holding media houses accountable for breach of the program code framed by it.
- i. FOR THAT, it is crucial to foresee and understand the consequences of paid, fake, and biased news which is all unreliable news. The respected Ministry of Information and Broadcasting, Union of India, which is the trustee of

airwaves, presumably has blindfolded itself just like King Dhritrashtra of Mahabharata who knew that his children, the Kauravas, were in the wrong and perpetrating evils, but he did not reprimand, censure or stop them.

- j. FOR THAT, Electronic Media has become the most powerful medium with unprecedented influence over the minds of the people. The lack of accountability on the Electronic Media channels, which have the power and impetus to set the country ablaze with their hateful and fissiparous discourse. Over the last few years, Media Trials, hate speech, propaganda news, paid news have become the order of the day, thereby impeding the right to fair trial of victims and right to fair and proportionate reporting. It is submitted that reckless reportage by the Electronic Media without accountability cannot be the reading of the right to freedom of speech and expression enjoyed by the Electronic Media.
- k. FOR THAT, unbridled power is always dangerous, as also the saying goes, “Power corrupts; absolute power corrupts, absolutely.” The Electronic Media has become like an unruly horse, which needs to be tamed. However, the Ministry of Information and Broadcasting, Union of India, being the nodal ministry has totally failed in the discharge of duties, in implementing the undertaking of

the Electronic Media broadcasters, of compliance with the Programme Code in Rule 5 of the Cable Television Rules, 1994. It is submitted that the Electronic Media Broadcasters are bound by the undertaking to comply with the Programme Code, which is made at the time of applying for permission to Uplink/Downlink their respective channels.

1. FOR THAT instead of doing service to the nation and working in public interest, of late, the media is afflicted with disseminating:

- i. Misinformation, Fake News and Propaganda,
- ii. Divisive and Schismatic Forces of Communalism, Ethnocentrism, Bigotry, Casteism, Linguism and Regionalism,
- iii. Indecent, Sleazy, Cheap, Sensational, Scandalous, Immoral, Inciting, Defamatory and Disproportionate Reports,
- iv. War-mongering,
- v. Superstitious, Violent, Backward and Public Disorder-inducing Attitudes,

all on which are well beyond the periphery and contours of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. Moreover, by the nature of the broadcast, the Electronic Media is wholly negating the right to fair and proper information that is enjoyed by the citizenry.

- m. FOR THAT, in the circumstances, it has become imperative that this Hon'ble Court as the ultimate *sentinel on the qui vive* protects and balances the rights of various stake holders so that the fundamental rights of one class of stake holders do not become subservient to the exercise of fundamental rights of the other class.
- n. FOR THAT, the Constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. Thus, the press is subject to the restrictions that are provided under the Article 19(2) of the Constitution. The power enjoyed by the news broadcasters/electronic media is immense, and without any accountability to the law or the Constitution. It is submitted that untrammelled power is prone to abuse, something that is antithetical to the rule of law.
- o. FOR THAT, in the pre-Independence era, the Media was a form of "service" to the cause of the people's freedom, and was a great juggernaut of social change, reform and awakening, and acted as one of the greatest tools to mobilize the people and consolidate social consciousness for the freedom struggle. The Media of the pre-independence era was largely run and owned by freedom fighters and great personalities and heroes of our nation, such as Raja Ram Mohan Roy, Bal Gangadhar Tilak,

Dadabhai Naoroji, Mahatma Gandhi, Jawaharlal Nehru, Dr. B.R. Ambedkar, et al.

- p. FOR THAT, while the press and the media continued in the pre-independence spirit, over time, with changes in the media and society, the news broadcaster and electronic media have used their power to only further their business interests. The Media has mutated from being a Service, to being a Business. Journalism mutated from being a Mission, to being a Profession. The Media came about from being owned by benevolent and self-less freedom fighters, to being owned by profit-oriented big Business and Corporate Houses. With passage of time Media-Business became a monumentally competitive and cut-throat commerce, where sensationalism, sleaze and scandal have become the norm and Truth/Facts became subsidiary.
- q. FOR THAT, free speech cannot be without regulation or consequence, especially when Article 19(1)(a) is subject to restrictions in Article 19(2), to be imposed reasonably. It is relevant to note that the spread of misinformation or falsities by the news broadcasters and electronic media fall foul of the right to information of the common citizens which is also recognised and guaranteed under Article 19(1)(a).

- r. FOR THAT, under the Indian Constitutional setup, it is solely the Judiciary which enjoys the privilege of 'self-regulation,' being Independent and conferred with the same by the Constitution itself. Thus, equating the Media-Business with the Judiciary, in terms of the privilege of 'self-regulation' directly strikes upon the Independence of the Judiciary and rattles and shakes the very foundations of the Indian Constitutional Scheme and the Democracy, and the same goes against every notion and canon of law and justice prevailing in India. It is notable, that despite being self-regulated even this Hon'ble Court are not immune from clutches of law and are amenable to regulations under "**Judges (Inquiry) Act, 1968.**"
- s. FOR THAT, the Media is simply a Business, albeit one which is one of the most powerful structures of Power in itself, and thus, the same must be regulated by constitutional norms and principles,, because the Democratic Principle expounds that all structures of power must be regulated for the good of all and to preserve the doctrine of Equality as enshrined under Article 14 of the Constitution of India, which is the golden track on which the Constitution runs, otherwise the same shall descend into arbitrariness and corruption.

- t. FOR THAT the whole self-regulatory process makes the Electronic Media Broadcaster a judge in his own case, thereby completely negating the rule of law enshrined in our Constitution. This is more so because the broadcast by the Electronic Media is not only the exercise of right to freedom of speech and expression of the broadcaster, but is a means to the right to information enjoyed by the citizenry, and therefore the exercise of the right must be done responsibly.
- u. FOR THAT, importantly, the Media was only accorded the status of “fourth pillar” because of the “role” it played. Now, since its role has changed, from Service to Business, and from Mission to Profession, in such circumstances, it cannot mechanically be referred to as the Fourth Pillar, to avert all judicial attempts at regulating the Media-Business. It cannot be termed as the ‘Fourth Pillar’ if it does not raise the people’s issues and acts as the voice of the voiceless, instead only acts as a TRP-hunting, profit-mongering machine.
- v. FOR THAT it is needless to say, for the purpose(s) of the plenary and inherent powers and jurisdiction of this Hon’ble Court under Articles 32 and 142 of the Constitution, the Media is well covered under the definition of ‘State’ under Article 12, squarely falling within the “Public Function Test,” as laid down by this

Hon'ble Court in a plethora of cases. The role of the Media corporations is comparable to the sovereign functions because of their mass-reach and pervasive control over the lives of individuals and having immense power of shaping their lives, having direct control over the content/news/"facts" being disseminated, and being heavily relied upon by the nation's populace for information, which eventually moulds their thoughts, opinions and ideas.

- w. FOR THAT, the Union of India and the State Governments, must assume the role of the Police, to impose penal sanctions under the prevailing laws, and so as to work in tandem with the **Media Tribunal** so constituted, under recommendations by the Independent Committee of retired Judges of this Hon'ble Court.
  
- x. FOR THAT, It is submitted that Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned. It is hence submitted that "Regulation" means regulation in public interest and not contra public interest. The expression "regulation" cannot possibly be read as contra public interest but in the interest of the public.

**PRAYERS**

91. In the facts and circumstances of the case, it is Most Respectfully prayed, that this Hon'ble Court may graciously be pleased:-

- a) Issue a writ, order or direction for setting up of an independent High Powered Committee headed by a retired Chief Justice or Judge of this Hon'ble Court or High Court and consisting of distinguished citizens from different fields/professions and concerned stake holders of the Official Respondents to scrutinize and review the entire legal framework relating to Media-Business regulation and recommend appropriate guidelines to be laid down by this Hon'ble Court; AND/OR
- b) On the receipt of the recommendations of the High Powered Committee, issue a writ order or direction laying down appropriate guidelines for regulation of media in exercise of the plenary and inherent power of this Hon'ble Court under Article 32 and 142 of the Constitution until a legislation is introduced; AND/OR
- c) Issue a writ, order or direction, in the nature of Mandamus issuing necessary directions to the Respondents that the guidelines so framed by this Hon'ble Court in consonance with the prevailing programme code under the Cable Act will govern the field until special legislation is enacted and
- d) Issue a writ, order or direction, recommending to the Union of India, for constitution/setting up of a "**Media Tribunal**" to adjudicate upon the complaint petitions against the Media/Broadcasting Channels/Networks, as

may be filed by the viewers/citizens and for enforcement of the Guidelines laid down by this Hon'ble Court ;  
AND/OR

- e) Pass any such other and further order(s) in addition to or in substitution for the prayers, *supra*, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;
- f) Award the costs of the petition.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS, AS IN  
DUTY BOUND, SHALL EVER PRAY.**

**DRAWN BY:**

**MR. RAJESH INAMDAR, ADV.  
MR. SHASHWAT ANAND, ADV.  
MR. PAI AMIT, ADV. ON RECORD  
MR. RAHAT BANSAL, ADV.  
MS. SMITA PANDEY, ADV.**

**SETTLED BY:**

**DEVADATT KAMAT  
SR ADVOCATE**

**PLACE: NEW DELHI  
DRAWN ON: 19.09.2020  
FILED ON: 28.09.2020**

**FILED BY:**



**PAI AMIT  
ADVOCATE FOR THE  
PETITIONER**