7.1 Introduction

The object of conferring power to punish for its contempt on courts under Contempt of Courts Act 1971 is to ensure that rendering justice shall be free from forces outside and nobody shall interfere with the administration of justice. Contempt action is a tool to be used to uphold the dignity of the courts. Judiciary has been given the function of being a guardian of the Constitution. In this process of adjudication many questions of law flow onto the Court of law for its consideration and decision. During this subjudice period the administration of justice should be allowed to take its own independent stand. Interference into this process is limited only to cases of fair comment of the case in Court.

Every case is determined by its merit. Investigation by press has changed the course of law in many cases and the Courts have appreciated the role of the fourth pillar – the press. There are however many cases where the Courts have passed adverse comments against undue interference by the media. In this chapter an examination of cases where damages are caused to private persons due to interference by media in subjudice matters are made.
7.1.1 Early Stages – Constitutional Protection

The Supreme Court has long back had established\(^1\) that freedom of speech of the press is not without limitations. It stated that it does not confer an absolute right to say anything. In the opinion of the court it is a right with responsibility. The limitations stated in Article 19(2) over this right are public order, decency or morality, contempt of Court, defamation, among other grounds.\(^2\)

Contempt of Court proceedings, apart from the above restrictions, is also protected under Article 129\(^3\) and 215\(^4\) of the Indian Constitution. Under these Articles, Supreme Court and High Court can respectively punish persons for contempt of Court. As late as in *Delhi Judicial Service Association v. State of Gujarat*\(^5\), the apex Court held that it can impose punishment even in cases of contempt of subordinate\(^6\) Courts. This power of the Courts being provided under the Constitution cannot be curtailed by provisions of the Contempt of Court Act 1971. The most contended argument against action for contempt of Court is truth. However this defense was not allowed to sustain in *Perspective*

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2. Constitution of India: Article 19(2) -The State can put restrictions on the right to freedom of speech and expression on the ground of sovereignty and integrity of India, security of the state , friendly relations with foreign states , public order , decency or morality or in relation to contempt of court , defamation or incitement to an offence. (These restrictions imply the fact that the press freedom was never intended to be an absolute freedom).
3. Article 129: The Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for Contempt of itself.
4. Article 215: Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for Contempt of itself.
6. The Contempt of Court Act, 1971, section 10- empowers High Court to do this.
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Publications v. State of Maharashtra\(^7\). Here it stated that this defense can be allowed in case of libel but not in Contempt.\(^8\)

However with the Contempt of Court amendment Act 2006, ‘Truth’ has been made expressly a defense for any contempt proceedings\(^9\). The court in cases where truth is pleaded as a defense would have to look into the facts and determine as to whether this publication of truth has any public interest connected to it or is it simply for commercial gain of the press and as to whether this exposure of the truth was done with bonafide interest to expose something which the public have a right to be informed of in the public interest.\(^10\) Only if truth is qualified with public interest and is bonafide, can it be invoked as a defense in contempt proceedings.\(^11\)

At the same time there is difference between truth as a defense and fair & accurate report of judicial proceedings. Fair criticism of judicial proceedings and fair reporting does not constitute contempt of Court.

7.1.2 US and UK Position on Contempt of Court

Article 6 of the US Constitution favors public trial. The object being to protect the accused and bring transparency in the proceedings. To illustrate one would like to elaborate upon O.J. Simpson’s trial.\(^12\) Orenthal James Simpson was a black American football player, who was

\(^8\) Ibid.
\(^9\) The Contempt of Courts (Amendment) Act, 2006 section 13 ((substituted) (3). The Court may permit in any proceeding for Contempt of Court, justification by truth as a valid defense if it satisfied that it is in public interest and the request for invoking the said defense is bonafide.
\(^10\) Ibid.
\(^11\) Ibid.
accused of murdering his separated wife and her friend. In 1995, after a lengthy internationally criminal trial, publicized though television, he was acquitted. Though he was acquitted in the criminal case but in the civil case in 1997 which was not a public trial, based on the same facts, he was found liable for the wrongful death of his wife and her friend by a unanimous jury. This verdict raised eyebrows as to whether criminal public trial did actually bring justice or helped the convict go free. The public trial, therefore possibly cannot guarantee fair justice as more the exposure to media, more will be the interference into administration of justice.

Under public exposure of camera, witness, accused, lawyers and judges may act differently as exposure to media makes them over conscious and their thinking process becomes distracted and corrupted. This handicaps the ordinary procedure of examination and cross examination of witnesses, study of evidences and arguments of the advocated. Eventually, all these give a dramatic expression to an ordinary court proceeding, which is definitely not the object of these courts.

In UK the Criminal Justice Act of 1925, strictly prohibits media intrusion in court proceedings. It provides in section 41(1) that no person shall:

a) Take or attempt to take in any Court any photograph or with a view to publication make or attempt to make in any Court any portrait or sketch, of any person, being a judge of the Court or a juror or a witness in or a party to any proceedings before the Court, whether Civil or Criminal or

13 Ibid.
b) Publish any photograph, portrait or sketch taken or made in contravention of the forgoing provisions of this section or any reproduction thereof.

A person, who contravenes the above provision, is liable on summary conviction in respect of each offence to a fine not exceeding fifty pounds. The difference in law between the two countries is so drastic and different and still both happen to be strong democracies. Though we are a democracy we have more in common with UK in terms of social, culture and history.

7.1.3 Contempt of Court Act 1971

In India the first Contempt of Court Act was in 1926 and later amended by the Contempt of Court (Amendment) Act 1937. After independence the parliament enacted the Contempt of Courts Act 1952. This was later modified into the present Contempt of Courts Act 1971.

Contempt proceedings are in the form of a normal criminal proceeding. The only difference is as the Supreme Court and the High Courts are Courts of record, the power to take proceedings under the Contempt of Court is in its inherent power. So in cases where the courts feel contempt is, there they can take up a case on its own.

Under section 3, a person is not guilty of Contempt of Court if he has published any matter which interferes or tends to interfere or obstructs or tends to obstruct the course of justice in connection with any civil or criminal procedure pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was

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14 The Criminal Justice Act, 1925, section 41(1).
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Thus it protects a person from contempt of court proceedings if it is done in ignorance of a pending suit. The section further explains that judicial proceeding shall be deemed to be pending, where appeal or revision in the case is possible in future. All the same, it is not deemed to be pending if proceedings for the execution of the decree, order, or sentence passed therein are pending.

Courts do not bar fair production of facts. The object of the court is always to prevent disturbance in the administration of justice and not hamper freedom of speech and expression.

The Law Commission of India in its 200th report in 2006, compared section 3 on the Indian Act with the UK position, where arrest is the starting point of pendency of a criminal proceeding under the UK Contempt of Court Act, 1981. Australia also follows similar practice. Therefore the report stated that the explanation to section 3 in the Contempt of Court Act 1971 needs to be amended, by adding a clause ‘arrest’ in the explanation below section 3 as being the starting point of pendency of a criminal proceeding. If this was incorporated then the protection against the press under the Contempt of Court Act 1971 will commence at the arrest stage itself rather than the present protection from the stage of pending judicial proceeding.

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15 The Contempt of Court Act, 1971, section 3.
16 Ibid.
17 Ibid.
7.1.4 Fair and Accurate Report

Section 4 of the Act states that there is no Contempt of Court when the press or media publish a fair and accurate report of a judicial proceeding but subject to the provisions contained in section 7\(^{19}\). But when the editor and / or publisher do not verify the correctness of the news item before publication and if it is found to be false, then they are guilty\(^{20}\).

The press freedom is further extended to fair comment on the merits of any case which has been heard and finally decided\(^{21}\). However, if this criticism is likely to interfere with administration of justice or affect the dignity of the Courts, then it would cease to a fair criticism\(^{22}\). The benefit of section 5 would be given even if the case was not finally decided\(^{23}\).

The punishment that can be imposed by the Court is simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or both\(^{24}\). The accused may be discharged on an apology being made to the satisfaction of Court\(^{25}\). The

\(^{19}\) The Contempt of Court Act, 1971, section 7- deals with in camera proceedings which should not be published – (a) where the publication is contrary to the provisions of any enactment for the time being in force. (b) Where the court on grounds of public policy expressly prohibits the publication. (c) Where the Court sits in chambers or in camera for reasons connected with public order or security of the state. (d) Where the information relates to a secret process, discovery or invention.


\(^{21}\) The Contempt of Court Act, 1971, section 5.


\(^{23}\) Id. at p. 926.

\(^{24}\) The Contempt of Court Act 1971, section 12.

\(^{25}\) Ibid.
ambit of Contempt of Court Act 1971 is wide and is in addition to the unfettered power of the High Courts and Supreme Court under Article 215 and 129 of the Constitution.26

The influx of the visual media has done more damage than good. They take up issues which involve elite people and on the pretext of discussion elevate the matter to a national debate. For instance small issues like Sania Mirza27 and her marriage became the talk of the town with her having no say in the matter – the decision having been already made by the media. She might be a star but her private life is for her to decide.

To top it all, on May 3rd28 the judgment day of Kasab, the terrorist accused in 26/11 Mumbai blasts, the Times Now channel had a debate in the morning hour itself and declared that it would be a death sentence. They went a step ahead discussing whether it would be a public hanging or not. This sort of discussions hampers the administration of justice as it can definitely, to some extent, affect the thinking process of judges and lawyers dealing with that matter.

These are not matters which the media should not be discussion and pronouncing judgments, which affect the final outcome of the case. They are equated to a fact finding agency putting across the matter to the respective authorities. Apart from that developing their own opinion and directing the discussion towards a preconceived goal distracts them from their responsibilities towards the public. The decisions have to be taken

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26 The Contempt of Court Act, 1971, section 22.
28 The Times Now Channel, May 3rd 2010 at 10.00 a.m.
by the Courts and the authorities concerned. Media as the fourth pillar of democracy should demarcate its limitation and not encroach into the territory of justice administration. As was stated in the final decision of Jessica Lal\textsuperscript{29}, the Supreme Court observed that there is danger of serious risk of prejudice if media publishes statements which manifestly hold the suspect or the accused guilty even before such an order has been passed by the court.\textsuperscript{30} In this case Ram Jethmalani, counsel for \textit{Manu Sharma} stated that the media before and during the proceedings proclaimed \textit{Manu} as guilty even before he was acquitted by the trial Court though later he was found guilty by the Supreme Court.

Media interferences in this manner can lower the role of the Courts in the eye of the society. Contempt of Court is a weapon which the Courts can use but it is seen rarely used by the Courts. A Bench of the Supreme Court stated in \textit{R.K. Anand v. Registrar, Delhi High Court}\textsuperscript{31} that,

\begin{quote}
“It would be a sad day for the Court to employ the media for setting its own house in order and the media too would not relish the role of being the snoopers for the Court. Media should perform the acts of journalism and act as a special agency for the Court”.
\end{quote}

Sister Sephy, the third accused in the \textit{Sister Abhayaa}\textsuperscript{32} murder case filed a petition before the Chief Judicial Magistrate court demanding an

\textsuperscript{29} \textit{Manu Sharma v. State (NCT of Delhi)} 2010 (6) S.C.C.1.
\textsuperscript{30} Ibid.
\textsuperscript{31} Ibid.
\textsuperscript{32} ‘Sister Sephy moves Court against CD Telecast’, \textit{The New Indian Express, (Cochin)} dt. 16\textsuperscript{th} September 2009 p.5.
enquiry into the leakage of visuals of narco analysis tests. These tapes were telecasted by the Malayalam news channels. The Courts issued a directive following of which the telecasting was stopped. This is a perfect example of subjudice matters not being protected from media discussion.

*Rathore’s case* was a good example in which the media interfered only after the verdict of the Court. The act of the media was appreciated for moving in favour of Ruchika Girhotra, who he molested in 1990. In a discussion in *Times Now channel*, leading criminal lawyer Mahesh Jethmalani stated that in Rathore’s case there was no media trial. In a similar programme on NDTV, the Chief Justice of India, Justice K.G. Balakrishnan reflected his views on Media Trial. He stated that media is only selecting some cases and neglecting the cases of poor people. He stated that this should not be the way the media should function.

**7.1.5 Police Interference**

The main source of information for the media is police. This could however be misleading in many cases. The Delhi High court stated in one case that the latest trend of police, CBI or any investigating agency is to encourage publicity by holding press conference and accompanying journalists and TV crews during investigation of a crime. The Court stated that this needs to be stopped as it creates risk of prejudice to the accused. After giving publicity and holding the person guilty in the eyes

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33 *The New Indian Express*, (Cochin) 6th January 2010, p.1
34 ‘News Hour’ at 9.30 P.M. on Times Now Channel, dated 8th January 2010.
36 Ibid.
of the public, the police or the CBI go into soporific slumber and take several years for the trial. In the meantime the person caught moves under the shadow of guilt, which goes contrary to the law that is man is not guilty till his act is found guilty by the Court of Law. Media’s argument is that this pseudo trial is done in public interest.

Chief Justice Lord Taylor made a statement as to the impact upon a victim of a press campaign. His Lordship said:

“we would like to stress that, whilst the press are the guardians of public interest to pursue a campaign of vilification of someone who has been before the Court in a way which causes hate mail to be sent, which causes his family to be under the need to move house which causes his children to be shunned by other children in the neighborhood is no public service. Furthermore if it is intended to bring pressure on the Courts then it is wholly misguided.”

As early as in 1959, Kerala High Court had observed in *Shivarajan v. The State* that in this case the Police showed indifference. The investigating officers had been freely giving out the progress made in the investigation to the press. It expressed concern over the undue interest shown by some newspapers in this case. The Court expressed concern and hoped that the authorities will take notice of this matter and of the provisions of the Criminal Procedure Code and the Evidence Act. Information obtained during the course of police investigation has to be

kept confidential and Police officers are not entitled to give this away for the benefit of the public or the press.  

Later this issue was again the concern in 2006, in State of Kerala v. Aboobacker\(^{41}\). This was regarding the undue media publicity where the Malayalam daily was giving their own stories about the disappearance of a girl and the investigation conducted by the police. Sustenance is seen drawn from sources within the police in order to boost those garbled versions. The Court expressed strong displeasure at the trial by media in respect of matters which are subjudice. It said that it did more harm than good to the society.

### 7.1.6 Apex Court on Media and Contempt

The Apex Court has always been propagating the right to information and freedom of speech and expression. Contempt of Courts Act 1971, though at the disposal of judges is rarely used by them. In normal situations it is used only when an order or direction of the Court is not complied with. It is however rarely used against the media. This is really unfortunate. To the move the hand of contempt of court except in cases of open insulations is very difficult. The Courts have to use this potential power vested in them when administration of justice becomes difficult due to media interference.

In Ajai Kumar Goyal v. Anil Kumar Sharma\(^{42}\) the Supreme Court observed that the right of media to make fair criticism on the functioning of subordinate judiciary is allowed so long as it does not undermine the

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40 Ibid.


integrity and dignity of the judiciary. Later in the case about a girl where a rape attempt was made on her, the Court agreed that a great harm has been caused to the girl by unnecessary publicity and taking out a march by the public. As a result the case had to be transferred from Kolhapur to Satara under the orders of Supreme Court. The Apex Court said that the trial by press, electronic media is the very antithesis of the rule of law. It can well lead to miscarriage of justice. The court stated a judge has to guard himself against any such pressure and be guided strictly by rule of law”.

Again in *M.P. Lohia v. State of West Bengal*, where it was a disputed dowry death case, the Court was disturbed by the fact that when Special Leave Petition was pending before the Supreme Court, an article titled “doomed by dowry” was published in the magazine called ‘Saga’. This was written by Kakoli Poddar based on her interview of the family of the deceased. All these materials were to be used in the forthcoming trial. The Court felt that these types of articles appearing in the media would certainly interfere with the administration of justice. The Court stated that they depreciated this practice and cautioned the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the matter is subjudice. However, to prevent any further issue being raised in this matter they treated this matter as closed and hoped that the others concerned in journalism would take note of this displeasure expressed by them, for

44 Ibid.
45 Ibid.
47 Ibid.
interfering with the administration of justice.\textsuperscript{48} It appears that the Court instead of using its potential power under Contempt law has been wasting away its power by begging the journalist to cater to its advice. This attitude of the courts should undergo a great shift, as the demand of the society changes

\textbf{7.1.7 The Law Commission Report\textsuperscript{49}}

Law Commission of India has exclusively dealt with trial by media, free speech and fair trial. Its 200\textsuperscript{th} report in 2006 elaborated upon the change from print media to electronic media and that the media as a whole has prejudiced subjudice cases. It stated the importance of an accused being presumed innocent till proved otherwise in a court of law and the role played by the media to hamper the course of justice by pronouncing judgment during its discussions. It has been stated that this behavior of the media comes under criminal contempt and it needs to be regulated. Presently under the Contempt of Court Act 1971 in section 3, the protection against the media for an accused starts from the stage of pending judicial proceedings only. The report explained the decision taken by the Supreme Court way back in 1969 in \textit{A.K. Gopalan v. Noordeen}\textsuperscript{50} that publication made after an arrest of a person could be contempt if it was prejudicial to the suspect or accused under Article 19 (1) (a), 19 (2) and 21 of the Constitution. This aspect had already been accepted by the Sanyal Committee in 1963,\textsuperscript{51} when it said that ‘arrest’

\textsuperscript{48} Ibid.


\textsuperscript{50} \textit{A.K. Gopalan v. Noordeen} 1969 (2) S.C.C.734.

\textsuperscript{51} Supra n.49.
should be the starting point of investigation but this was dropped by the Joint Committee of the Parliament\textsuperscript{52}.

The Law Commission report further compared the UK position, where arrest is the starting point of pendency of a criminal proceeding under the UK Contempt of Court Act, 1981. Australia also follows similar practice. Therefore the report stated that the explanation to section 3 in the Contempt of Court Act 1971 needs to be amended, by adding a clause ‘arrest’ in the explanation below section 3 as being the starting point of pendency of a criminal proceeding. The report proposed section 10 A under which any criminal contempt of court at the subordinate court level could directly come before the High Court\textsuperscript{53}.

The proposal of the Law Commission is specifically targeted to make arrest the starting point of pendency of a criminal proceeding. Once the ‘arrest’ is brought on record then any publication prejudicial to the case could be considered contempt of court from the point of arrest.

\textbf{7.1.8 Madrid Principles}

An expert group of legal luminaries and media experts assembled together at Madrid\textsuperscript{54} under the aegis of the International Commission of Jurists from 18-20 January 1994. The object of the meeting was to bring a balance between the freedom of speech and expression and the judicial independence. Here the Committee formulated the Basic Principle of

\textsuperscript{52} Ibid.
\textsuperscript{53} Ibid.
preemption of innocence of an accused in a case. It stated that the freedom of media for gathering and conveying information to the public and discussion of case before and after trial should in no way detrimentally affect the rights of an accused to get justice from the court. This is in violation of the above stated Basic Principle. The Basic Principle simply states the legal concept that no man is guilty till declared so by a court of law. This puts responsibility on the media to be cautious and at the same time responsibility is vested in the judges also to take care that an accused is protected from the hands of the media, in regard to administration of justice. India is a party to this Convention. This Convention emphasis on three main concepts: (a) secrecy of trial should be strictly adhered to by the courts, (b) in camera proceedings should be allowed in deserving cases, (c) the signatory nations need not allow right to broadcast or record trials in court.

7.1.9 Restrictions by Press Council of India – Subjudice Matters

Press Council Act of 1978\(^5\) has made norms and ethical code intended to regulate matters that are subjudice. If someone believes that a news agency has committed any professional misconduct, the PCI can, if they agree with the complainant, ‘warn, admonish or censure the newspaper’ or direct the newspaper to ‘publish the contradiction of the complainant in its forthcoming issue’.\(^6\)

These measures are seen used only after the publication of news material. Such a course is not stringent and thus limited in their

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5\(^5\) Hereinafter referred to as PCI.

effectiveness. The norms of PCI cannot be legally enforced and thereafter is seen observed in its breach\textsuperscript{57}.

7.1.10 Review of Contempt of Court Act 1971

Justice G.N. Ray in a seminar on media made some observations\textsuperscript{58}. He being the former Chairman of PCI and being a former Judge of the Supreme Court could give a legal insight into the role of PCI. During the discussions for amendment of Contempt of Court Act, 1971, to include ‘Truth’ and ‘Public Interest’ as defenses for media in regard to contempt of court by them, he had supported these defenses, as Chairman of the PCI. These defenses have been incorporated into the amendment in the Contempt of Courts Act, 1971\textsuperscript{59}. The media involvement in criminal justice administration had received in-depth consideration by the “Committee on National Policy of Criminal Justice” in the wake of the sting operations and trial by the media\textsuperscript{60}. The Committee opined that unless there is substantial risk of serious prejudice to the course of

\textsuperscript{57} Ibid

\textsuperscript{58} Workshop on Reporting of Court proceedings by Media and Administration of Justice – Addressed by Mr. Justice G.N. Ray, Chairman – Press Council of India at Vigayan Bhavan New Delhi, on 29\textsuperscript{th} & 30\textsuperscript{th} march 2008 on the inauguration of 2 day workshop – organized by Supreme Court Legal Services Committee, PCI and Others.

\textsuperscript{59} The Contempt of Courts (Amendment) Act 2006 – substituted a new section for section 13. Contempt not punishable in certain cases – notwithstanding anything contained in any law for the time being in force – a) no court shall impose a sentence under this act for a contempt of court unless it is satisfied that the content is of such a nature that it substantially interferes or tends substantially to interfere with due course of justice. b) The Court may permit in any proceeding for contempt of court, justification by truth as a valid defense if it is satisfied that it is in public interest and the request for invoking the said defense is bonafide.

\textsuperscript{60} Annual Report of the Press Council of India, April 1, 2007- March 31, 2008, New Delhi, p. 20.
justice, there should not be restriction or prohibition on the coverage of criminal proceedings.

In yet another lecture Justice Ray further elaborated upon the media and its transgressions. He stated that ‘Aarushi Murder Case’ is a glaring example of media’s overdoing and unethical practice. Privilege of presumption of innocence to which an accused is entitled to is blatantly discarded by the media in presenting facts, often distorted and unverified and presented with angularity pointing to the involvement of the person indicted in the commission of crime. He stated that it is a common experience that a newspaper or a channel often picks up one case of crime as a special subject of its choice and vigorously goes on reporting on that incident on a day to day basis for a long time. If ultimately such person is not charge sheeted for want of materials or ultimately acquitted by Court of Law for want of unimpeachable evidence, people start entertaining a belief that there must have been some manipulation by police or other agencies and a fair trial had not been done in the case. The end result is loss of public faith in the functioning of police and investigating agency and even appropriate functioning of law courts, although in a given case, there might have been a fair investigation but the commission of crime by the accused could not be established by convincing evidence. Media plays a crucial role in ensuring that justice is seen done and transparency is not affected. The role of media is really laudable, but the aspect of over enthusiasm

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61 Ibid.

and adopting of unethical practices by them should be controlled and regulated.\(^{63}\)

The comments of Justice R.S. Sarkaria\(^{64}\) former judge of the Supreme Court and former chairman of PCI were referred to by Justice Ray as to when a matter becomes *subjudice* in the Court of law. This is important not only for the purpose of ascertaining whether the bar of PCI jurisdiction under subsection (3) of section 14 of the PCI Act 1978\(^{65}\), is attracted or not, but also in the context of Contempt of Courts Act. The term ‘*subjudice*’ is a Latin expression for ‘under a judge’. A case in session before a competent Court of law is treated as *subjudice*. The case retains such status till the judgment in the case is delivered\(^{66}\). Though civil contempt is not of much relevance, criminal contempt as defined in section 2 (c) is very wide. It includes publication whether by words spoken or written or even by signs or by visible representations, which

\(^{63}\) *Ibid.*

\(^{64}\) *Id. at p.7.*

\(^{65}\) The Press Council Act 1978, sub-section (3) of section 14 reads as follows: ‘Nothing in sub-section (1) shall be deemed to empower the counsel to hold an inquiry into any matter in respect of which any proceeding in the Court of Law’.

\(^{66}\) The Contempt of Courts Act 1971, section 3 in its Explanation defines when a judicial proceeding is said to be pending. It provides: a judicial proceeding is – (a) said to be pending – (A) in the case of a civil proceeding when it is instituted by the filing of a plaint or otherwise, (B) in the case of a criminal proceeding under the Criminal Procedure Code 1898 or any other law – (i) where it relates to the commission of an offence, when the charge sheet or challan is filed or when the Court summons or warrant as the case may be, against the accused, and (ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired; (b) Which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending”.
scandalizes or tends to scandalize or lowers or tends to lower the authority of any Court or prejudices or interferes with any judicial proceedings or interferes or tends to interfere or obstruct the administration of justice.

There is some sort of confusion between section 2 sub clause (c) and section 3 of the Contempt of Court Act. Whereas section 3 is limited to pending proceeding only, section 2 sub-clause (c) is wide enough to include all other acts which interferes or obstructs administration of justice and it includes pending proceedings also. Therefore, the question of ‘pendency’ becomes irrelevant when the contempt is by way of scandalizing the Courts or constitutes an attempt to lower their authority so as to obstruct administration of justice. The Supreme Court in Subarao⁶⁷ held that from the explanation to sub section (2) of section 3, it is clear that there will be no criminal liability for contempt of court unless the publication is made at the time when the proceeding is ‘pending’ before the court. This opinion of the court does not hold good when section 2(c) is read along with section 3, 4, and 5 of the Contempt of Courts Act, 1971⁶⁸. The defense given by sub section (3) of section 3⁶⁹ is not allowed in the case of distribution of any publication otherwise.

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⁶⁸ The Contempt of Court Act,1971, section 4– Fair and Accurate Report of Judicial Proceeding not Contempt: Subject to the provisions contained in Section 7, a person shall not be guilty of Contempt of Court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

Section 5, Fair Criticism of Judicial Act not Contempt- A person shall not be guilty of Contempt of Court for publishing any fair comment on the merits of any case which has been heard and finally decided.

⁶⁹ The Contempt of Court Act of 1971, sub-section (3) of section 3- states: ‘a person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid.
than in conformity with the provisions of section 3 & 5 of the Press and Registration of Books Act, 1867\textsuperscript{70}.

The next element which is relevant is regarding the starting point of the pendency of the matter in a criminal case. The expression ‘Challan’ or ‘charge sheet’ means a final report submitted by the police to the magistrate in a case. Thus the submission of the report or filing of challan in a criminal proceeding is the starting point of the pendency of the matter in a criminal case. This is the area of conflict between the Contempt of Court Act 1971 and the 200\textsuperscript{th} Law Commission Report. The report stressed on an extension of this period from the point of arrest, instead of challan or charge sheet. The main reason for the want of extension is to protect the arrested person from the public eye and also to bar the police from making a public spectacle of the arrest.

Apart from this, section 4 & 5 protect fair and accurate report and protects fair criticism of a judicial decision. The plea of fair comment will not be available under section 5, if the comment on the judgment is made before the case is heard and finally decided by the court. The apex court categorically held that any one has right to express fair, reasonable and legitimate criticism on any decision given by a judge\textsuperscript{71}. At the same time it also held that if criticism is likely to interfere with due administration of justice, then it would seize to be fair and reasonable criticism under section 5 and would scandalize the courts.

\textsuperscript{70} The Press and Registration of Books Act 1867, sections 3 and 5-

section 3: \textit{Particulars to be Printed on Books and Papers} – Every book or paper printed shall be printed legibly on it the name of the printer and the place of printing and the name of the publisher and the place of publication.

section 5: \textit{Rules as to Publication of News Papers}.

Later in a case taken *suomotu* by the Kerala High Court, it took exception to the statement made by *M.V.Jayarajan*, a politician belonging to the Marxist party, that judges are fools and their verdicts having only the value of grass was not only objectionable but also that the message conveyed to the public was that the judges had no respect, amounted to criminal contempt. Here the Court did not proceed against the media for publishing the comment as they were entitled to publish the factum of contempt committed by the respondent. By doing so, they were not committing any contempt of court especially when they were not justifying the conduct of the respondent.

Section 13(a) of the Contempt of Courts Act, 1971 states that no court shall impose a sentence unless it is satisfied that it substantially interferes or tends substantially to interfere with the due course of justice. Justification of truth can be a valid defense under section 13(b) if it is satisfied that – (a) it is in the public interest & (b) the request for the defense is bonafide. This sub section has come by way of an amendment which the PCI submitted in writing to the Parliamentary Committee.

To conclude, regarding the present view of the Supreme Court with reference to contempt, the case of *Sahara India Real Estate Corporation Ltd. and Ors v. Securities and Exchange Board of India and Anr.*, would be the most appropriate one. Here the Court evolved the technique of ‘postponement orders’, which meant postponing the reporting by the media of trial court hearings for a short period if an accused proved that earlier reports had harmed his right to fair trial. However these orders

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73 *Id.* at p.486.
74 Civil Appeal No. 9613 of 2011 and C.A. No. 9833.
can be challenged by the media. The Court stated that the purpose of contempt law is not only to punish, but to preserve the sanctity of administration of justice and the integrity of the pending proceedings. Therefore the five judge Constitution bench stated such orders of postponement, in the absence of any other alternative measures such as change of venue or postponement of trial, satisfy the requirement and also help the courts to balance conflicting societal interests of right to know and fair administration of justice.

**Conclusion**

In conclusion, it can be stated that *sub judice* matters should be reported with caution. Normally courts are slow to use their power under the Contempt of Courts Act, 1971. It is suggested that the recommendation of the Law Commission 200th report of 2006 is incorporated in the Contempt of Court Act 1971, so as to enable the Court to start contempt proceedings at the arrest stage rather than the present position enabling the contempt proceeding to start only when there is a pending judicial proceeding. This would create more fear in the minds of the media. As any publication regarding the accused at the time of arrest would become contempt of court.

It is advisable that Courts use these powers more effectively so that some degree of fear and respect is invoked in the media. American Bar Association sponsors awards to persons who are good at legal journalism. The Indian Bar Association can also initiate such methods to develop a healthy relationship with the press. Together they can initiate programmes for journalists so that the press would know how to function within the legal frame work. As explained in the *International Convention*
on Media and Judiciary 1994, the judges have the main responsibility to see that justice is given and to protect the accused from publicity which will hamper a fair trial of the case. The judge is the only person who has the authority and the reasoning power to analyze the extent of damage done by the press even though it is a true fact, which the media has stated. In those cases the court may pass gagging orders forbidding the media from discussing the case till further orders. In other cases, where damage has already been done, the case may be posted for a later date and the media be strictly kept out. In such cases, the judge may brief the journalists on the case. In all other cases, except where in camera trial is the right of the accused, the journalists may be informed by a judge or an authorized person about the developments in a case, and they may be told as to what and how to be reported. A close relationship between the judiciary and the media would bring in healthy reporting. Training programs for journalists on behalf of the judiciary would be a good move in this direction.

75 www.unhchr.ch / Huridocda.
8.1 Broadcasting in India

Indian Broadcasting Company came into being in 1926\(^1\). In 1930 it went into liquidation. The morale of the public who had been excited about broadcasting went down. On their appeal to the government it was taken over in 1931 and renamed as the Indian Broadcasting Service.\(^2\) In 1936 it was developed into the All India Radio. The ‘vividh bharati’ came into being in 1957 providing light music programmes. With the advent of television, radio has taken a back seat. Now it is getting revived by FM radio\(^3\).

8.2 Television

New Delhi hosted in 1956 the General Conference of the United Nations Educational, Scientific, and Cultural Organization (UNESCO). As a result, UNESCO decided to give a grant $20,000/- to India to set up a “Pilot Project” to study television in India.\(^4\) United States also gave help and on September 15\(^{th}\) 1959, the then President Rajendra Prasad inaugurated the first experimental TV center in India. The spurt of TV stations all over India took place in the 70’s under SITE (Satellite Instructional Television Experiment). Under SITE, India used the ATS-6

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2 *Ibid*.
3 *Ibid*.
4 *Ibid*.
a very sophisticated and powerful satellite to beam instructional programmes in four languages to 2400 villages.\(^5\) Gradually, Doordarshan was delinked from All India Radio in April 1976 and was established as a separate department.\(^6\)

The Varghese Committee\(^7\) has recommended for a single National Broadcast Trust under which would function both Akashvani and Doordarshan. The result was the Prasar Bharathi (Broadcasting Corporation of India) Bill, which was introduced in the Loksabha in 1979. This became the Prasar Bharathi (Broadcasting Corporation of India Act 1990)\(^8\). But in May 1990 it lapsed. In March 2000, the Minister of State for Information & Broadcasting, Mr. Arun Jaitley, stated that the draft for the Bill was ready. He said that the Cable TV Networks (Regulation) Act 1995 will be repealed and merged with the proposed Broadcast Bill. Cable TV came to India in the early 90’s. This happened when people wanted to watch the Iran-Iraq war over CNN & BBC, then the private network operators took over urban India without any sanction of law as there was no law at that time. Thus, in a moment of urgency, in 1995 The Cable Networks Act was enacted.\(^9\)

### 8.3 Cinema

In 1896, a representative of the Lumiere brothers, for the first time showed films at the Watson Hotel in Mumbai. This was the beginning of

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\(^5\) Ibid.
\(^6\) Ibid.
\(^7\) Ibid.
\(^8\) It was enforced vide the Amendment Ordinance of 1997.
Indian Cinema. Very soon Harishchandra Sawe Bhatvadekar in Bombay and Hiralal Sen in Calcutta got movie cameras and began making films. The first feature film was shown in 1913. It was ‘Harishchandra’ produced by Dhundiraj Govind, popularly known as Dada Shaeb Phalke. He was the father of Indian cinema.\(^\text{10}\) Ardeshir Irani produced India’s first sound film “Alam-Ara” in 1931. As cinema started growing in India the need to bring in regulations also became important. The Cinematograph Act of 1918 was passed for regulating examination and certification of films. This was for the purpose of public exhibition and therefore regulation of cinemas was included in their licensing\(^\text{11}\). This Act remained in force till 1952. In 1952 a new act called the Cinematograph Act of 1952 came into force. It provided separate provisions relating to the sanctioning of films for exhibition under the Union list, certifying films for adults and non-adults and separate provisions relating to licensing and regulation of cinemas under the state list, to bring in rules for tax and other purposes. This Act was further amended in 1984.

8.4 The Press and the Press Council of India

The Press Council of India was constituted in 1966 under the Press Council Act 1965. This was made to preserve the freedom of the press and to maintain and improve the standards thereof. This Act was repealed with the promulgation of the publication of ‘objectionable matter ordinance’ of 1975. This then became the prevention of Publication of Objectionable Matter Act in 1976. Simultaneously was

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\(^{10}\) Ibid.

\(^{11}\) Sanctioning of Cinematograph Films for exhibition comes in the 7\(^{th}\) Schedule of the constitution – entry 60 of the Union list and under entry 33 of the State list.
passed the Press Council (Repeal) Act 1976 and the Parliamentary Proceedings (Protection of Publication) Repeal Act 1976. The Prevention of Publication of Objectionable Matter Act was repealed in 1977 and the Parliamentary Proceeding (Protection of Publication) Act 1977 was passed. This was supported by the 44th Amendment 1978, which inserted Article 361A into the constitution.

The Press Council Act 1978 was enacted reestablishing the Press Council. The Press Council Act 1965 that was repealed got replaced by the above said Act. The object of this enactment (i) is to preserve the freedom of the Press (ii) to maintain and improve the standards of newspaper and news agencies in the country.  

### 8.4.1 Composition of the Press Council

Press Council as contemplated in the Act is a ‘body corporate’. It consists of one chairman and 28 other members. The Chairman is nominated by a committee consisting of the Speakers of Rajya and Lok Sabha and a person elected by the members of the council. Of the other 28 members, 13 are working journalists of whom 6 are editors of newspapers and the remaining 7 are working journalists. Six of them are nominated from among persons who own or carry on the business of management of newspapers. One member is nominated from among

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13 Id.s.4.
14 Id.s.5(1).
15 Id.s.5(2).
16 Id.s.5(3).
17 Ibid.
persons who manage news agencies. Three are persons having special knowledge or practical experience in respect of education or science, law and literature and culture of which respectively one each is nominated by UGC, Bar Council of India and Sahitya Academy. Five are MPs of whom 3 are nominated by the Speaker from among the members of the Lok Sabha and 2 are nominated by the Chairman of the Rajya Sabha among its members. In practice, since the Council performs quasi-judicial functions, it was considered desirable to appoint a person with legal background as its chairman. Justice A.N. Grover was the first Chairman of the Council appointed in April 1979. The term of the Chairman is three years and he can be re-nominated for one more term.

An analysis of the constitution of the Council which is heavily loaded with journalists shows that it is dominated by media professionals. Therefore, looking into its structure, it can be easily predicted that PCI cannot balance the interests of the public and the press. Having a law man as the chairman one cannot believe that it will decide cases in favour of public. The objective of the council is not reflected in the composition of the council. Apart from these, the members of parliament in the Council by their presence may give political overtones to the decisions of the council. Justice Madholkar, the first chairman of the Press Commission in his Tagore Law Lectures rightly expressed doubts about the political influence of these MPs in the Press Council.

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18 Ibid.
19 Ibid.
20 Ibid.
21 Id.s.6.
23 Ibid.
8.4.2 Objects and Functions of the Council

The Act has laid down various responsibilities and duties of the Council. In order to maintain independence of press, as categorically stated in the Act. In pursuance of this, the PCI has evolved a code of ethics to ensure the maintenance of high standards of public taste and to have a due sense of freedom and to encourage the growth of a sense of responsibility and public service.

8.4.3 Powers of the Press Council

Section 14 gives the PCI power to warn, admonish and censure the press. These are the only weapons available with the PCI for enforcement purposes. Therefore, the PCI Act limits the PCI from taking

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26 The P.C.I. Act 1978, s.14:

1. Where on receipt of a complaint made to it or otherwise the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the council after giving the newspaper or news agency, the editor or journalist concerned an opportunity of being heard, hold an enquiry in such a manner as may be provided by the regulations made under this act and it satisfied that it is necessary so to do it may for reasons to be recorded in writing warn, admonish or censure the newspaper, news agency, the editor or the journalist or disapprove conduct of the editor or the journalist as the case may be: provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman there is no sufficient ground for holding and enquiry.

2. If the Council is of the opinion that it is necessary or expedient in the public interest so to do, it may require any newspaper to publish therein in such manner as the Council thinks fit, any particulars relating to any enquiry under this section against a newspaper or news agency, an editor or a journalist working therein, including the name of such newspaper, news agency, editor or journalist.

3. Nothing in subsection (1) shall be deemed to empower the council to hold an enquiry into any matter in respect of which any proceeding is pending in the Court of law.

4. The decision of the Council under subsection (1) or (2) as the case may be shall be final and shall not be questioned in any Court of Law.
stringent actions. It is supposed to be only a self-regulatory organ as the government always felt that freedom of press should be protected.

For performing its functions, under section 14, the Council has been given the same powers as vested in a Civil Court while trying a case under the CPC. Along with this the PCI (Procedure for enquiry) Regulations, 1979 deal with the procedure for conducting enquiry. Any complaint under section 14 (1) and section 13 or the complaint taken up by the PCI Chairman suo motu have to follow the procedures stated in the above rules.

Under the rules an enquiry committee is to be constituted by the Council under section 8 (1) of the Act. Going through the bare

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27 Id. s.15:

1. For the purpose of performing its functions or holding an enquiry under this Act, the Council shall have the same powers throughout India as are vested in a Civil Court while trying a suit under C.P.C. 1908 in respect of the following matters, namely:
   a. Summoning and enforcing the attendance of persons and examining them on oath.
   b. Requiring the discovery and inspection of documents.
   c. Receiving evidence on affidavits.
   d. Requisitioning any public record or copies thereof from any Court or office.
   e. Issuing commissions for the examination of witnesses or documents and
   f. Any other matter which may be prescribed.
2. Nothing in Subsection (1) shall be deemed to be compel any newspaper, news agency, editor or journalist to disclose the source of any news or information published by that newspaper or received or reported by that news agency, editor or journalist.
3. Every inquiry held by the Council shall be deemed to be a Judicial Proceeding within the meaning of Indian Penal Code, sections 193 and 228.
4. The Council may, if it considers it necessary, for the purpose of carrying out its objects or the performance of any of its functions under this Act, make such observations, as it may think fit, in any of its decisions or reports, respecting the conduct of any authority, including government.
provisions, it is clear that the Chairman does not have much of
discretion. Even in the case of decisions, it is the majority’s opinion that
forms the judgment. And as the majority of the enquiry committee
consists of members of the media itself, the decision of the committee is
bound to be dominated by them. This shifts the balance towards the
press rather than forming any independent view. Therefore, it can be
stated that PCI was never intended to control the press rather it is only a
form of self regulatory system. Therefore, the PCI procedures are more
of an advisory rather than a judicial proceeding, though the Act states
under section 15 (3) that every enquiry held by the Council shall be
deemed to be a judicial proceeding.

8.4.4 Revealing the Source

The PCI Act clearly states in section 15 (2) that no newspaper,
news agency, editor or journalist shall be deemed to be compelled to
disclose the source of any news. When we study this theory of protection
of source of news, it would be useful to look into the US position.
Referring to the dissenting judgment of Justice Douglas in Branzburg
case\(^{28}\), it gives the picture that the judge was not convinced with the
argument by the press, in favour of protection of confidential news
sources.

The American Newspapers Guild\(^{29}\) has adopted a Code of Ethics,
which in Canon 5 states\(^{30}\) that newspaper men shall refuse to reveal

‘The function of the Press is and to explore the harmful as well as the good
influences at work’.

\(^{29}\) Dr. Sebastian Paul, *Forbidden Zone – Essays on Journalism*, Pranatha Books,

\(^{30}\) *Id.* at p.75.
confidences or disclose sources of confidential information in Court or before Judicial or investigating bodies.

Even in UK the House of Lords held in *British Steel Corporation*\(^{31}\) that there is no absolute immunity for journalists from disclosing their sources of information and if the judge needs it for justice, journalists cannot claim immunity.

In India there are not many reported cases on this issue. The Law Commission of India in its 93\(^{rd}\) report on *Protection of Mass Media* in respect of confidential information has recommended that an absolute immunity be given to reporters in respect of sources of information obtained by them in confidence.\(^{32}\) However, it recommended an amendment to the Evidence Act whereby the Courts are to be vested with the discretion not to compel a reporter to make such disclosure.\(^{33}\)

In India, the PCI follows the procedure under the Civil Procedure Code 1908 and the Indian Evidence Act 1872, which gives no immunity to journalists, when it comes to evidence taking. They are treated on par with any other witness or accused. The *Second Press Commission Report* in 1982 rightly opined that there is no absolute immunity for journalists from disclosing their sources of information. The reason given is that this provision could be used by the Press to keep secret its own confidential sources while at the same time trying to break the confidentiality of

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\(^{33}\) Ibid.
others. Presently in India the journalists are not normally asked to reveal their sources. While at the same time if circumstances demand, the court can ask for it. As such there is no law prohibiting the Court from asking the press to divulge the sources. Public interest demands that truth should be revealed in some cases but at the same time it is also in public interest that individual privacy and confidence should be protected in the society.

8.4.5 Code of Ethics

Until recently PCI had not formulated any code of ethics for journalists. It is only in 2010 after its inception in 1978; PCI has come up with a code of ethics. Absence of code of ethics was justified by the former Chairman of the Council, Justice A.N. Sen in the 1986 Annual Report 2, in the following words:

“I feel that defining a code of conduct in clear terms may be impractical and in my view seeking to lay down the code of conduct which must necessarily be in broad and general terms may have the effect of interference with the freedom of press.”

The Press Council while deciding a complaint filed by Government of Tamilnadu against the Illustrated Weekly of India, alleged that an article written by Cho Ramaswamy making various allegations of corruption against Chief Minister – M.G. Ramachandran and his government was defamatory. In this case the PCI made certain observations on the defense pleas taken by the press against impugned publications. The press pleaded that it was done in good faith. At the same time it does not protect untrue

34 Foreword by the Chairman, 1986 Annual Report 2.
statements of facts even if it is of public interest. In *Blade*\(^{36}\) case in regard to government servants of Goa, PCI held that it won’t constitute libel if the Press comes with evidence and in good faith. It held that constant publication of certain indecent or defamatory writings with the object of extracting money by blackmail by the editor will result in censure\(^{37}\).

The Second Press Commission suggested in its report in 1982\(^{38}\) that Section 13 (1) (c) of the PCI Act 1978 should be amended by adding after the words “the maintenance of high standards of public taste” the words including “respect for privacy”. In the case regarding the murder of two nuns belonging to the Snehasadan in Mumbai\(^{39}\), while reporting the murders *the Indian Express*, *Times of India*, *The Free Press Journal* and *Samna* had stated that on the basis of postmortem and police reports, both had regular sexual intercourse and one of them had sexually transmitted disease. The council found that these impugned reports were manifestly injurious not only to the reputation, personal dignity and privacy of the murdered nuns but also had a tendency to affect the reputation of Snehasadan, an institution for the care of destitute children. The Council was disturbed by the media’s irresponsibility and warned the papers for reporting unauthenticated news as these papers had given their own opinion on facts stated in the postmortem report which did not find mention in the postmortem examination report.

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8.4.6 Norms of Journalist Conduct of PCI ⁴⁰

Press Council of India has now in 2010 come up with its norms of Journalistic conduct. The Code of Ethics elaborates upon right to privacy and privacy of public figures.⁴¹ It talks about taking caution against defamatory writings. The press is not allowed to intrude into the privacy unless outweighed by genuine overriding public interest not being a prurient or morbid curiosity. Special caution is essential in reports likely to stigmatize women. Matters concerning a person’s home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of privacy except where any of these impinges upon the public or public interest. Caution is required to be taken against revealing the identity of victims while reporting crime involving rape, abduction or kidnaping of females or sexual assault on children and raising questions touching their chastity, privacy, names and publication of photographs of the victims. It is the duty of Press that when it concerns privacy of public figures that it should be confirmed that it is of public interests through fair means, verified and then reported.

The families of public figures are generally not journalistic subjects. There are certain restrictions regarding recording of interviews and phone conversations.⁴² In cases of criticizing judicial acts, except in camera or if the Court directs otherwise, the Court proceedings are open to Press. Caution is to be taken to ensure that the publication in any form

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⁴¹ P.C.I., norms 6 and 7.
⁴² P.C.I., norm 8.
The Right to Privacy and Press Council of India

does not obstruct, impede or prejudice seriously the administration of justice or the personal character of the accused standing trial.\textsuperscript{43}

Newspapers shall not publish or comment on evidence collected as a result of investigative journalism, when after the accused is arrested and charged the Court becomes seized of the case.\textsuperscript{44} Under the rules, obscenity and vulgarity is to be eschewed even if it serves any social or public purpose in relation to art, painting, medicine or reform of sex because the press is not the appropriate place for it\textsuperscript{45}. The Indian reader is mature and to copy the west by promoting the so called popular permissiveness may defeat the very aim of the press, to create awareness rather than to boost circulation.

The rules also state the basic elements of investigative journalism: it states that it has to be the work of the reporter and that public importance should be served through it and the reporter should prove that an attempt has been made to hide the truth from the people which the reporter has brought to public notice.\textsuperscript{46}

The reporter in such cases must not act as a prosecutor; the principle that a person is innocent unless the offence is proved should not be forgotten.\textsuperscript{47}

On the basis of a writ petition no CMP 52/2008 filed by the National Network of Positive People in the juvenile court

\textsuperscript{43} P.C.I., norms 12 and 41.
\textsuperscript{44} P.C.I., norms 26 and 41.
\textsuperscript{45} P.C.I., norm 17.
\textsuperscript{46} P.C.I., norm 26.
\textsuperscript{47} Ibid.
The Right to Privacy and Press Council of India

Thiruvanathpuram; the Court came heavily on the media for visually screening of two children, Bency and Benson, who were children of HIV parents. As a result the PCI framed rules prohibiting reporting of HIV/Aids connected children\(^{48}\).

8.4.7 Review by PCI

The workload of the present PCI has increased considerably. To analyze the effectiveness, the survey of the Annual Reports from 2005 to 2009 is undertaken. The Council has two enquiry committees, and these proceedings are open to the public. The parties are allowed to be represented by lawyers, and government also makes its own representations. To highlight a few cases discussed in the above reports, one such case was of “Gudiya”\(^{49}\), a perfect example of channel interrogation. Here ‘Gudiya’ was the name of a muslim woman who became a widow within a month of her marriage and got married to another person. But her first husband had actually not died but was behind bars in Pakistan, of which she was unaware. He later returned from the Pakistani jail. But by then she was already pregnant through her second husband. At that juncture the media took over this matter. It organized a ‘live panchayat’ on the channel, where the families concerned and some clerics were brought together. The program was titled “Kiski Gudiya?” with the sub title “yeh Kaissa Bandhan?” It was a live telecast and the panchayat was conducted under the Shariat law. The object of the channel was clear when the anchor announced “isi majilis mein faisla hoga” (this case will be settled here itself). In this case what mattered to the channel was not

\(^{48}\) C.M.P. 52/2008.

Gudiya’s life but viewer ship rating\(^{50}\). But this matter is outside the purview of PCI as it has not been given control over channels and cables. The government had evolved the Cable Television Networks (Regulation) Act in 1995 to give the government power to initiate action against cable television operators and broadcasting channels. Now the government is coming up with another system of setting up district level surveillance committees under the Cable Television Networks (Regulation) Act. It will consist of District Police Superintendent, Principal of a Women’s College and the District Public Relation Officer, headed by District Magistrate. If the committee detects a violation, the District Magistrate can under Section 20 of the above Act confiscate the equipment or initiate action under Indian Penal Code\(^{51}\). Other than this Act, there is no other legislation to regulate these sorts of offences by the electronic media. Government is considering bringing a law to regulate the content on television\(^{52}\), but nothing concrete has yet come out.

### 8.4.8 Adjudication by PCI

PCI has been given the power to adjudicate on complaints received by it. It can in this process censure, warn or admonish the paper concerned.\(^{53}\) Defamation cases constituted 32 complaints in 2004-05 of which the Press was found guilty in 10 cases.\(^{54}\) The complaints against the press have been on the rise, and in the year 2007-08 this has risen up

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\(^{50}\) Ibid.  
\(^{52}\) *The Hindustan Times*, New Delhi, dated 29\(^{th}\) November 2005. (*Report of P.C.I. 2005-06*).  
\(^{53}\) See the Press Council of India, Act 1978, section 14.  
\(^{54}\) *Report of the P.C.I. 2004-05*, p. 73.
The number of complaints has further risen in 2008-09, with defamation cases itself amounting to 73. As already stated, the ambit of the power of PCI is limited to warning and censure. These tools of punishment are very ineffective to regulate the behavior of the Press. The PCI has stated, that the Press should work within its limits and remember its responsibility under the rule of law that it should not behave like a prosecutor and should be guided by the paramount principle that a person is innocent till proved guilty by the Court of Law.

8.4.9 Mechanisms to Control Press & Electronic Media

The PCI does not contain any strong provision to ensure compliance to the ethics and guidelines formulated by it. The reason being, the Parliament expected that the code of ethics framed by the PCI will be followed in letter and spirit by the media. The danger of free media is still enhanced with the broadcasting through electronic media. There is no regulatory mechanism to supervise its working, except the

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56 Id. at p.90.
57 Ibid.
one under the Cable Television Networks (Regulation) Act of 1995. The ministry of Information and Broadcasting was keen to bring a Broadcast Services Regulation Bill\(^{60}\), but the Editor’s Guild of India stated in September 2007, that it did not accept the proposed bill, the reason being that this would give immense power to government over news and current affair channels.\(^{61}\) As a result the Bill did not become an Act. The Bill was to be introduced during the monsoon session of Parliament in 2007. It was withheld following protests by media who accused the government of trying to curb its freedom of expression\(^{62}\). Later the Ministry issued guidelines to build up a local mechanism that would enforce the programme code of the Cable Television Networks (Regulation) Act\(^{63}\). Just like Film certification\(^{64}\) the programmes will have to be certified as Universal (U), which can be shown anytime, universally Adult (U/A), that can be telecast only between 8 PM and 4 PM and Adult (A) to be shown only between 11 PM to 4 AM.

The PCI has stated that to honor the views of the readers, the newspapers should appoint a Readers’ Editor.\(^{65}\) In the present scenario, Readers’ Editors are termed also as Ombudsman. Following the practice in the *Guardian*, *The Hindu* has a Readers’ Editor. It is operational since March 2006. Ian Meyes, Readers’ Editor of the *Guardian* said in his January 2006 Lecture that it made the paper more responsive to their

\(^{60}\) *Annual Report of the P.C.I.*, 2007-08, p.29.


\(^{65}\) *Ibid.*
complaints. Recently, the newspaper gave some figures from March 06 to September 06 regarding public response. In the first two months the responses exceeded one thousand per month. E-mails formed the main channel of communication. The system of having a Content Auditor in broadcasting and Readers’ Editor in written press is limited to its object. The object is to pacify the complainants by rectifying the errors and straightening the relationship. But in cases of grave errors, these should not be the course of action. Pacifying grave mistakes on the part of journalist and press, especially if it is done purposefully is a wrong practice. These matters are not compensated even by the Ombudsman of the Paper, i.e. the Readers’ Editor or by the PCI (The Chief Ombudsman for all papers). The bruises made and the agony caused is left untreated by one and all. This continuous act of defiance by the media is bound to cause deterioration of faith in the Press and can cause negative emotions to boil up. Any bruise left untreated will cause further harm if left unattended for long.

8.4.10 Actions Taken by the Ministry of Information & Broadcasting

The Ministry has been active in taking action against visual media, for violating the Cable Networks (Regulation) Act. It banned FTV for two months for showing “Midnight Hot”. This program showed scantily clad models walk the ramp; similarly the AXN was also proscribed for showing ‘bikini destination’. The Ministry has also issued two show cause notices to the TV channel “Live India”, as it showed the fake sting operation conducted on a mathematics teacher named Uma Khuranna.

67 Ibid.
These notices were issued following submission of the Delhi Police status report, which stated “Uma Khuranna has not been found to be involved in any organized prostitution racket of school girls as shown in the sting operation and it also stated that, that part of the sting operation which showed her in the wrong was stage managed”. Later the Government on 20th September 2007 banned Live India News Channel from airing programmes for one month for its alleged fake sting operations\(^69\). This was the first news channel to be banned\(^70\). Later in the Aarushi Talwar case the Ministry is considering issuing show cause notices to some Television Channels for reported character assignation of Aarushi and her parents. Many organizations have triggered the ministry to take a move in this matter as a result, the Government directed star TV to withhold telecast of an episode of TV serial ‘Kahanni Ghar Ghar ki’ in which Aarushi murder case was proposed to be dramatized.\(^71\)

### 8.4.11 Court on Media Control

From the Apex Court down to its hierarchy, there has been continuous pressure on media regulation. Gone are the days when media was in fact free in expressing its views and therefore had to struggle to get to the people. Today media is very powerful and is entangled in a series of interests. It could be in the nature of politics, advertisement, lobbying, and competition, commercialization, paid news or duplicating and copying the foreign media. Today the Press can no more argue that it is free and independent and public interest oriented. Today more than the news it is the motive behind the news and its estimated outcome, which

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\(^{69}\) Id. at p.34.

\(^{70}\) The Statesman, (New Delhi), dated 21\(^{st}\) September 2007.

prompts it to be published in the newspapers or broadcasted through the channels. The Courts have also therefore developed a stand to regulate media which was unheard of a few decades back. In 2008, a Magistrate Court in Egmore sentenced the Editor and the Publisher of ‘Dinamaler’ to undergo three months simple imprisonment in a defamation case.\(^72\) This case was filed by a retired Headmaster of a Government School.\(^73\), the allegation being that “Dinamaler” published on 16\(^{th}\) March 2001 that he had helped students to engage in copying in the Public examination. This resulted in his suspension and later this news item was found to be wrong, malicious and baseless\(^74\).

A lower Court in Lucknow has awarded jail term to three journalists and two publisher printers for publishing a defamatory article and interview.\(^75\). The reason being that the leading newspaper (Pioneer) in October 1994 in its Delhi Edition had published a defamatory interview quoting Mr. Anant Kumar Singh, the then District Magistrate of Muzzafarnagar, as saying “any man will rape a woman in a secluded spot”. He denied having made that statement and demanded an apology from the newspaper which it refused\(^76\).

In the case of former Samajwadi party General Secretary, Mr. Amar Singh, the Supreme Court declined to vacate its interim order, banning the media from publishing contents of controversial private conversation,

\(^72\) *The Hindu*, (New Delhi), dated 28 March 2008.
\(^73\) *Ibid.*
\(^74\) *Id.* at p.42.
\(^75\) *Annual report of P.C.I. 2007-08*, p.41.
\(^76\) *Ibid.*
Amar Singh and his friends\textsuperscript{77} had made. In another case, the Honorable Juvenile Court of\textsuperscript{78}, Thiruvanathapuram, objected to publication of an incident relating to two children with HIV/AIDS. As a result PCI updated its guidelines on October 13\textsuperscript{th} – 14\textsuperscript{th}, 2008 on HIV/AIDS. Even in the case of \textit{Aarushi Talwar}, the Supreme Court directed the media to show restraint.\textsuperscript{79}

The PIL was seeking to protect the reputation of \textit{Aarushi}'s family and requested to direct the Director General of Police of all states to ensure that no information is leaked to the media regarding a criminal case pending investigation\textsuperscript{80}.

In 2008, due to the delay in framing a Broadcasting Act, the Supreme Court upheld a Delhi High Court order maintaining that Telecom Regulatory Authority of India can regulate the Broadcast Services till a Broadcasting Act comes into being\textsuperscript{81}.

\textbf{8.4.12 Comparison with United States and United Kingdom}

Indian Courts do not go generally beyond warnings and imposition of punishment is very rare. US and UK Courts believes in monetary compensation to the victim from the press. A former \textit{US Today} reporter, \textit{Toni Locy} has been ordered to pay a fine up to 5000 $ per day until she reveals the sources in her stories about 2001 anthrax attacks, which

\textsuperscript{77} \textit{The Hindu}, (New Delhi), dated 3\textsuperscript{rd} April 2007, (From the \textit{Annual Report of P.C.I. 2007-08}, p. 41).

\textsuperscript{78} C.M.P. 52 / 2008.

\textsuperscript{79} \textit{The Hindustan Times}, (New Delhi), dated 13\textsuperscript{th} July 2008 (\textit{Annual Report of P.C.I. 2007-08}).

\textsuperscript{80} \textit{Ibid}.

\textsuperscript{81} \textit{The Indian Express}, (New Delhi), dated 4\textsuperscript{th} January 2008 (\textit{Annual Report of P.C.I. 2007-08}).
named former Army Scientist- *Steven Hatfill* as a possible suspect\(^{82}\). Two British tabloid Newspapers made a front page apology on 19\(^{th}\) March 2008 to the parents of a missing girl, *Madeline McCann*. They had suggested that the parents might have killed their daughter and covered up her death. *Daily Express* and *Daily Star* agreed to pay ‘substantial damages’ as the paper’s allegation against both parents were fake\(^{83}\). Later the Court ordered 11 British tabloids including *The Sun*, *The Daily Mail* and *The News of the World* to apologize and pay Pounds 60,000/- in damages to a man they had falsely accused of being involved in the disappearance of Madeline\(^{84}\).

In another case of an Indian Captain, *Ashwini Kumar*, who was the Regional Director of Air India, in charge of UK and Ireland was stated in the front page article in *The Evening Standard* headlined “sex shame of airline chief”. He was accused of sexually harassing a female colleague and was called a ‘serial sex pest’. He won the libel case and was awarded Pounds 85,000/- in damages and Pounds 500,000/- in costs\(^{85}\). The British Court did not reveal the names of the couple and details of their background in the Baby P abuse case. It was released only after the High Court order protecting their anonymity expired at the midnight of 10\(^{th}\) August 2009\(^{86}\).

The Courts abroad have a better and effective way of media regulation, which is highly lacking in India. In the case of media trial on


\(^{84}\) *Id.* at p. 53.

\(^{85}\) *Ibid.*

Dr. J.V. Vilanilam, the former Vice-Chancellor of Kerala University during the period 1992-96, the papers falsely gave propaganda\textsuperscript{87} that he had obtained a Professorship in 1992 on the basis of a false certificate. This was found to be wrong. He was physically prevented from entering the university and his house, car and other personal properties were attacked by the agitators. There were threats posted on the front door of his house and his life was in danger. The agitators approached the High Court of Kerala with a ‘Qua Warranto’ petition but were disappointed when the High Court ruled that he had the right to continue as Vice-Chancellor. An enquiry committee appointed by the Government of Kerala also found no merit in the allegations. Finally the agitators withdrew. However, much damage was done to him. The newspapers involved were not at all punished or made to give compensation. They gave him bad publicity, but today they are scot-free.

Another instance is the case of Senior Scientist S. Nambi Narayanan who was falsely accused in 1994 with leaking vital defense secrets to two alleged Maldivian intelligent officers, Mariam Rasheeda and Fauzia Hassan\textsuperscript{88}. He spent 50 days in jail as a result of media, police and government accusations. He said, despite Supreme Courts favorable verdict in April 1998, the officials who had tortured him were far from conceding their guilt. He said that the espionage case against him and three others was malicious, without jurisdiction or sanction.

Another case is of Sunanda Pushkar who was involved in the IPL Franchise issue. Her name was badly tainted in the ‘Outlook’ April 26\textsuperscript{th} 2010 issue in article titled ‘Got a girl, named Sue’ and this was written

\textsuperscript{87} www.vilanilam.com retrieved on 4\textsuperscript{th} June 2010.
\textsuperscript{88} expressindia.com/news/ic/daily, retrieved on 24\textsuperscript{th} June 2010.
by Ms. Gopinath. In a later issue dated May 24th 2010, the *Outlook* magazine was good enough to publish a letter from her friend, Colleen Lobo, from Toronto. She gives the good and positive side of Sunanda and defies what has been written about her in the earlier issue. Ironically, the earlier issue would have gained more momentum than the letter in the latter issue of “*Outlook*”. The damage was already done to her through that article and the magazine was allowed to go Scott free.

Recently in *The New Indian Express*, dated 9th June 2010, it had an article ‘Lover’s suicide traps – hi-tech Casanova’, which referred to a suicide by a girl. In violation of the law and rules of the PCI, the newspaper published the name of the girl. The damage done to the dead girl and the family is of less concern to the press in comparison with the publicity they achieve for in competition with other media houses. This is the need of the time – to make the press compensate for the damage they cause to private individuals. A new legislation should be brought in to protect private people against this power block ‘The Media’.

**8.4.13 Paid News**

Paid news is an issue which has been affecting General Elections. This became prominent in India during the last general elections. Expressing deep concern on this in the Rajya Sabha, the Minister for Information & Broadcasting, Ambika Soni said that the PCI and the Election Commission would submit a report on this, which would be tabled in the House. It is interesting to note that the Leader of the Opposition, in the Rajya Sabha, Arun Jaitley described the PCI as a toothless wonder and wondered whether it could find solution to this
problem. Though the PCI did come with its announcement of bringing a white paper on paid news very soon, it is yet to be seen, how it can be solved as this involves a number of issues such as commercial validity of newspaper, monitoring processes, corporatization of media houses etc. If these issues are not dealt with properly, it would lead to a negation of parliamentary democracy. The reason being that there were reports that some media houses received money for publishing or broadcasting news in favor of particular individuals during elections. This affects the readers thinking as the reader or the viewer has the right to harvest, unadulterated news, which is being denied to him. He is not even being informed that the news is motivated by ‘monetary considerations’ said Arun Jaitley. CPM leader, Sitaram Yechury suggested that the government should stop advertisements to these newspapers. These are only suggestions put forward by parliamentarians. These methods of stopping advertisements or asking the PCI to act upon this are not going to gain ground. Effective mechanism by amending the Peoples’ Representation Act and bringing in an enactment for the press and visual media to regulate these practices should be considered seriously. A comprehensive enactment balancing the rights of media and rights of private individuals should be considered and debated.

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89 The New Indian Express, (Cochin) 6th March 2010, p.10.
90 The New Indian Express, (Cochin) 2nd April 2010, p.7.
91 Ibid.
92 Ibid.
93 Ibid.
8.4.14 Foreign Direct Investment and Media

May 2003 saw the Indian Government liberalize the policy on Foreign Direct Investment\(^{94}\) in media. In print media, FDI up to 26% is allowed in publishing Newspapers and periodicals dealing in news and current affairs. Permission has been granted only to Indian Companies with the largest Indian shareholder holding at least 51% of the paid up capital. It is conditional that at least 3/4\(^{th}\) of the Directors on the Board of Directors of the applicant Indian Company and all key executives and editorial staff should be resident Indians\(^ {95}\).

Similarly in the field of Broadcasting, 100% FDI is allowed subject to government approval. This has given rise to fear and repercussions from the political parties. Leading editors and opinion makers who feel that this would undermine the media’s right to freedom of expression as enshrined in the Constitution and will be detrimental for the Indian Media\(^ {96}\).

Recently, the papers reported about 3G Spectrum auction fetching the Government Rs. 68,000 crores\(^ {97}\). This opened a new level of technology and competitors like Vodafone, Idea, and Reliance have got their slot in their business. These companies expect to make money through technology which makes cable, news channel all available on Mobile phones. Telecommunications being already allowed 100%...
foreign equity after *Fema* 2000, the Indian soil is open for foreign exploitation. This makes Indians prone to foreign invasion in terms of technology and thinking process.

All this coupled with international Media Magnate, Rupert Murdoch having entered India through *Star Television* is now planning to take over *Asainet Channel*. Rupert Murdoch’s *the News Corporation* is trying to influence Indian news. His *Wall Street Journal* is the first foreign paper to get the official nod of the Indian Government. Today after seven years, a large number of 154 facsimile editions of foreign journals on health alone are published from the country out of the total 375, since doors were opened for such publication in 2003 according to government data.

It is true that after the liberalization policy of the government, we have to open our gateways to other nations, under WTO. This does not mean that we should expose our people to foreign media with their own ideas without giving due protection and safeguards against unwanted thinking to our people. The concept of Paparazzi is not the trend in India neither do we encourage the tabloid news much. With exposure to foreign concepts of newsgathering and journalism, the serious aspect of disbursement of news, which is the culture of news media in India, may deteriorate. To prevent such ill effects, the Indian Government should come up with a legislation to balance the individual rights of privacy with media freedom. When one side of the society ‘media freedom’...
becomes stronger then it starts dictating terms, then it is the right time for the government to uplift the weaker part i.e. ‘personal privacy’ to a higher pedestal so as to balance social Interest with individual interest. This balancing of interests is the main role of the government of any democratic nation.

The BBC poll result released on 9th December 2007, as reported in the Report of PCI 2007-08 regarding public faith in the press show the following:\footnote{100}{The survey, which polled 11344 people across 14 countries, was conducted in India, Brazil, Egypt, Germany, Great Britain, Kenya, Mexico, Nigeria, Russia, Singapore, South Africa, UAE, US and Venezuela by the International Polling Firms Globescan and synovate.}

a) Around 61% Indian believe that news is reported honestly in the country.

b) Around 72% Indians think Press and Media is free in India as compared to only 56% in UK.

c) 56% feel all over the world that free press is needed for free society, which in USA is 70% and in UK 67%. While in India it is only 41%, while 48% feel social harmony is more important for a free society.

d) Indians top the table in rating Government Controlled news organizations for good performance.

The survey shows that Indian public has faith in the press. If this faith has to continue going strong, then Press has a corollary duty towards the public to give it the right and proper information. Today, the Americans and the British do not rely completely on the paper and visual media. They track down the news item to find the truth. In UK, BBC has
always kept its high standards and so have the CNN, to a great extent, in USA. Indian print media and visual media have yet to reach these high standards. They find it hard to get news and lack the system of news reporting from all over the world. They should either have their reporters stationed in those places or have tie up with International Reporting Agencies. The lack of these systems, keep the Indian media, revolving around its own spicy domestic news. This does not help generate knowledge and important information to the public, but only acts as a gossip generating agency.

Public confidence is the foundation of the Press. If that confidence is lost, then it is only a piece of paper which carries the views of the editor, after the reading of which, it is simply thrown in the garbage box. It is therefore the confidence and faith of the people that has to be retained in the Indian media, without which democracy is difficult to be visualized in its pure sense.