संख्या एन-28011/01/2021-बीसी.III

भारत सरकार

सूचना और प्रसारण मंत्रालय

ए' विंग, शास्त्री भवन ,

नई दिल्ली-110001.

5 मार्च, 2021

सेवा में,

सभी प्राइवेट सैटेलाइट टीवी चैनल

विषय: पूछताछ/जांच आदि के तहत मामलों पर मीडिया कवरेज।

मुझे पूछताछ/जांच के तहत मामलों की मीडिया कवरेज के संबंध में वर्ष 2020 के आईए संख्या 95156, के साथ वर्ष 2020 के पीआईएल (एसटी) संख्या 92252, वर्ष 2020 के पीआईएल (एसटी) संख्या 1774, वर्ष 2020 की सिविल पीआईएल-सीजे-एलडी-वीसी संख्या 40, वर्ष 2020 की पीआईएल (एल) संख्या 3145 और वर्ष 2020 की आपराधिक पीआईएल (एसटी) संख्या 2339, के मामलों में बॉम्बे के माननीय उच्च न्यायालय के दिनांक 18.01.2021 के फैसले को संलग्न करने का निर्देश दिया गया है।

2. अनुरोध है कि माननीय उच्च न्यायालय के उपरोक्त निर्णय पर ध्यान दिया जाए और उचित कार्रवाई के लिए सभी हितधारकों तक इसका प्रचार-प्रसार किया जाए।

(जीसी एरोन)

निदेशक (बीसी)

दूरभाष सं. 23386394

प्रतिलिपि:-

1. श्री रजत शर्मा, अध्यक्ष, न्यूज ब्रॉडकास्टर्स एसोसिएशन (एनबीए), मैनटेक हाउस, तीसरी मंजिल, सी-56/5, सेक्टर-62, नोएडा-201307.
2. श्री के. महादेवन, अध्यक्ष, द इंडियन ब्रॉडकास्टिंग फाउंडेशन (आईबीएफ), बी-304, तीसरी मंजिल, अंसल प्लाजा, खेलगांव मार्ग, नई दिल्ली-110049.
3. श्री राकेश शर्मा, एसोसिएशन ऑफ रीजनल टेलीविजन ब्रॉडकास्टर्स ऑफ इंडिया (एआरटीबीआई), बी-116, ओखला इंडस्ट्रियल एरिया फेज-1, नई दिल्ली -110 065.

प्रतिलिपि सूचनार्थ:-

सचिव, भारतीय प्रेस परिषद, सूचना भवन, 8 सीजीओ कॉम्प्लेक्स, लोधी रोड, नई दिल्ली-110003.

संलग्नक: यथोपरि

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**PUBLIC INTEREST LITIGATION (ST) NO. 92252 OF 2020
WITH
INTERIM APPLICATION NO. 95156 OF 2020**

1. Mr. Nilesh Navalakha
Age: 44 Years, Occ: Businessman
Social activist, Indian Inhabitant,
Address: 620, Pentagon,
Shahu College Road,
Parvati, Pune 411 009.

2. Shri Mahibub D. Shaikh
Aged: 62 Years, Occ: Businessman
Social activist, Indian Inhabitant,
Address: 6, Sahyadri,
Old Employment Chowk,
Solapur, Maharashtra 413 001.

3. Shri Subhash Chander Chaba
S/o Late Ram Prakash Chabba
Age – Major Years, Occ: Pensioner,
Social activist, Indian Inhabitant,
House No. 402, Sector 21,
Panchkula (Haryana) 134 116. } Petitioners

Versus

1. Union of India
Through the Secretary / Joint Secretary
(P & A) Joint Secretary (Broadcasting)
Ministry of Information and Broadcasting
Room No. 552, A Wing, Shastri Bhawan,
New Delhi 110 001.

2. Press Council of India
The Secretary, 1st, 2nd & 3rd Floor,
Soochna Bhawan, 8, C.G.O. Complex,
Lodhi Road, New Delhi 110 003.

3. News Broadcasters Association
The Secretary General, Mantec House,
C-56/5, 2nd Floor, Sector 62,
Noida 201 301.

4. Central Bureau of Investigation
Through its Officer
Plot No. 5-B, 6th Floor, CGO Complex,
Lodhi Road, New Delhi 110 003.

5. State of Maharashtra
The Chief Secretary, CS Office,
Main Building, Mantralaya, 6th Floor,
Madame Cama Road, Mumbai 400 032.

6. The India Today Group
The Authorised Person
Mediaplex FC-8, Sector -16A,
Film City, Noida – 201 301.

7. Times Now
The Authorised Person
1st Floor, Trade House,
Kamala Mill Compound,
Senapati Bapat Marg, Lower Parel,
Mumbai 400 013.

8. Republic TV
The Authorised Person
Wadia International Centre,
Kamala Mills Compound,
NBW Building, Bombay Dying,
Pandurang Budhkar Marg,
Century Mills, Lower Parel,
Mumbai 400 025.

9. NDTV Ltd.
The Authorised Person
207, Okhla Industrial Estate,
Phase 3, New Delhi 110 020.

10. News 18
The Authorised Person
Global Broadcast News,
Express Trade Tower,
Plot No. 15-16, Sector 16A,
Noida – 201 301.

11. Zee News
The Authorised Person
14th Floor, "A" Wing, Marathon Futurex,
N M Joshi Marg, Lower Parel,
Mumbai 400 013.

12. Narcotics Control Bureau (NCB), through the Zonal Director, Exchange Building, 3rd, SS Ram Gulam Marg, Ballard Estate, Fort, Mumbai, Maharashtra 400 001.

13. Enforcement Directorate (ED), through its Joint Director, Mumbai Zonal Office, Kaiser-i-Hind, 4th Floor, Currimbhoy Road, Ballard Estate, Mumbai 400 001.

14. ABP News through its Authorised Person A-37, Sector 60, Ashok Marg, Noida, Uttar Pradesh 201 307.

15. India TV through its Authorised Person India TV Broadcast Centre, B-30, Sector 85, Noida 201 305, Uttar Pradesh.

16. News Nation through its Authorised Person Plot No. 14, Sector 126, Noida 201 301 Uttar Pradesh, India.

17. News Broadcasters Federation through its Authorised Person 3-B, GG-2 Block, Vikaspuri, New Delhi 110 018. } Respondents

Mr. Devadatt Kamat, Senior Advocate a/w Mr. Rajesh Inamdar with Mr.Shashwat Anand, Mr. Pankaj Kandhari, Ms. Smita Pandey, Mr.Amit Pai, Mr. Vishal Jagwani, Kevin Gala, Siddharth Naik, Pinky Chainani, Mr. Ankur Azad, Mr. Sarveshwari Prasad, Mr. Rahat Bansal, Mr. Faiz Ahmad. i/b Mr. Pankaj Kandhari for Petitioners.

Mr. Anil Singh, Additional Solicitor General a/w Mr. Sandesh Patil, Mr.Aditya Thakkar, Mr.Amogh Singh, Ms. Apurva Gute, Mr. Chintan, Mr. Mayur Prashant Rane, Mr. Sumedh Sahakari, Mr. D. P. Singh, Ms.Reshma Ravapati, Mr. Saurabh Prabhulkar and Medvita Trivedi for respondent Nos.1, 4, 12 and 13.

None for respondent No.2 (Press Council of India).

Mr. Arvind Datar, Senior Advocate i/by Mr. Bharat Manghani for respondent No.3 (NBA)

Mr. P. P. Kakade, Govt. Pleader with Mrs. R. A. Salunkhe, AGP for respondent No.5 -State.

Mr. Rajeev Pandey with Mr. Madhur Rai i/by PRS Legal for respondent No.6(The India Today Group).

Mr. Kunal Tandon a/w Ms. Prachi Pandya i/by Corporate Attorneys for respondent No.7 (Times Now).

Ms. Malvika Trivdei a/w Mr. Saket Shukla, Mr. Vasanth Rajshekharan, Mr. Mrinal Ojha, Mr. Debashri Datta, Mr.Rajat Pradhan, Ms. Madhavi Joshi and Mr. Siddhant Kumar i/by Phoenix Legal for respondent No.8 (Republic TV).

Mr. Angad Dugal, Mr. Govind Singh Grewal, Shiva Kumar, Tanya Vershney, Raj Surana a/w Rishi Murarka for respondent No.9 (NDTV Ltd.).

None for respondent No. 10 (News 18).

Mr. Ankit Lohiya a/w Mr. Hetal Thakore, Mr. Kunal Parekh, Ms. Bhavika Tiwari i/by Dua Associates AOR Mumbai for respondent No.11 (Zee News).

Ms. Hetal Jobhanputra for respondent No. 14 (ABP News).

Mr. Jayant Mehta a/w Mr. Alankar Kirpekar a/w Mr. Tejveer Bhatia, Mr. Rohan Swarop, Mr. Shekhar Bhagat i/by MAG Legal for respondent No.15 (India TV).

Mr. Siddhesh Bhole, Mr. Rishabh Dhanuka i/by Alba Law Offices for respondent No. 16 (News Nation).

Mr. Siddharth Bhatnagar, Senior Advocate a/w Mr. Pralhad Paranjape for respondent No. 17 (NBF).

WITH
CRIMINAL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION (ST) NO.1774 OF 2020

1. Shri Mahesh Narayan Singh }
Age: About 77 years, }
Occ: Director General of Police }

(Retd.) and Former Commissioner of Police, Mumbai
R/o 61, Sagar Tarang Co.Op.Hoc. Society, Worli Seaface, Worli, Mumbai 400 030.

2. Shri Parvinder Singh Parsicha
Age: 72 years, Occ: (Retd) Maharashtra Director General of Police, R/o Flat 1103, Tower-A, Vivarea Towers, Sane Guruji Marg, Mumbai 400 011

3. Shri K. Subramanyam
Age: 68 Years, Occ: (Retd.)
R/o 1302, 'GODAVARI', Sir Poochkhanwala Road, Worli, Mumbai 400 030.

4. Shri Dhananjay N. Jadhav
Age: 72 years, Occ: (Retd), Mumbai Commissioner of Police, 1302, Amar Co-Op. Society, Plot No. 7, Sector 58A, Nerul Navi Mumbai 400 706.

5. Shri Dhanushkodi Shivanandan
Age: 69 yrs. Occ:(Retd) Maharashtra Director General of Police, R/o Ashoka Tower, B/1803, Dr. B. A. Road, Parel, Mumbai 400 012.

6. Shri Sanjeev Dayal
Age: 65 years, Occ:(Retd) Maharashtra, Director General of Police, R/o 41, Jasmine Madhusudan Kelkar Road, Bandra East, Mumbai.

7. Shri Satish Chandra Mathur
Age: 62 yrs. Occ: (Retd), Maharashtra Director General of Police, R/o Flat No. 81/8th Floor, Jupiter Apartment, 41, Cuffe Parade Near Taj Vivanta, Mumbai 400 005.

8. Shri Krishipal Raghuvanshi
Age: 65 yrs. Occ:(Retd), Director General of Police and Former

Chief of Anti Terrorist Squad, Maharashtra, R/o Flat No. 2022, Leona Building, Rhodas Enclaves, Hiranandani Estate, Ghodbandar Rd. Thane West 400 067. } Petitioners

Versus

1. Union of India
Through the Secretary / Joint Secretary (P & A) Joint Secretary (Broadcasting) Ministry of Information and Broadcasting Room No. 552, A Wing, Shastri Bhawan, New Delhi 110 001.

2. Press Council of India
The Secretary, Sector – 62, Noida 201 301

3. News Broadcasters Association
The Secretary General, Mantec House, C-56/5, 2nd Floor, Sector 62, Noida 201 301.

4. News Broadcasting Standards Authority
Having its office at C/o News Broadcasters Association Mantec House, C-56/5, 2nd Floor, Sector 62, Noida 201 301

5. State of Maharashtra
The Chief Secretary, CS Office, Main Building, Mantralaya, 6th Floor, Madame Cama Road, Mumbai 400 032.

6. News Broadcasters Federation
through its Secretary General 3-B, GG-2 Block, Vikaspuri, New Delhi 110 018.

7. The India Today Group
Through The Authorised Person Mediaplex FC-8, Sector -16A, Film City, Noida – 201 301.

8. Times Now
The Authorised Person 1st Floor, Trade House, Kamala Mill Compound, Senapati Bapat Marg, Lower Parel,

Mumbai 400 013. }

9. Republic TV }
The Authorised Person }
Wadia International Centre, }
Kamala Mills Compound, }
NBW Building, Bombay Dying, }
Pandurang Budhkar Marg, }
Century Mills, Lower Parel, }
Mumbai 400 025. }

10. NDTV Ltd. }
The Authorised Person }
207, Okhla Industrial Estate, }
Phase 3, New Delhi 110 020. }

11. News 18 }
The Authorised Person }
Global Broadcast News, }
Express Trade Tower, }
Plot No. 15-16, Sector 16A, }
Noida – 201 301. }

12. Zee News }
The Authorised Person, 14th Floor, }
"A" Wing, Marathon Futurex, }
N M Joshi Marg, Lower Parel, }
Mumbai 400 013. }

13. ABP News }
The Authorised Person }
ABP News Centre, 301, }
Boston House, 3rd Floor, Suren Road, }
Andheri – East, Mumbai 400 093. }

14. India TV }
The Authorised Person }
India TV Broadcast Centre, }
B-30, Sector 85, Noida 201 305, }
Uttar Pradesh, India. }

15. News Nation }
The Authorised Person }
Plot No. 14, Sector 126, }
Noida 201 301 }
Uttar Pradesh, India. } Respondents

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Gaurav Joshi, Senior Advocate with Mr. Chetan Kapadia, Mr. R. Sarda, Mr. A. Joshi, Mr. F. Patel, Mrs. Manik Joshi, Mr. M. Bajpai, Mr. G. Gangal i/b. M/s.Crawford Bayley & Co., for the Petitioners.

Mr. Anil Singh, Additional Solicitor General a/w Mr. Sandesh Patil, Mr.Aditya Thakkar, Mr.Amogh Singh, Ms. Apurva Gute, Mr. Chintan, Mr. Mayur Prashant Rane, Mr. Sumedh Sahakari, Mr. D. P. Singh, Ms. Reshma Ravapati, Mr. Saurabh Prabhulkar and Medvita Trivedi Adv. for respondent No.1-UOI.

None for respondent No.2 (Press Council of India).

Mr. Arvind Datar, Senior Advocate a/w Mr. Bharat Manghani for respondent No.3 (NBA).

Mr. Arvind Datar, Senior Advocate i/by Mr. Bharat Manghani a/w Nisha Bhambani a/w Rahul Unnikrishnan and Mr. Tarun Krishnakumar for respondent No.4 (NBSA).

Mr. Deepak Thakare, Public Prosecutor a/w Mr. Y. P. Yagnik, APP a/w Dr. F. R. Shaikh, APP for respondent No.5-State.

Mr. Siddharth Bhatnagar, Senior Advocate a/w Mr. Pralhad Paranjape for respondent No.6 (NBF).

Mr. Rajeev K. Pandey with Mr. Madhur Rai i/by PRS Legal for respondent No.7 (The India Today Group).

Mr. Kunal Tandon a/w Ms. Prachi Pradnya i/by Corporate Attorneys for respondent No.8 (Times Now).

Ms. Malvika Trivedi a/w Mr. Saket Shukla, Mr. Vasanth Rajshekharan, Mr. Mrinal Ojha, Mr. Debashri Datta, Mr. Rajat Pradhan, Ms. Madhavi Joshi and Mr. Siddhant Kumar i/by Phoenix Legal for respondent No.9 (Republic TV).

Mr. Angad Dugal, Govind Singh Grewal, Shiva Kumar, Tanya Vershey, Raj Surana a/w Rishi Murarka for respondent No.10 (NDTV Ltd).

None for respondent No.11 (News 18).

Mr. Ankit Lohiya a/w Mr. Hetal Thakre, Mrs. Kunal Parekh, Ms.Bhavika Tiwari i/by Duo Associate AOR Mumbai for respondent No. 12 (Zee News).

Ms. Hetal Jobanpurta for respondent No. 13 (ABP News).

Mr. Alankar Kirpekar a/w Mr. Tejveer Bhatia, Mr. Rohan Swarop, Mr.Shekhar Bhagat i/by MAG Legal for respondent No.14 (India TV).

Mr. Siddhesh Bhole a/w Ms. Zeeshan Hasmi, Mr. Anikt Parasher, Mr.Rishabh Dhanuka i/by S. S. B. Legal & Advisory for respondent No. 15 (News Nation).

WITH
CIVIL PIL-CJ-LD-VC-NO.40 OF 2020

Asim Suhas Sarode }
Age 49 yrs. Occu: Lawyer }
Address- Flat No.1, Prathamesh CHS }
Prabhat Road, Deccan, }
Pune 411 004 } Petitioner

Versus

1. News Broadcasting Association (NBA) }
FF-42, Omaxe Square, Commercial }
Centre, Jasola, New Delhi 110 025. }
}
2. Press Council of India }
Through : Shri Justice C. K. Prasad }
Chairman, 1st, 2nd and 3rd Floor, }
Soochana Bhawan, 8 C.G.O. Complex, }
Lodhi Road, New Delhi 110 003. }
}
3. Union of India }
Ministry of Information and }
Broadcasting through its Joint Secretary, }
Room No. 552, "A" Wing, Shastri Bhavan, }
New Delhi 110 001. } Respondents

Mr. Asim Sarode, petitioner-in-person.

Mr. Arvind Datar, Senior Advocate i/by Mr. Bharat K. Manghani for Respondent No.1 (NBA).

Mr. Prashant Mishra for respondent No.2 (Press Council of India).

Mr. Anil Singh, Additional Solicitor General a/w Mr. Sandesh Patil, Mr. Aditya Thakkar, Mr.Amogh Singh, Ms. Apurva Gute,

Mr. Chintan, Mr. Mayur Prashant Rane, Mr. Sumedh Sahakari, Mr. D. P. Singh, Ms. Reshma Ravapati, Mr. Saurabh Prabhulkar and Medvita Trivedi for respondent No.3-UOI.

WITH
ORIGINAL SIDE
PUBLIC INTEREST LITIGATION (L) NO.3145 OF 2020

In Pursuit of Justice Registered under the Societies Registration Act, 1860 & The Maharashtra Public Trust Act, Regn. No. E5730-Pune Having its office at Shivrapsad, 261/1, Budhwar Chowk, Pune – 411 002 Through its authorised signatory Advocate Shirin Merchant, age 45 years R/o No.6, Rose Hill, Clover Village, Wanawadi, Pune 411 001.	}	Petitioner

Versus

1.	The Union of India Through The Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi – 110 001.	}	
2.	Press Council of India Through Secretary, Soochana Bhawan, 8 CGO Complex, Lodhi Road, New Delhi 110 003.	}	
3.	Law Commission of India Through Secretariat, 4th Floor, B-Wing, Loknayak Bhawan, Khan Marekt, New Delhi 110 003.	}	Respondents

Dr. Neela Gokhale a/w Ms. Yogini Ugale, Mr. Kushal Chaudhary, Ms. Shruti Dixit, Ms. Harshal Gupta for Petitioner in Original Side PIL (L) 3145 of 2020.

Mr. Anil Singh, Additional Solicitor General a/w Mr. Sandesh Patil, Mr. Aditya Thakkar, Mr.Amogh Singh, Ms. Apurva Gute, Mr. Chintan, Mr. Mayur Prashant Rane, Mr. Sumedh Sahakari, Mr. D. P. Singh, Ms. Reshma Ravapati, Mr. Saurabh Prabhulkar and Medvita Trivedi for respondent Nos. 1 and 3.

Mr. Prashant Mishra for respondent No. 2 (Press Council of India).

WITH
CRIMINAL PUBLIC INTEREST LITIGATION (ST) NO.2339 OF 2020

Ms. Prerna Arora An Adult, Indian Inhabitant, residing at G-Wing, 2404, Oberoi Splendor, JVLR, Andheri (East), Mumbai.	} } } }	Petitioner

Versus

1.	Press Council of India 1st, 2nd and 3rd Floor, Soochna Bhawan, 8, C.G.O. Complex, Lodhi Road, New Delhi – 110 003.	} } } } }	
2.	Indian Broadcasting Foundation B-304, Ansal Plaza, Third Floor, Khelgaon Marg, New Delhi 110 049.	} } }	Respondents

Mr. Sunny Punamiya for petitioner.

Mr. Prashant Mishra for respondent No.1 (Press Council of India).

Mr. Abhishek Malhotra a/w Ms. Sneha Herwade, Ms. Sanya Sehgal i/by TMT Law Practice for respondent No.2 (Indian Broadcating Foundation).

CORAM : DIPANKAR DATTA CJ. &
G.S.KULKARNI, J.

Reserved on : November 6, 2020
Pronounced on: January 18, 2021

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PRELUDE

1. While COVID-19 was wreaking havoc in the country and causing unimaginable misery [viz. the working class losing jobs and thereby their livelihood, innumerable innocent lives being lost including those of migrant labours not only due to its direct but also indirect effects, the health-care system in all the States across the country facing extreme stress, justice seekers finding the justice delivery system almost inaccessible, etc.] and thus creating an atmosphere of severe tension and despair in the country, the unnatural death of a relatively young film actor (hereafter "the actor", for short) in Mumbai on June 14, 2020 became the cynosure of the electronic media. The manifold problem, hardship and inconvenience brought about by the pandemic all over the country notwithstanding, various TV channels initiated intense discussion during prime time on the probable cause of death of the actor. Some of such channels, resorting to "investigative journalism" as they call it, sought to spread the message among its viewers that Mumbai Police has been passing off a homicidal death as a suicidal death and that a close acquaintance of the actor, who herself is an actress (hereafter "the actress", for short), had orchestrated his death. What followed such reportage is noteworthy. The actor's father had lodged an FIR at Patna, Bihar naming the actress as an accused for his son's homicidal death. Incidentally, the actor hailed from Bihar prior to making a career in films and settling down in Mumbai. To conduct investigation into such FIR, police personnel from Bihar landed in Mumbai. Citing the pandemic, such personnel were promptly quarantined. It is not necessary for the present purpose to ascertain who were behind such move and what the motive was. Suffice it to note, the actress applied before the Supreme Court for transfer of a First Information Report at a police station in Patna and all consequential proceedings from the jurisdictional court at Patna to the jurisdictional court at Mumbai, under section 406 of the Code of Criminal Procedure (hereafter 'the Cr.P.C' for short) read with Order XXXIX of the Supreme

Court Rules. Upon hearing the parties, the Supreme Court passed an order dated August 19, 2020 entrusting the Central Bureau of Investigation (hereafter "the CBI", for short) with investigation into the complaint of the actor's father. In compliance with such order, the CBI took over investigation. In due course of time, the Enforcement Directorate (hereafter "the ED", for short) and the Narcotics Control Bureau (hereafter "the NCB", for short) too joined the fray by launching separate prosecution suspecting offences under the Prevention of Money Laundering Act, 2002 and the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereafter "the NDPS Act", for short), respectively. After the intervention of the Supreme Court, it had been the claim of some of the TV channels that Mumbai Police's vicious attempt to suppress the homicidal death of the actor, which had been unearthed by "investigative journalism", stands validated by reason of the order of the Supreme Court. It had also been the claim of one of the TV channels that because of its persistent vigorous demands for divesting Mumbai Police of investigative powers in the case that truth has triumphed with the CBI being entrusted with the investigation by the Supreme Court. Investigation by the CBI, the ED and the NCB are still in progress.

2. Apart from the above, a couple of TV channels aired several programmes raising questions as to the manner of investigation by Mumbai Police and also as to why the actress had not been arrested in view of materials that such channels had gathered through "investigative journalism". One of them even went to the extent of obtaining opinion from the viewers on whether the actress should be arrested. One other channel flashed that the actor had been murdered. The persistent efforts of the channels for arrest of the actress did bear fruit in that although the CBI did not find reason to arrest her, she came to be arrested by the NCB. After a monthlong incarceration, this Court by its order dated October 7, 2020 granted the actress bail upon recording a finding that materials collected thus far by the NCB *prima*

facie did not suggest that she had committed any offence under the NDPS Act.

3. Unfortunately, some of the TV channels in their programmes displayed headlines which, in effect, taunt the actor for committing suicide and seek to question as to whether he was into consumption of drugs. The insensitivity of such TV channels is writ large in that the headlines/questions were displayed/posed knowing fully well that the same would never be rebutted by the individual to whom it is directed.

4. Since the unnatural death of the actor on June 14, 2020, 5 (five) writ petitions, all in the Public Interest Litigation jurisdiction, came to be presented before this Court between June 25, 2020 and September 10, 2020 seeking multifarious relief. All but one of the writ petitions raise common issues in regard to the role of the electronic media in reporting matters concerning investigation into the unnatural death of the actor, thus amounting to a 'media trial'. The petitioners urge that the electronic media in derogation of their legitimate media rights are broadcasting irresponsible and unethical news programmes of a nature amounting to slander as also amounting to a direct interference in the course of investigation, as undertaken by the investigating agencies, of a highly prejudicial nature. The petitioners contend that some of the television channels have televised interviews with material witnesses and in fact indulged in cross-examining these witnesses. They have taken upon themselves the role of the investigating agencies, prosecutors and adjudicators in pronouncing persons guilty of committing an offence, even before the lawful investigation is completed by the investigating agencies. It is claimed that the news channels have also resorted to a reckless reporting against the State agencies on whom the powers of investigation are conferred by law. It is the petitioners'contention that such interference by the electronic media in the course of lawful investigation of any alleged crime defies all cannons

of legal legitimacy. It is with such grievances the petitioners have approached this Court. In brief, the reliefs claimed, *inter-alia*, are for issuance of necessary directions to the media channels for temporary postponement of news reporting in any form of a media trial or parallel investigation into the 'FIR' regarding the unnatural death of the actor that the CBI has been investigating. Prayer is also made for a writ of mandamus for issuance of directions/guidelines not to allow electronic, radio, internet or any other form of media from publishing any false, derogatory and scandalous news reports which may either jeopardize the reputation of the police and affect administration of justice, and to have a balanced ethical and objective reporting. There is also a prayer in one of the writ petitions that the scope and ambit of section 3(2) of the Contempt of Courts Act, 1971 (hereafter the CoC Act, for short) be interpreted to include an FIR as the starting point of pending proceedings before the Court for the purpose of invoking the CoC Act in cases where publication obstructs administration of justice. Having noticed the broad contours of the proceedings before us, we now proceed to delve deep into the individual writ petitions.

4A. **Briefly about the petitions:-**

I. Public Interest Litigation PIL-CJ-LD-VC-NO.40 OF 2020

(Asim Suhas Sarode Vs. News Broadcasting Association (NBA) & Ors.)

(a). This Public Interest Litigation, the first in the series, was presented before this Court on June 25, 2020 by Shri. Asim Suhas Sarode as petitioner, who is a practicing Advocate. He claims that he has been working on various human rights and environmental issues. The concern of the petitioner is that immediately on the unnatural death of the actor on June 14, 2020, the TV channels started reporting the news of his suicide. He says that the telecasts on the suicide, in the manner aired, left him disturbed, as the news coverage contained

photographs of the dead body of the actor which was least that could be expected. He says that such an approach on the part of the media shows insensitive attitude towards mental health. He has stated that various FIRs were lodged including those by the Maharashtra Cyber Cell Police department, by issuing warning on Twitter to restrain from posting images of a dead body. It is his case that the media needs to practice sensitivity in such reporting, and the media professionals should recognize the importance in conveying nuanced meanings and the language should not sensationalize suicide. It is his case that there are media guidelines issued by the World Health Organization (hereafter "the WHO", for short) and the International Association for Suicide Prevention (IASP) on how news organizations should report on suicides, which need to be followed. His case is that there is a necessity to understand depression and how it affects people. The media reports cannot be more depressing because the media is required to consider the impact of such news on people, who are living with mental illness. No one chooses to be depressed or stay depressed. Their brain does not allow them to come out of it. The Press Council of India (hereafter "the PCI", for short) has adopted the guidelines of the WHO; however, they are not followed by the media in India. As per the WHO guidelines adopted by the PCI, according to the petitioner, following are required to be avoided:-

> "1. Publish stories about suicide prominently and unduly repeat such stories.
>
> 2. Use language which sensationalize or normalizes suicide, or presents it as a constructive solution to problems;
>
> 3. Explicitly describe the method used;
>
> 4. Provide details about the site/location
>
> 5. Use sensational headlines;

6. Use photographs, video footage or social media links."

(b). The petitioner contends that implementation of the objectives of the Mental Health Act, 2017 is lacking in totality, when it recognizes suicide as a mental illness. Almost all media houses used the word "committed suicide", when it should be "died by suicide". On such premise, the petitioner has prayed for the following reliefs:-

"(A) The Hon'ble High Court be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ directing the Respondents-

(i) To file an affidavit before the Hon'ble Court mentioning that they will inform all their members to abide by the guidelines issued by the Press Council of India and WHO.

(ii) To submit on the affidavit, the standard operating process (SOP) of functioning by the respondents while reporting and publishing news report related to death due to suicide by any celebrity or anyone.

(iii) To mention on the affidavit that they will inform to its members to print/broadcast information on mental health awareness and suicide prevention every quarter.

(iv) To run information scroll on TV channels during examination and results period about assistance available if one feels suicidal so that people are aware as dated we have seen high suicide rates during exam and result time.

(B) Petitioner urges that Hon'ble High Court to please interpret suicide as a mental illness and clarify it is not a crime."

II. PIL (ST) NO. 92252 of 2020 Shri Nilesh Navlakha & Ors vs UOI & Ors

(a) This Public Interest Litigation dated August 26, 2020 has been filed by Shri Nilesh Navlakha and two others. Shri Nilesh Navlakha has described himself to be a reputed filmmaker, who has produced nine films on social issues, and is a recipient of national awards for his three films. He is also a social activist involved in various social causes. Petitioner No. 2 - Shri. Mahibub Shaikh, is the editor of a regional newspaper 'Bandhuprem', published from Solapur. Petitioner No. 3 - Shri. Subash Cander Chaba has retired from the Punjab State Electricity Board and is also actively involved on social issues. The petitioners array the Union of India (hereafter 'the UOI', for short) through its Secretary, Ministry of Information and Broadcasting, the PCI, the News Broadcasters Association, the CBI, the State of Maharashtra and several media channels as the respondents. The petitioners pray that directions be issued to the electronic media channels as also to the print media for temporary postponement of news reporting in any manner, which would tantamount to a 'media trial' or 'parallel investigation' of a nature directly or indirectly hampering the investigation in pursuance of the FIR registered by the CBI, relating to the unnatural death of the actor. There is a prayer for further direction to the respondents to ensure that the tenets of the "Programme Code" as prescribed under the Cable Television Networks (Regulation) Act, 1995 (hereafter the "CTVN Act", for short) and Cable Television Networks Rules, 1994 (hereafter the "CTVN Rules", for short) are followed in letter and spirit. The Petitioners also pray that the respondents keep strict vigil on the media channels in sensitive cases and adhere to the CTVN Act and the CTVN Rules and take stringent actions against the media channels who violate the "Programme Code" and the journalistic ethics.

(b) The petitioners contend that they do not intend to impinge or curtail the freedom of press of the media; however, in the interest of administration of justice, they are seeking such directions to the

respondents to toe the 'Lakshman Rekha' and ensure that no media trial is undertaken, which has an impact of causing a prejudice to an independent investigation being undertaken by the CBI. The petitioners say that the media trial in the death of actor is posing real and substantial risk of prejudice to the proper administration of justice and the criminal justice system, and the fairness of a trial. They contend that a neutralizing device (balancing act) would not be an unreasonable restriction on the media rights and on the contrary would fall within the proper constitutional framework. The contention is that the journalists are expected to be fair and neutral to all sides, and to provide diverse points of view. They are against propaganda news, their concern is that 'pure' news reporting has more or less disappeared and personal ideology of the editor or a proprietor of the news channel often shapes the news which has led the media to lose its credibility amongst people.

(c) The prayers as made by the petitioners read as under **:-**

> **"**a. Issue writ of mandamus or any other writ/order of direction to the respondents to issue necessary instructions to the Media channels both print and electronic for temporary postponement of news reporting by way of telecasting, publishing, republishing reports/articles and/or carrying out discussions/debates of any kind by the Media both Electronic and Print tantamount to 'Media Trial' or 'Parallel Investigation' or examining or cross examining the witnesses or the vital evidence, which has the effect of directly or indirectly interfering with the investigation process without preventing from publishing information which does not in any way interfere with the investigation or seek to sully the character and reputation of the victim/accused/witnesses or any other person or prejudice the defence in any manner in respect of FIR No.RC242020S0001 registered by the Central Bureau of Investigation on 06.08.2020 relating to the unfortunate demise of Actor Sushant Singh Rajput; and

b. Direct the respondents to ensure that the tenets of the programme code are followed in both letter and spirit, as laid down in Cable Television Networks (Regulation) Act, 1995 and 1994 Rules; and

c. Direct the respondent nos. 1 and 3 to keep strict vigil on the media channels in sensitive cases and issue necessary guidelines/instructions directing the Media to adhere with the Cable Television Networks (Regulation) Act, 1995 and 1994 Rules and take necessary stringent actions against such media channels who conduct the 'Media Trial' in violation of the programmer code and journalistic ethics;"

III. Public Interest Litigation No.1774 of 2020 (Mahesh Narayan Singh & Ors vs Union of India & Ors.

(a). This Public Interest Litigation dated August 31, 2020 is filed by Mr.Mahesh Narayan Singh & Ors., who are stated to be retired senior officers of the Indian Police Services (IPS) and who were once part of Mumbai Police and the Maharashtra State Police. They claim to have held prominent positions including posts like Director General of Police, Additional Director General of Police, Commissioner of Police, etc. They have retired after decades of distinguished and meritorious service and are public spirited and upstanding citizens of the country. Their petition also arrays the UOI through its Secretary, Ministry of Information and Broadcasting, the PCI, News Broadcasters Association, News Broadcasting Standards Authority and the State of Maharashtra as the respondents. They contend that the actions of the media in their reportage as impugned, i.e, by use of derogatory and irresponsible language against Mumbai Police and its Police Commissioner has tarnished the image and good name of the entire police force. Such reportage, according to them, has damaged the valuable reputation of Mumbai Police. It is contended that these news reports label the investigation by Mumbai Police such as "*botched up investigation", "tampering", "nexus", "olive branch extended to an accused by the Mumbai Police", "refused to file FIR", "blot on the name of Mumbai Police",*

*"shameful", "wholly-owned subsidiary of *** (read the actress)", "Mumbai Police exposed", "negligence", "lost its credibility", "shoddy investigation"* etc., which are highly derogatory, irresponsible and totally incorrect. According to the petitioners, after the decision of the Supreme Court in Transfer Petition (Criminal) No.225 of 2020, such reportage amounts to a total misreporting of the facts by the media. The petitioners contend that based on this false reporting, the media has gone to the extent of demanding resignation of the Commissioner, Mumbai Police quite oblivious of the observations made by the Supreme Court. This was nothing but the TV channels trying to influence the course of investigation being undertaken by the central agencies. It is contended that such media trial, which has resulted into parallel investigation being undertaken by private individuals, amounts to gross violation of the rights of the accused and the witnesses guaranteed under Articles 14 and 21 of the Constitution, as right to a fair trial including a fair investigation is a Fundamental Right of an accused in the Indian criminal justice system.

(b). The petitioners say that media in our country enjoys extreme privileges; however, the same cannot be allowed to undermine the authoritative investigation being undertaken by the authorities. They contend that the right to freedom of speech and expression guaranteed under Article 19(1)(a) is not absolute and as Article 19(2) ordains, can be restricted by law, *inter-alia*, in the interests of public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. They say that oblivious to this clear position in law, one of the prominent media house/ t.v. channel has claimed that - "...... *It is in the pursuit of the truth the network has carried out deep investigations, confronted key witnesses, accessed crucial primary testimonies, stung multiple key individuals and exposed the botch-ups of the Mumbai police and will continue to do so until the truth emerges, in its entirety*." It is submitted that such an action on the part of the electronic media is brazenly illegal, apart from being grossly

unfair and an irresponsible conduct on the part of the media house.

(c). Following are the prayers as made by the petitioners:-

> “a) Issue a writ of mandamus or any other writ, order or direction upon respondent nos.1 to 4 thereby issuing instructions/guidelines to be followed by the Media Houses be it print, electronic, radio, internet or television or any other form of Media, to refrain from publishing and circulating any false, derogatory and scandalous comments, social media posts, news stories etc. which may jeopardize the reputation of the Police and may cause the public to lose faith in the system and in Police administration or hinder the cause of administration of justice; and
>
> b) Issue a writ of mandamus directing the Respondent no. 2, 3 and 4 to ensure that the reporting of crimes and criminal investigations are carried out in a balanced, ethical, unbiased and objective manner and not to turn such reporting into media trial and a vilification campaign against the police, investigators and others and direct Respondent-Union of India to ensure the compliance of the Codes of respondent nos. 2, 3 and 4;
>
> c) Issue a writ of mandamus or any other writ, order or direction upon respondent nos. 1 to 4 issuing instructions/guidelines to the Media Houses be it print, electronic, radio, internet or television or any other form of Media, to refrain from conducting a “Media Trial” of any case which may cause serious prejudice inter alia to the proper functioning of the Investigating agency; and
>
> d) Issue a writ of mandamus or any other writ, order or direction upon respondent nos. 1 to 4 issuing instructions/guidelines to the Media Houses be it print, electronic, radio, internet or television or any other form of Media, to indulge in ethical reporting and responsible journalism rather than ‘sensationalism’ so as to increase its Total Rating Point (“TRP”); and
>
> e) Issue a writ of mandamus or any other writ, order or direction upon respondent nos. 1

to 4 and the necessary authorities for ensuring that the Media Houses do not violate the crime reporting ethics and to take appropriate actions if and when the Media indulges in acts that may be contrary to and violate the prayers made hereinabove; and

f) Issue a writ of mandamus or any other writ, order or direction upon respondent nos. 1 to 4 for laying down guidelines regarding the mode and manner of reporting/covering any pending investigation/cases including judicial proceedings particularly applicable in the case of death of Sushant Singh Rajput; and

g) Issue a writ of mandamus or any other writ, order or direction upon respondent nos. 1 to 4 and its members/staff/officers and employees, to refrain from publishing and/or broadcasting any derogatory comments, social media posts, news stories etc. aimed at undermining the reputation of the Mumbai Police and interfering with the administration of justice, and further restrain the Media Trial in connection with the death of Sushant Singh Rajput, be it print, electronic, radio, internet or television or any other form of Media."

IV. Public Interest Litigation (L) No. 3145 of 2020 (In Pursuit of Justice vs. Union of India)

(a). The petitioner, a society, has filed this writ petition dated September 3, 2020 through its authorized signatory advocate Ms. Shirin Merchant. The respondents in this petition are the UOI, the PCI and the Law Commission of India. This petition raising similar concerns as in the earlier two petitions, however, raises an additional issue on the interpretation of the provisions of section 3(2) of the CoC Act. It is contended that this provision is required to be read down to mean that the offending publication be held to be contemptuous as soon as an FIR is registered, for the reason that such publication is prejudicial to the procedure and the imminent criminal proceedings contemplated under the process of law which would ultimately culminate into a fair trial.

(b). The petitioners say that the filing of this Public Interest

Petition was triggered because of the continuous reporting on the death of the actor by the electronic media. According to the petitioner, from the nature of the reportage, the sanctity of the State police machinery has been demolished and the public opinion was sought to be manipulated, against the 'State law and order' machinery. This, according to the petitioner, has led to an inevitable ramification that the faith and confidence of the citizens in the police machinery has been seriously impaired by reckless media trial undertaken by the media channels. The petitioner says that this has led to a general belief that the State machinery cannot be trusted and has completely shattered the credence and reliability the citizens are entitled to have in the local police machinery.

(c). It is contended that the constitutional protection under Article 21 protecting the right of an accused of a fair trial is in the nature of *a valid restriction operating on the right of free speech under Article 19(1)(a) by the very force of the former being a constitutional provision*. According to the petitioner, the media has publicly tried and convicted the alleged accused and has even proceeded to attribute a number of acts to the accused person(s) portraying the accused as a murderer, abettor, a drug addict, etc. The media has in fact declared that number of persons are involved in the suicide of the actor, alleging it to be murder case, *inter-alia*, on the basis of - (i) statement to the CBI of a potential witness (a house manager) has been put up in the media; (ii) Whatsapp chats between potential witnesses have been broadcast; (iii) death, rape, etc. threats to the alleged accused; (iv) reaction of investigation agency to the statements given by certain accused has been published in the media; (v) statements of hospital staff members reported/published in the media; (vi) the forensic specialist who carried out the autopsy on the body of the actor has also been interviewed on a national TV channel; (vii) statements of investigating officers, and purported statements of certain witnesses have also been commented upon; (viii) IPS officers of Bihar Police have also appeared in TV debates

on the said issue; (ix) private chats of the alleged accused were also published in media; and (x) abusing and tarnishing the reputation as well as calling into question, the character of the accused/suspect for not answering the questions posed by the media.

(d). It is contended that such acts on the part of the electronic media would amount to a relentless intrusion in the private lives of the victims and the witnesses. In addition to this, the reputation of the State police was tarnished portraying it to be incompetent and complacent in screening the concerned accused. Also, the potential witnesses have been exposed by identifying them, interviewing them and by bringing them in the public eye, asking them to make statements on TV channels and terming their statements as confessions. This crosses all boundaries of legitimacy, in as much as, according to the petitioner these potential witnesses eventually when required by law to depose on oath before a Court of competent jurisdiction, would be faced with a dilemma of sticking to their unverified public statements given to a reporter. This has brought about a situation that the witnesses would be in a peril of coming under pressure from both the accused as well as the investigating agency.

(e). Referring to the 180th report of the Law Commission of India, the petitioner has contended that the said report has extensively dealt with the doctrine of media trial, and thereafter the Law Commission in its comprehensive 200th report on the subject, has also dealt with the CoC Act to recommend that such media trial would also postulate a criminal contempt when such acts of any media interfere or obstruct the administration of justice in any manner.

(f). The petitioners have referred to the decision of the Supreme Court in **Saibal Kumar Gupta vs. B.K. Sen,** reported in AIR 1961 SC 633, in the context of parallel investigation at the hands of the media to contend that the Supreme Court held that “it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime and to publish the results of such investigation, and that such

trial by media must be prevented as it tends to adversely interfere with the course of justice".

(g). It is further contended that the issue of trial by media or prejudice to a fair trial on account of pre-trial publication is directly linked with Article 19(1)(a) of the Constitution as well as section 3 of the CoC Act. The issue is about balancing the freedom of speech and expression on the one hand and undue interference with administration of justice within the framework of the CoC Act as permitted by Article 19(2) on the other.

(h). The petitioners next contend that the provisions of section 3 of the CoC Act restricts the freedom of speech and expression including the freedom of the media to report, if any such publication obstructs the course of justice in connection with any civil or criminal proceeding which is pending. According to the petitioner, section 3(1) of the CoC Act affords protection, to the person, if the person who publishes has no reasonable grounds to believe that a proceeding is pending before a court of law. The petitioner says that as per the present law, the starting point of pendency of criminal proceedings is from the stage when the court actually gets involved on submission of a final report by the investigating agency under section 173 of the Cr.P.C. thereby meaning that any publication prior to filing of such report is not contempt.

(i). The contention is that looking at the current scenario, wherein the media has indulged in holding a trial and has attempted to convict suspects/accused and in the process has brought in the public domain statements of witnesses, confessions, details of forensic reports, and all such things which would ordinarily be a matter forming part of the investigation report to be dealt with by the Court while framing charges, such reportage have seriously violated the constitutional rights of an accused to a fair trial. Reference has been made to the comment of the Law Commission that while the law has given immunity under section 3(2) of the CoC Act, if the publication is one which admittedly

obstructs the course of justice and only because such a publication has been made before the filing of charge-sheet, whether such procedure is just, fair, and equitable? It is, thus, contended that if such offending publication is made in respect of a person against whom an FIR is filed but a challan has not yet been filed, nor has such a person been arrested, the procedure as one strictly provided by section 3(2) of the CoC Act may not be a procedure which is fair, just and equitable and in fact would be arbitrary and may not stand the test of Article 14. According to the petitioner, it has become necessary and in the interest of justice, that the said provision in the CoC Act is required be read down to deem that such publication be held to be contemptuous as soon as the FIR is registered against a person, since the persistent salacious publication may be prejudicial to the procedure and proceedings contemplated under the 'due process of law' terminating into a fair trial.

(j). In support of the contention, the petitioner has referred to the decision of the Supreme Court in **A.K. Gopalan vs. Noordeen,** reported in (1969) 2 SCC 734, to contend that the Supreme Court has held that *"a contempt of court may be committed by a person when he knows or has good reason to believe that criminal proceedings are imminent"*. According to the petitioner, the test is whether the circumstances in which the alleged contemnor makes a statement are such that a person of ordinary prudence would be of opinion that criminal proceedings would soon be launched.

(k). The petitioner has next referred to the decision of Supreme Court in **Justice K.S. Puttaswamy vs. Union of India,** reported in (2018) 1 SCC 809, to contend that it is law declared that the right to privacy is an intrinsic part of right to life and personal liberty under Article 21 and forms part of the freedoms guaranteed under Part III of the Constitution. It is, thus, contended that the relentless intrusion of the media in the personal and private life of the accused/suspect and the family and friends of such person amounts to violation of such liberty.

(l). The petitioner also refers to the decision of the Supreme Court in **Subramaniam Swamy vs. Union of India,** reported in (2015) 13 SCC 353, to contend that the Supreme Court has analyzed the meaning of the terms “defamation” and “reputation” and observed that the concept of reputation is included in the protection of ‘dignity’ which is a part of the constitutional protection provided under the right to life. The Court has ratified that restrictions on such freedom do not have an undue chilling effect on the right and hence, the right to freedom of speech does not override the right to reputation.

(m). On the above contentions, the following prayers are made by the petitioner:

> “A. Issue an appropriate order or direction in the like nature to the Respondent No.1 Ministry to issue appropriate orders/notification cautioning the media outlets and print media houses from publication/broadcasting of information which is likely obstruct the administration of justice, including the process of investigation;
> B. Declare the scope and ambit of section 3 (2) of the Contempt of Courts Act, 1971 to include the starting point of the pending proceedings to be from registration of FIR, for the purpose of invoking the said Act, in cases of publications which obstructs or tends to obstruct the administration of justice;
> C. Direct the Respondent No. 1 to restrain publication/broadcasting of information relating to the ongoing investigation in respect of the SSR case forthwith, during the pendency of the present petition.”

V . Criminal Public Interest Litigation no.2339 of 2020 (Preranaa Virendrakumar Arora vs. Press Council of India)

(a). The prayer in this writ petition dated September 10, 2020 is somewhat similar to the prayers as made in the public interest litigation filed by the petitioner “In Pursuit of Justice”. The petitioner has prayed for a direction to be issued to define and narrow the scope of the term ‘reasonable belief’ appearing in section 3(1) of the CoC Act. A further relief is prayed, namely, that the term ‘reasonable belief’ appearing in

section 3(1) of the CoC Act be ordered to be deleted being contrary to the object of such enactment, and that the said term be deleted being vague, ambiguous, counter-productive and violative of Article 21 of Constitution of India. There is a prayer that a writ be issued so that the terms 'arrest' and 'investigation' are included in the term 'pending' appearing in section 3 of the CoC Act, as also to include 'commencement of inquiry or investigation' and 'arrest of an individual' under the meaning of the term 'pending' appearing in such section of the said enactment. There is a further prayer that a direction be issued to constitute a Committee of 3 members headed by a retired High Court Judge to consider and file a report as to whether any law and/or statute can be brought to regulate the publication and/or reporting by the media in newsprint, online platforms or any other platform.

Factual matrix:-

5. The genesis giving rise to these Public Interest Litigation is common. It arises from the unnatural death of the actor on June 14, 2020 at Mumbai. The petitioners state that on June 18, 2020, Mumbai Police registered an Accidental Death Report (ADR) and commenced inquiry under section 174 of the Cr.P.C. to ascertain the cause of death and also to determine whether the death was the result of such criminal act committed by some other persons. The final postmortem report signed by a team of five doctors was received by Mumbai Police on June 24, 2020. According to the postmortem report, "*No struggle marks or external injuries*" were found on the actor's body. This report also mentioned the cause of death as "asphyxia due to hanging". It is stated that during the course of inquiry during June to August 2020, statements of 56 persons were recorded and other evidence such as the postmortem report, forensic report, etc. were collected.

6. On June 20, 2020, a complaint was lodged against one of the prominent news channels before the Secretary, Ministry of Information and Broadcasting, seeking action for insensitive and

disparaging comments against the Indian Army and the coverage of death of the actor, stated to be in defiance with the Programme Code. It is said that no action was taken against the media channel on the petitioner's complaint.

7. It is stated that the father of the actor who is based in Patna, Bihar filed a complaint registered as FIR No.214 of 2020 dated July 25, 2020 at Rajeev Nagar Police Station, Patna under sections 341, 342, 380, 406, 420, 306, 506 and 120B of the Indian Penal Code (hereafter, 'the IPC', for short) against the actress, although he had not attempted to file a FIR in Mumbai.

8. The actress filed a petition before the Supreme Court [Transfer Petition (Criminal) No.225 of 2020] seeking transfer of FIR No.241 of 2020 filed by the father of the actor at Patna to Mumbai Police. The actress also relied on her tweet seeking CBI investigation in the matter.

9. On August 5, 2020 at the hearing of the transfer petition before the Supreme Court, the Central Government informed the Supreme Court that it had handed over the probe into the case of death of the actor to the CBI. The CBI, accordingly, lodged FIR on August 6, 2020.

10. In the transfer petition, certain important questions of law in regard to the power of the Supreme Court to transfer investigation under section 406 of the Cr.P.C., whether the proceedings under section 174 of the Cr.P.C. conducted by Mumbai Police to inquire into the unnatural death of the actor could be termed as investigation and whether the jurisdiction of Patna Police to register an FIR and commence investigation into the death that took place in Mumbai, fell for consideration.

11. The Supreme Court decided the transfer petition by a

judgment and order dated August 19, 2020. In paragraph 30 of the decision, the Court held that the Bihar Government was competent to give consent for entrustment of investigation to the CBI and as such the ongoing investigation by the CBI is held to be lawful. It is necessary to note the relevant observations of the Supreme Court:-

> "39. As noted earlier, as because both states are making acrimonious allegations of political interference against each other, the legitimacy of the investigation has come under a cloud. Accusing fingers are being pointed and people have taken the liberty to put out their own conjectures and theories. Such comments, responsible to or otherwise, have led speculative public discourse which have hogged media limelight. These developments unfortunately have the propensity to delay and misdirect the investigation. In such situation, there is reasonable apprehension of truth being a casualty and justice becoming a victim.
>
> 40. The actor *** was a talented actor in the Mumbai film world and died well before his full potential could be realised. His family, friends and admirers are keenly waiting the outcome of the investigation so that all the speculations floating around can be put to rest. Therefore a fair, competent and impartial investigation is the need of the hour. The expected outcome then would be, a measure of justice for the Complainant, who lost his only son. For the petitioner too, it will be the desired justice as she herself called for a CBI investigation. The dissemination of the real facts through unbiased investigation would certainly result in justice for the innocents, who might be the target of vilification campaign. Equally importantly, when integrity and credibility of the investigation is discernible, the trust, faith and confidence of the common man in the judicial process will resonate. When truth meets sunshine, justice

> will not prevail on the living alone but after Life's fitful fever, now the departed will also sleep well. Satyameva Jayate.
>
> 41. In such backdrop, to ensure public confidence in the investigation and to do complete justice in the matter, this Court considers it appropriate to invoke the powers conferred by Article 142 of the Constitution. As a Court exercising lawful jurisdiction for the assigned roster, no impediment is seen for exercise of plenary power in the present matter. Therefore while according approval for the ongoing CBI investigation, if any other case is registered on the death of the actor *** and the surrounding circumstances of his unnatural death, the CBI is directed to investigate the new case as well. It is ordered accordingly."

The petitioners say that from June 14, 2020 several prominent media channels have been literally conducting 'media trials' and 'parallel investigation' by conducting and broadcasting debates, rendering opinions, exposing the material witnesses, examining and cross-examining the witnesses, chasing the officials of CBI who were investigating the case. The petitioners say that all such telecast and broadcast are available in public domain. It is said that the prominent news channels in their attempt to sensationalize the issues, have gone as far as displaying the CDR records which is a vital piece of evidence, thereby resulting in the several threat calls and messages sent to the alleged accused. As per the media reports in public domain, being the day when the accused in the FIR was summoned by the Enforcement Directorate, the news channel uploaded a video in which the actor's contact details were clearly shown. The petitioners say that to scandalize and sensationalize the death of the actor, irresponsible reporting to implicate one of the prominent ministers of the State of Maharashtra and have been making derogatory, false and distasteful remarks against several ministers. Several news channels have proceeded to convict the

accused named in the FIR and also were making insinuations against high-ranking officers of Mumbai Police and the Ministers of the State without even completion of the investigation in the matter. The news anchors and reporters were examining and cross-examining all the proposed witnesses exposing the probable evidence to the public which could be examined only by the investigating agency or by the competent courts during the course of trial.

12. On August 28, 2020, the PCI also issued a tweet through its official twitter account that the coverage of the alleged suicide of the actor by many media outlets are in contravention of the norms of journalistic conduct framed by it and it issued an advisory reminding the media to follow the norms of journalistic conduct.

13. The petitioners say that media trials during the pre-trial investigation stage by reportage and exposure of key witnesses and evidence, clearly undermines the concept of free and fair trial. The freedom of the media, especially of the TV channels, cannot be allowed to super stretch to a point where, by outpouring reprobate information, begins to clog and cloud the pellucid comprehension of 'facts/news' in the people's minds and impinges upon free and fair investigation. The actions of the media in sensationalizing the actor's death is not only adversely impacting the ongoing investigation by the CBI, but was also in the teeth of the 'doctrine of postponement' propounded by a Constitution Bench of the Supreme Court in the case of **Sahara India Real Estate Corporation Ltd vs SEBI,** reported in (2012) 10 SCC 603**.**

14. The petitioners say that the fundamental or moot question of law which arises for consideration of this Court would be as to whether the media under the garb of reporting news, can serve their own opinions as facts/news. The petitioners contend that the basic

function of media is to report news and facts as they come and the formulation of a new opinion on the same is within the complete and exclusive domain of the people. However, it is observed that media works to create or induce opinions by narrating and reporting opinionated and tailored facts as news, which is beyond the scope, power and privilege accorded to the proverbial fourth pillar and a blatant abuse and misuse thereof.

15. The petitioners contend that such media coverage not only flouts and violates the mandate of the CTVN Act and the Rules thereunder, but it is also in contravention of the Code of Ethics and Broadcasting Standards Regulations. The further contention is that majority of the media of this country is Corporate Media, not owned and/or controlled by the State/Government but by business houses which thrive upon and function upon the TRP-driven and ratings and viewership oriented “business models” to generate profits for themselves by attracting advertisements, sponsorships, investments, etc.

16. The petitioners assert that media is plagued with the affliction of disproportionate reporting, which may be seen from the undue coverage given to inconsequential and mindless matters, unrelated to the greater good of the people of the country, as opposed to issues of national and international importance which the people are grappling with such as the COVID 19 crisis, mass joblessness, economic downfall, starvation, medical and healthcare structural problems, farmers issues, domestic violence, etc. These are the issues which hardly ever get any substantial significant or considerable coverage in comparison to the TV time given to the exaggerated and sensationalised non-issues.

17. The petitioners contend that it is definitely not in the domain of the media to prove someone guilty, and there is no question of

guilt or innocence till the investigation and trial by competent authorities is complete; however, it is apparent that the media is hellbent upon painting the accused persons named in the FIR as guilty and culpable, through relentless repetitive and reiterative rhetoric and emphasis. In this context, the petitioners refer to the decision of the Supreme Court in **Sidhartha Vashist @ Manu Sharma vs. State (NCT of Delhi),** reported in (2010) 6 SCC 1, wherein the Supreme Court has commented on the danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom, and that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. The Supreme Court also observed that it will amount to a travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial. It is held that the freedom of speech protected under Article 19(1)(a) of the Constitution has to be carefully and cautiously used, so as to avoid interference with the administration of justice and leading to undesirable results in matters *sub judice* before the courts.

18. The petitioners refer to the decision of the Supreme Court in **R.K. Anand vs. Delhi High Court,** reported in (2009) 8 SCC 106, where the Supreme Court observed that 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 of the court. It was observed that the media should perform the acts of journalism and not as a special agency for the court. It was also observed that the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law is most unfair.

19. The petitioners referring to the decision of the Supreme Court in **M.P Lohia vs. State of West Bengal,** reported in (2005) 2 SCC 686, contend that the Court reiterated its earlier view that freedom of

speech and expression sometimes may amount to interference with the administration of justice, and that articles appearing in the media that could be prejudicial should not be permitted.

20. The following common contentions are raised by the petitioners against the electronic media:-

(i) The Television Channels are trying to influence the course of investigation being undertaken by the Central Agencies through their biased reporting and false propaganda, thereby creating an air of suspicion in the minds of the general public.

(ii) The anchors of some TV channels are virtually running a vituperative daily campaign against Mumbai Police and its Commissioner and other officers by attacking them by name in the most unbecoming manner which would erode public confidence in the institution of the police machinery.

(iii) Adverse media campaign against Mumbai Police is designed with sinister motives and reporting is being done recklessly with a preconceived notion coupled with consistent and deliberate failure to report fully and correctly, and is systematically aimed to tarnish the fair image of Mumbai Police. It is also interfering in the course of investigation by the police, CBI and other agencies, being the agencies who have been conferred authority in law to investigate any alleged crime. Both, the electronic and the print media, have flagrantly violated the Codes issued by the print and electronic news watchdogs and thus are turning the crime reporting into media trial by assuming the role of prosecutor,

jury and the judge.

(iv) It is submitted that the freedom of press must be safeguarded at all costs and at the same time it should not be allowed to be used to virtually attempt to overthrow the authority of the State. It is not permissible to have medial trial resulting into parallel investigation being done by several private individuals by expressing opinion, exposing material witnesses as well as examining of witnesses and divulging crucial pieces of evidence before the investigating agency could have a chance to examine them, seek corroboration and ascertain correCTVN ess or otherwise of the same. This would amount to serious impediment in the investigation being carried out by the investigating agency. The media reporting should be fair and responsible, with necessary care and caution. It shall not fall foul of section 124A of the IPC and/or section 3 of the Police (Incitement of Disaffection) Act, 1922 (hereafter“the 1922 Act”, for short) and shall not be with an intent to spread and induce such disaffection, lack of faith and hatred against the State and its police department.

(v) The media reporting is required to be responsible keeping in mind the statutory restrictions placed vide section 3 of the Police-Forces (Restrictions of Rights) Act, 1966, which restricts the right of the police force in respect of freedom of speech. The freedom of right of speech and expression of citizens is curtailed to a limited extent in so far as it is used to cause disaffection in reference not to all persons as in the case of section 124-A of the IPC but to a

limited and special class of persons, namely, the members of the police force. To support this proposition, reliance is placed on the decision of the Division Bench of this Court in ***Indulal K.Yagnik* vs. *State,*** *reported in 1960 Cri. LJ 1192***.**

(vi) Section 3 of the 1922 Act is more or less similarly worded as section 124-A of the IPC. The only difference is that section 124-A of the IPC speaks of bringing disaffection in general towards the Government established by law whereas section 3 speaks of causing disaffection towards the Government amongst the members of the police force. Thus, for the purpose of invoking the said section, the contents of the articles should be such so as to cause disaffection amongst the members of the police force towards the Government established by law in India or the same should have the effect of inducing any member of the police force to withhold his service or to commit a breach of discipline. Even the explanation appended to the said section is more or less *pari materia* with the explanation appended to section 124-A of the IPC. There is hence a statutory restraint on any such kind of media trial and publicly ridiculing statements conducing to public mischief, which falls foul of section 505 of the IPC. None of the acts of media houses can interfere with the statutory functions of any investigating authorities responsible for investigation into any crime. The electronic media is not permitted to use objectionable gestures coupled with highly derogatory words to assault at and to lower the dignity of public servants, which

may tend to deter them from discharge of their duty responsibly.

(vii) As per section 2 of the CoC Act, a criminal contempt is divided into three parts: (i) scandalising, (ii) prejudicing or interfering with the judicial proceeding, and (iii) interference or obstruction in the administration of justice. It is well settled that prejudicial publication affects the people at large as well as the mind of the judges and as a result affects the rights of the accused thereby denying fair trial, which would amount to contempt of Court. The petitioners in support of this submission rely on the decision of the Supreme Court in **Saibal Kumar Gupta & Ors.** *(supra)***.**

(viii) The media acts as an important pillar of democracy and the news, reporting, comments, etc. ought to be free and fair, beyond the influence of corporate or political interests. Media personnel should be subjected to responsible and ethical reporting, and shall not resort to derogatory, false and distasteful remarks by spreading viral theme of sensationalism to make the public lose its faith in the system and the police. Serious allegations have been leveled by the media on high ranking officers of Mumbai Police in extreme distaste without any evidence which would result in influencing the investigating officers, who sometimes succumb to the pressure created by popular opinion, which is the result of malicious campaign.

(ix) The effect of media trial is that if a judgment is delivered against the verdict already passed by the media, then questions relating to impartiality, bias

or possibility of corruption would be raised, which may seriously prejudice the administration of the criminal law process. This is a fit case to apply the doctrine of postponement as laid down in the decision of the Supreme Court in the case **Sahara India Real Estate Corp.Ltd. (***supra***).** It is contended that the effect of media trial was witnessed on many occasions earlier wherein free and fair trial/investigation has suffered due to sensational reporting and media trial conducted of the case. Some instances relied are in the cases of **K.M. Nanavati, Jessica Lal, Priyadarshini Mattoo, Arushi Talwar, Sheena Bora** etc.

(x) The Supreme Court of India on various occasions dwelled upon the concept of drawing a line between free media and fair trial. In this context a reference is made to the decision in **State of Maharashtra vs. Rajendra Jawanmal Gandhi,** reported in (1997) 8 SCC 386, and a recent decision of the Division Bench of this Court (Aurangabad Bench) in the case **Konan Kodio Ganstone & Ors. vs. State of Maharashtra** [Criminal Writ Petition No.548 of 2020]. The credibility of media is based on the unbiased and objective reporting, and responsibility for the same needs to be fixed so as to ensure that administration of justice is not undermined.

(xi) Also, the right to be presumed innocent until proven guilty is one of the most important concept of criminal justice system in India. The right is grossly violated by way of the media conducting its own trial and creating an atmosphere of prejudice. In **Zahira Habibullah Sheikh vs. State of Gujarat,** reported

in (2005) 2 SCC 75, the Supreme Court explained that a fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. It also means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.

(xii)The reporting of the death of the actor by the media is also violative of the Press Council Act, 1978 (hereafter "the PCI Act", for short), the CTVN Act along with the Code of Ethics and Broadcasting Standards Regulations. It is contended that it is eminently desirable, being the need of the hour, that this Court may frame necessary and appropriate guidelines laying down the mode and manner of reporting/covering any pending investigation/case including Court proceedings so as to balance free speech with the valuable rights of an accused to fair and impartial investigation by the police as well as his right to a fair trial both falling under Articles 14, 21 and 39A of the Constitution of India.

(xiii) Even internationally, a free and fair trial is an important concept which is chartered under the UN Basic Principles on the Independence of the Judiciary under Article 6 which states that the judiciary is entitled to and required *"to ensure that judicial proceedings were conducted fairly and the right of the parties are respected."* A reference is made to Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) which provides that *"All persons shall be equal before the courts and tribunals."*It also provides that in the determination

of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interests of the private lives of the parties so require, or to the extent necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice.

(xiv) Further, even the European Convention on Human Rights (ECHR) under Article 10 speaks about right to freedom of expression including freedom to hold opinions and to receive and impart information and ideas but restricts the same by providing that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(xv) Internationally the problem of media trial is widely acknowledged as seen from number of foreign decisions. A reference is made to the decision of the U.S. Supreme Court in case of **Billie Sol Estes vs.**

Texas, reported in 381 US 532 (1965) to show that a rule is laid down to the effect that televising of notorious criminal trials is prohibited. Also, a reference is made to the decision of the House of Lords in England in the case of **Attorney General vs. British Broadcasting Corporation (BBC),** reported in [1981] AC 303**.** It is submitted that the British Courts have always favoured the rights of an accused over the freedom of the press. Reliance is placed on the decision in **R. vs. Lord Chancellor,** reported in (2017) UKSC 51 to contend that the English Courts have recognized the potential threat to justice posed by unrestrained publicity.

(xvi) The basic function of the media is to report news and facts as they come, and the formulation of any opinion on the same is within the complete and exclusive dominion of the people. However, media as has been well observed, works to create or induce opinions, by narrating and reporting opinionated and tailored facts in news, which is beyond the scope, power and privilege accorded to the proverbial fourth-pillar and a blatant abuse and misuse of the right, and the same is impermissible and against all the canons of justice in a democracy. It is submitted that the media has already publicly tried and convicted the alleged accused and even proceeded to attribute a number of acts to the accused person attributing qualities such as murderer, abettor, addict, gold-digger, fraudster and such unproved attributes.

(xvii) The Law Commission has dealt with the doctrine of media trial and has submitted its comprehensive

200th Report on the subject, in which the Law Commission has considered Universal Declaration of Human Rights concerning the rights of suspects and accused, the International Covenant on Civil and Political Rights referring to Article 14(2) and (3) of the European Convention for the protection of human rights and fundamental freedoms, and the Constitution of India. Referring to Article 20 of the Constitution, the Law Commission has specifically dealt with the issue of rights of the accused persons vis-a-vis the right to life and liberty referring to the CoC Act, which also postulates a criminal contempt in case of any act including any publication interfering with or obstructing the administration of justice in any manner.

(xviii) In the current scenario, where the media has actually tried and convicted the suspects/accused and have brought in the public domain statements of witnesses, confessions, details of forensic reports, and all such things which would ordinarily be a matter of investigation and trial, to be dealt with by the Court while framing charges, the constitutional right of a fair trial has been seriously jeopardised.

Case of the Respondents:

Counter Affidavit of Respondent no.1-UOI in PIL(St) 92252/2020

21. Shri.Prem Chand, Under Secretary in the Ministry of Information and Broadcasting, Government of India (hereafter "the MI&B**,** for short) has filed an affidavit titled as "Short affidavit on behalf of respondent no.1" in the PIL filed by Nilesh Navlakha and others. The preliminary contention of the deponent is of the Government upholding the freedom of press. It is stated that the PCI is a statutory autonomous

body constituted under the PCI Act to maintain and improve the standards of newspaper and news agency, that is. print media in India and also to inculcate principles of self regulation amongst the press. That in furtherance of its objectives, the PCI under section 13(2)(b) of the PCI Act has framed "Norms of Journalistic Conduct" which covers the principles and ethics regarding journalism namely accuracy and fairness, pre-publication verification, caution against defamatory writings, trial by media etc. which are required to be adhered to by the print media. It is stated that in regard to the alleged suicide by the actor, the PCI issued an advisory dated August 28, 2020 to the media to adhere to the norms framed by the PCI. Also, the PCI takes cognizance *suo-motu* or on complaints, of the contents in print media which are in violation of the 'Norms of Journalistic Conduct'. Further, as per section 14 of the PCI Act, the PCI, after holding an inquiry, may warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist, as the case may be. Hence, for any grievance relating to contents published in the print media, the person aggrieved may approach the PCI directly, in accordance with the provisions of 'Complaint Mechanism', which is available on the PCI's website.

22. In regard to electronic media, it is stated that as per existing regulatory framework, programmes telecast on private satellite TV channels are regulated in terms of the CTVN Act and the CTVN Rules framed thereunder. It is stated that all programmes telecast on TV channels are required to adhere to the "Programme Code"prescribed under the CTVN Rules. It is next contended that as part of self-regulatory mechanism, News Broadcasters Association (NBA), a representative body of news and current affairs channels has formulated Code of Ethics and Broadcasting Standards covering a wide range of principles to self-regulate news broadcasting. The Code of Ethics and Broadcasting Standards has made provisions that channels should

strive not to broadcast anything defamatory or libelous and must strive to ensure that allegations are not portrayed as fact and charges are not conveyed as an act of guilt. It is stated that NBA has set up News Broadcasting Standards Authority (hereafter "the NBSA", for short) to consider complaints against or in respect of broadcasters insofar as these relate to the content of any news and current affairs broadcast. It is stated that on August 13, 2020, the NBSA has also issued advisory wherein attention of news channels is drawn to specific guidelines covering reportage dated February 10, 2020 which deals with the manner in which media should report in case of a suicide. The affidavit further states that some complaints including the petitioners' complaint dated June 20, 2020 were received in the MI&B against telecast of news report relating to the demise of the actor by various TV channels. Some of the TV channels are members of self regulatory body namely, the NBA, and these complaints were forwarded to the NBA for further necessary action in the matter on August 10, 2020. It is stated that the NBA has also informed the MI&B that the matter is being inquired into. It is further stated that the MI&B also has an institutional mechanism to deal with the violation of the Programme Code. Further an Inter-Ministerial Committee (hereafter "the IMC", for short) has been constituted under the Chairmanship of Additional Secretary (MI&B) and comprising officers drawn from the MI&B as well as Ministries of Home Affairs, Defence, External Affairs, Law, Women & Child Development, Health & Family Welfare, Consumer Affairs, and a representative from the industry in Advertising Standards Council of India (ASCL) which may review the decision/recommendation of the NBA. The IMC functions in a recommendatory capacity. The final decision regarding penalty and its quantum is taken by the MI&B. On the prayers as made in the petition, it is stated that in regard to the content violation by the print and the electronic media, the petitioner may approach the appropriate forum as per details given in the preceding paras. It is further stated that these forums take necessary action on the

representation in accordance with the existing guidelines/rules and regulations.

Counter-affidavit filed on behalf of PCI

23. On behalf of Respondent no.2 - Press Council of India (PCI), reply affidavit of T. Gou Khanjin, Under Secretary is filed in the petition filed by Mr. Asim Suhas Sarode. The affidavit contains that the PCI is a creature of the Press Council of India Act, 1978 and serves as a watchdog of the press, for the press and by the press. It adjudicates complaint against and by the Press, inter alia, for violation of ethics and freedom of Press. In this context, a reference is made to powers conferred under Sections 13 and 14 to the PCI Act to contend that the PCI has jurisdiction over the print media only and has powers to impose such punishments of warning admonishing or censuring the news papers, news agency, the editors, or the journalist or disapprove the conduct of the editor or the journalist, as the case may be. It is contended that the PCI has framed "Norms of journalistic Conduct", wherein specific provision has been made with regard to reporting on suicide which prescribes that the newspapers and news agencies while reporting on suicide cases shall not; published stories about suicide prominently and unduly repeat such stories; used language which sensationalized or normalizes suicide, or presents it as a constructive solution to problems; explicitly described the method used; provide details about the site/location; use sensational headlines; use photographs, video footage or social media links. It is contended that besides warning admonishing and censuring the news papers, the news agency, the editors of the journalists, the PCI under Section 15 (4) is empowered to make such observations, as it may think fit in any of its decisions or reports, respecting the conduct of any authority, including Government. While exercising this power, the PCI may direct the authority or the government to launch prosecution of any person or

authority. It is stated that the PCI had received a complaint through email dated 20th June 2020 alleging the print media and digital media had created mockery on the death of the late actor. The PCI by its letter dated 24h June 2020 requested the complainant to file a specific complaint against the print media by complying with the mandatory requirements as per the Press Council of India (Procedure of Inquiry) Regulations, 1979 within three weeks from the date of receipt of such letter failing which the complaint would be dismissed. No specific complaint was filed. The complainant was also informed that the electronic media, internet, television channel, social media do not come under the jurisdiction of PCI Act.

Counter affidavit on behalf of the News Broadcasters Association

24. Ms.Annie Joseph, Secretary General of the NBA has filed an affidavit. She states that NBA comprises of several important national and regional private television news and current affairs broadcasters who are its members. It is stated that since the electronic media is a powerful medium of communication, one of the first initiatives of the NBA was to put in place a Code of Ethics and Broadcasting Standards ("Code of Ethics") to be adopted and voluntarily followed by its member broadcasters in April, 2008 so as to make this Code of Ethics effective and to enforce the same by providing to the aggrieved parties a remedy against breach by member-broadcasters. NBA also framed the News Broadcasting Standards Regulations which contain the scheme for setting up completely independent self-regulatory adjudicatory body, namely, the NBSA to ensure compliance of the Code of Ethics. The Regulations as also various guidelines/ advisories issued by it are binding on the members of the NBA.

25. Referring to the decision of the Delhi High Court in **Court on its own Motion vs. State and Ors.,** reported in 2009 Cri.L.J. 677, it

is stated that that the media being the fourth pillar of democracy, it was observed by the Court that before a cause is instituted in a court of law or is otherwise not imminent, the media has full play in the matter of investigative journalism. This is in accordance with constitutional principles of freedom of speech and expression as also in consonance with the rights and duties of media to raise issues of public concern and interest. This is also in harmony with the citizen's right to know, particularly about events relating to the investigation of the case or delay in the investigation or soft-pedalling on investigations pertaining to the matters of public concern and importance.

26. Referring to the words of Lord Shaw in the case of **Scott vs. Scott,** reported in [1913] AC 417, it is contended that publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial. The security of securities is publicity.

27. Referring to the interim order dated September 3, 2020 passed by this Court on these petitions, it is stated that already this Court has urged the broadcasters to exercise restraint in its reporting of the investigation of unnatural death of the actor which would in any manner hamper or prejudice the on-going investigation being carried out by the CBI. It is stated that the members of the NBA have abided by the said order and as far as possible tried to strike a balance between free speech and privacy of individual.

28. It is contended that for practicing self-regulation, it was imperative to lay down guidelines, procedural safeguards, define editorial principles consistent with the tenets of freedom of speech and expression as articulated in the Constitution of India; the regulatory framework; common sensibilities of television viewers and establish a

body that would act as a watchdog and a grievance redressal forum for the member broadcasters and viewers. NBSA has been set up precisely for the said reasons. NBSA deals with complaints of viewers against telecasts made by the member broadcasters of the NBA.

29. It is contended that the NBA has considered balancing the rights of viewers and its members. Referring to the decision of Supreme Court in **Destruction of Public and Private Properties vs. State of Andhra Pradesh & Ors.,** reported in (2009)5 SCC 512, at paragraphs 32 and 33, it is contended that the Court has referred to and accepted the observations made by the Committee headed by Mr. Fali Nariman, Senior Advocate.

30. The affidavit also makes a reference to the orders dated February 8, 2012 and March 7, 2012 of the Delhi High Court in the matter of **Mr. Anant Kumar Asthana & Ors. vs. Union of India & Anr.,** [WP(Civil) No.787 of 2012], to state that the NBA became a member of the Committee formed to frame guidelines to regulate media reporting and disclosure of details relating to children. These guidelines were approved by the Delhi High Court. It is thus contended that this Court may not pass any adverse order which would in any way directly or indirectly, affect or curtail the rights of the media.

Counter-affidavit on behalf of the Central Bureau of Investigation (CBI)

31. The CBI has stated that in pursuance of the notification dated August 4, 2020 issued by the Home Department, Government of Bihar under Section 6 of the Delhi Special Police Establishment Act, 1946 (hereafter "the DSPE Act", for short), the investigation of FIR No.241/2020 dated 25 July 2020 registered under sections 341, 342, 380, 406, 420, 306, 506, 120-B of the IPC at PS-Rajiv Nagar, Patna,

Bihar relating to the death of the actor was transferred for investigation to the CBI. It is stated that accordingly, a regular case vide RC 2242020S0001 dated August 6, 2020 was registered under the said provisions of the IPC against one *** (read: the actress) and others, by the CBI.

32. It is stated that the case was registered on the basis of a complaint of Shri K.K. Singh, father of the actor, wherein it was alleged that *** (read: the actress) and her family members and others hatched a conspiracy. It was alleged that the actress developed intimacy with the actor and took control of his credit cards and bank accounts and misappropriated the funds of the actor. It is stated that in furtherance of the said conspiracy, the actor was illegally restrained and confined, he was threatened that he would be implicated in the suicide case of his secretary, who died under mysterious circumstances in the intervening night of June 08/09, 2020. The complaint also alleged that the actor was made to believe that he was suffering from mental problem and was threatened that if he fails to tow their line, his medical reports would be made public, and thereby abetted him to finally commit suicide on June 14, 2020.

33. It is also stated that the Supreme Court of India by its order dated August 19, 2020 in ***** vs. The State of Bihar & Ors.,** reported in TP(Cri.) No.225 of 2020 approved the investigation being carried out by the CBI. It is stated that accordingly, the CBI continued investigation in a professional manner and utmost importance was given to confidentiality of the process and findings of the investigation.

34. It is stated that the CBI has neither done any media briefing nor is there is any leakage of information on its part; however, it cannot prevent the electronic and print media from carrying and broadcasting news items related to the case. It is contended that there is a huge

volume of user generated content in various platforms of social media and the CBI cannot restrain the media from keeping track of the movements of its team/officers/ witnesses/other persons of interest at public places until and unless it amounts to interference in the investigation, given the right to Freedom of Speech and Expression as provided in the Constitution of India.

35. It is stated that on September 3, 2020, the CBI had released a press statement in regard to its investigation being conducted in a systematic and professional way and certain media reports attributed to the CBI investigation are speculative and not based on facts. In this context it is contended that as a matter of policy, the CBI does not share details of ongoing investigation as also the CBI spokesperson or any team member has not shared any details of investigation with the media and the details being reported and attributed to the CBI are not credible. It was also requested that media may confirm details from the CBI spokesperson. It is stated that the CBI has not briefed the press after September 3, 2020.

36. It is next stated that the petitioners' claim that such reporting by the media is adversely impacting the ongoing investigation by the CBI cannot be supported and would create a negative impact of such news on the image and reputation of the CBI, in the eyes of public at large. It is stated that there is no denying the fact that such reporting results in prejudicing the public at large. It is stated that the CBI is doing its investigation in an objective manner wherein all facts and evidence related to the case are being meticulously scrutinized and without being influenced by any external factors. It is stated that the investigation carried out by the CBI is unhindered from such reporting by media. It is categorically stated that the CBI has not leaked any information related to the investigation of this case and the same has maintained highest level of confidentiality and professionalism.

Counter-affidavit on behalf of T.V. TODAY NETWORK LIMITED (INDIA TODAY GROUP)

37. At the outset it is contended that the petitioner is seeking relief of a postponement order which cannot be sought in a Public Interest petition as such relief can be sought by a person who is himself aggrieved as held by the Supreme Court in **Sahara India Real Estate Corporation Limited** (supra).

38. It is contended that the actor's case is not *sub-judice* and this would be relevant in the context of sub-section 3(2) of the CoC. No chargesheet has been filed by the investigating authority nor any Court has issued a summons/warrant against the accused. Hence no reporting on the said case can constitute contempt of court. The legal position in India is unlike the position in England wherein a criminal proceeding is considered to be "active" or *sub-judice* when any "initial step" is taken in the case including arrest without warrant. However, the CoC Act was enacted upon acceptance of the recommendations of the M.P. Bhargava Committee (i.e. Joint Parliamentary Committee, which submitted its report on February 23, 1970). The M.P. Bhargava Committee has subsequently opined that the criminal case should only be considered to be pending "when the case actually comes before the court and it becomes seized of the matter."

39. Reference is made to the 200th Report of the Law Commission of India which recommended that the CoC Act be amended in order to bring it in line with the Contempt of Court Act, 1981 in England. The said recommendations are yet to be accepted by the Parliament. Consequently the actor's case cannot be considered to be *sub-judice* as it stands presently.

40. Reference is made to the observations as made in paragraphs 35 to 36 and 46 to 47 in the decision rendered by the Supreme Court in **Sahara India Real Estate Corporation Limited** (supra), to contend that a postponement order, in some cases can be issued in order to prevent contempt of Court; however, there is no question of any contempt of Court in the case of the actor considering the observations of the Supreme Court, as also that this is not the case which is *sub- judice* or pending in any criminal court. Reference is also made to the decision in **Reliance Petrochemicals vs. Proprietor of Indian Express Newspapers,** reported in (1988) 4 SCC 592 wherein the Supreme Court has held that, under the U.S Constitution the test of "present and imminent danger" is applied before issuing any gag order. Hence, when there is no imminent danger to the administration of justice, the case being not *sub-judice*, there cannot be any gag order on the media. Even in the case of **Asaram Bapu vs. Union of India,** reported in (2013)10 SCC 37, the Supreme Court declined the request to impose gag order on the media. The contention that there is no question of any contempt being committed by the media channels is further sought to be canvassed by referring to some English judgments. It is contended that the Supreme Court in **Rajendra Gandhi** (supra)**,** has held that although a trial by media is anti-thesis to the rule of law, the onus is on the Judge to insulate himself from a media trial. It was observed that "a Judge has to guard himself against any such pressure and he has to be to guided strictly by rules of law."

41. It is contended that no general guidelines can be laid down for preventing a media trial. This contention is supported by referring to the decision of the Supreme Court in **R.K. Anand** (supra) where it is held that no general guidelines can be laid down for prevention of a media trial and that norms must come from within the journalistic community. Reference is made to the observations in paragraph 330 where Their Lordships observed as under;

> "330. It is not our intent here to lay down any reformist agenda for the media. Any attempt to control and regulate the media from outside is likely to cause more harm than good. The norms to regulate the media and to raise its professional standards must come from inside."

42. It is contended that the petitioners have made vague allegations and they have not alleged any specific wrong doing on the part of the answering respondent. No particulars of any such objectionable reporting are set out in the petition which would have the tendency to interfere with the administration of justice. It is contended that the petition alleges some media organizations having implicated prominent personalities. If this be so, considering the law laid down by the Supreme Court in **R. Rajgopal vs. State of T.N.**, reported in (1994) 6 SCC 632, there cannot be any restraint on any alleged defamatory broadcast by the Press. It would be open for the person who is aggrieved to file criminal case for defamation. It is laid down by the Supreme Court that a statement against public official such as a Minister can only be considered as defamatory if it is made "with reckless disregard for truth." This is a question which would require a trial and cannot be determined in a Public Interest Litigation.

43. Referring to the decision in **Shreya Singhal vs. Union of India**, reported in (2015) 5 SCC 1, it is contended that according to the Supreme Court there is distinction between "discussion" or "advocacy" of view point and "incitement". The Court held that it is only when discussion or advocacy reaches the level of incitement that Article 19(2) is attracted. If discussion on television news channels of the answering respondent amounts to discussion/advocacy of a viewpoint, it is not incitement.

44. A reference is made to the decision in **Bilal Ahmed Kaloo vs. State of A.P.**, reported in (1997) 7 SCC 431 to contend that the

Supreme Court has held that far more serious allegations levelled against the Indian Army in Kashmir do not fall foul of section 153(A) of the IPC.

45. In regard to the stand of this T.V. channel, it is stated that India Today group originally started its journalistic activities with publication of a magazine “India Today” way back in December 1975. It is stated that electronic media came up as an additional way for reaching out to the people with news and presentation of diverse views; hence, the India Today Group entered the field of electronic media. The India Today Group publishes magazine such as India Today, India Today Hindi, Business Today besides the Indian editions of leading international titles like Cosmopolitan, Harper’s Bazaar and Reader’s Digest and all these magazines command a leadership status in print media. In electronic media, the India Today Group has leading 24 x 7 news channels beginning with Aaj Tak which is a leading Hindi news channel for the past two decades followed by India Today which is a leading English channel and also two other Hindi news channels, i.e., Tez and Aaj Tak HD and 3 radio channels in Delhi, Mumbai and Kolkata. Both Aaj Tak and India Today created history in channels having positive impact on public opinion. The whole object of this news channels has been to provoke thoughts, discussions and debates rather than present any one-sided story. Practice of fair reporting by these channels has earned the group reputation in the field of journalism throughout India and overseas and also amongst its peers. All reporting even on the concerns as raised by the petitioners, as far as this respondent is concerned, are made in good faith and also are expression of free and frank view over a topic of debate at national level. Issue which is raised by the petitioner is covered by plethora of judgments and hence no interference is called for in regard to the prayers as made in the petition.

46. It is contended that in any case the petitioners have no

locus standi to agitate the cause of any private person or cause of any investigating agency as an efficacious remedy is available to the citizens against the concerned media house. An omnibus order for gagging the media would cause harm to public interest rather than serving any public interest. The provisions of the CTVN Act and the Rules framed thereunder provide for sufficient remedy to the aggrieved persons.

47. It is next contended that Article 19 of the Universal Declaration of Human Rights, as also Article 19 on Civil Political Rights duly recognized the freedom of press which is an integral part of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. Referring to the decision of the Supreme Court in **Indian Express Newspapers (Bombay) Private Limited and Others vs. Union of India**, reported in AIR 1986 SC 515, it is contended that the "anticipated harm" on the part of the petitioners ought not to be allowed as a shield to any authority to suppress freedom of press. It is next contended that the apprehension of the petitioners is quite remote and conjectural and no direct nexus with any actual adverse effect has been averred by the petitioners. Referring to the decision of the Supreme Court in **Union of India and Others vs. Association for Democratic Reforms**, reported in AIR 2002 SC 2112, it is contended that although one sided information, dis-information, mis-information and non-information equally create an uninformed citizenry which would make democracy a farce, however, to avoid such situations, right strategy would be to strengthen the media rather than an attempt to bring undue restraints on its rights. Hence, undue restraints imposed on the media on the basis of one-sided beliefs of some persons claiming to espouse cause of public interest would harm larger public interest.

48. It is contended that reporting in the news channels of this respondent was fully compliant with the norms which are prescribed by the NBSA. The petitioners have already sought to file complaint on June 20, 2020 against the news channels. The present petition which is filed

for omnibus reliefs is not maintainable and should be dismissed.

Counter affidavit on behalf of Times Now.

49. At the outset, it is contended that the petition is not maintainable under Article 226 of the Constitution since there is no violation of the fundamental rights or any legal right of the petitioners. The petitioners are seeking enforcement of the provisions of the CTVN Act and the rules framed thereunder and the self-regulatory guidelines enforceable through the process of self– regulation. These reliefs are in the nature of a pre-publication injunction, which is not permissible in law.

50. It is stated that the petitioners, on their own accord, have concluded that the reporting by the answering respondents is neither fair nor equitable, without referring to the reporting as a whole. It is contended that whether such reporting is in violation of any provisions of law is a disputed question of fact and cannot be gone into under the guise of exercise of jurisdiction of this Court under Article 226 of the Constitution. Further this respondent "is not even" State or an organization under the control of the Government to bring it within the purview of Article 12 of the Constitution so as to be amendable to the jurisdiction of this Court under Article 226 of the Constitution. It is settled that a writ will ordinarily lie only against the State or instrumentality of the State. Reliance is placed on the case of **Binny Ltd. vs. Sadasivan**, reported in AIR 2005 SC 3202, wherein the Supreme Court has held that a writ will lie against a private body only when it performs public functions or discharges public duties. There is no averment in the petition that this respondent is performing any public function. Thus, the respondent cannot be considered as a 'State' within the meaning of Article 12 of the Constitution.

51. The petitioners have no locus whatsoever to raise an issue about the on-going discussion on the death of the actor. The discussion on the television has been conducted in public interest and to ensure

that justice is met. It is stated that this petition must be seen in the light of fact that the same has been filed by 'busy body' petitioners who are neither involved in the issue that is debated upon as an accused or as a witness or is a victim of controversy. It is not a case where the petitioners' rights under Article 21 are infringed by any means. The petition is therefore certainly not maintainable. It is contended that the Supreme Court has already passed necessary judgment/order, upholding the fact of transfer of all investigation relating to the death of the actor to the CBI and in pursuance thereto this Court has also passed orders on September 3, 2020 and on September 10, 2020. Also the NBSA has heard the matter in detail, and as such, is likely to pass necessary orders; hence, the petition is infructuous to the extent that it seeks the authorities to act.

52. There is also no violation either constitutional, statutory or of the self-regulatory mechanism, as this respondent being a television channel is involved in dissemination of the current affairs and news being a fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India, which cannot be curtailed, unless the restrictions as contained in Article 19(2) of the Constitution are triggered following a lawful procedure. No case of violation is made out against this respondent. There is no violation of any statutory provision by this respondent and/or of any self-regulatory guidelines. The respondent thereafter has referred to the rights of the media to disseminate information as recognised in several decisions. This respondent has referred to the decision of the Supreme Court in **Romesh Thapar vs. State of Madras,** reported in AIR 1950 SC 124 on the importance of freedom of speech and expression both from the point of view of the liberty of the individual and from the point of view of our democratic form of government. Also, a reference is made to the decision of the Supreme Court in **Sakal Papers (P) Ltd. v. Union of India,** reported in AIR 1962 SC 305 to contend that the Constitution Bench of the Supreme Court held that freedom of speech and expression of

opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and governments and must be preserved. A reference is also made to the judgment in **Bennett Coleman & Co. v. Union of India,** reported in (1972)2 SCC 788 to contend that the freedom of speech and of the press is the 'ark of democracy' as public criticism is essential to the working of its institutions. A reference is also made to the decision of the Supreme Court in **S. Khushboo vs. Kanniammal & Others,** reported in AIR 2010 SC 3196, wherein it is held that the importance of freedom of speech and expression was necessary to tolerate unpopular views. A reference is made to the decision of Delhi High Court in **Sushil Sharma vs. The State (Delhi Administration),** reported in 1996 Cri. LJ 3944 to contend that the Court has held that mature investigative journalism helps in unearthing many skeletons on which democratic institutions are surviving.

53. It is next contended that the telecast as undertaken by this respondent was a bonafide reporting of a matter of public interest to which it was entitled to make. It is settled law that the press is entitled to make fair comments on issues that impact the public at large, which is the freedom of press, and a facet of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. It is stated that the telecast and news reporting on the unfortunate demise of the actor is a step taken by this respondent to unearth the truth and to bring it before the public at large. The right to know is a basic right which the citizen of a free country aspires in the horizon of the right to live in this age in our land under the Constitution.

54. It is contended that the postponement order as sought by the petitioners are passed only in cases in which there is a substantial risk to the fairness of the trial or for appropriate administration of justice, unlike what is ongoing in the present case. This respondent has never posed any risk or interfered with the investigation undertaken by

the three independent agencies namely the CBI, the ED and the NCB, all of which are conducting investigation in a matter that is best suited as per law. Hence the relief claimed in the present case and attempting to seek a restraint order is a complete mockery and travesty of justice besides direct infringement of the fundamental rights of this respondent. This, particularly when the actor was a public figure and public interest required that the public becomes aware of the happenings in the investigation. It is contended that it is settled law that the media and press should not be unnecessarily restricted in their speech as the same may amount to curtailment of expression of the ideas and free discussion in the public on the basis of which a democratic country functions. Freedom of Expression and Democracy are the cornerstone of our Constitution. The intention of the Constitution framers was that a well-informed citizenry would govern itself better. The reality of open and free public discussion and debate was considered central to the operation of our democracy. Freedom of speech can be curtailed when it shall prejudice the administration of justice and the petitioners have failed to show and/or establish as to what has been reported till date by this respondent was in any manner prejudicial to the administration of justice. In this context, a reference is made by this respondent to a brief note on Media & Judicial Independence by Mr. Justice P.B. Sawant (retired) who has stated that no doubt media plays a very vital role in present times, imedia has come to be known as the eyes and the ears of the people. Over the years it has also become their brain and tongue."

55. It is contended that the petitioners have also not explained, as to how, any of the answering respondent's news telecasts was in violation of the Code of Ethics and Broadcasting Standards of the NBA. Vague averments have been made against a few media reports without any specifics and without in fact stating as to why and how a mere telecast of live news reporting or news debates by the respondent could be used to allege any violation of the Code. The petitioners cannot pray for common and blanket order to be passed which would be an incorrect

position in law.

56. It is contended that freedom of speech and expression not only includes the right to freedom of press but it also includes the right to acquire information and consequently, the right to acquire information includes the right to access to the source of information as held in **Prabha Dutt vs. Union of India,** reported in (1982) 1 SCC 1. Hence any attempt to deny such right to access to the source of information must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution.

57. It is contended that the interpretation canvassed on behalf of the petitioners is also devoid of practicality especially in view of the prevalence of the electronic media and the internet. In this context reference is made to the decision of the Supreme Court in **Nakkheeragopal vs. State**, reported in 2001(4) CTC 423 to contend that while discussing the prohibition on exit polls during the 48 hours period prescribed under section 126 of Representation of Peoples Act, the Supreme Court in paragraph 25 has laid down that (i) the right to access the source of information is required to be read into the freedom of press protected under Article 19(1)(a) of the Constitution, namely the freedom of speech and expression; (ii) no restrictions could be made to interfere with the freedom of press, unless 'law' specifically empowers the State or its officials to impose any restraint, either prior or post; (iii) even if any norms or guidelines were to be enacted by the State, following due process of law, either on their own or on the suggestions of commission appointed for the said object, the same would be valid, only subject to the satisfaction of Article 19(2) of the Constitution; (iv) any restriction, even imposed by a law, under Article 19(2) of the Constitution, the same should not only be in the interest of public, but should also satisfy the test of reasonableness; (v) the freedom of press is subject to the conduct of public officials in discharge of their official duties.

58. The respondent has next referred to the decision of the Supreme Court in **Shreya Singhal** (supra) and more particularly to the observations of the Court in paragraphs 13 to 19, 24, 25, 38 to 41, 46 and 47 to contend that the restriction on Article 19(1)(a) are limited to the one recognised by Article 19(2). There is no concept of restriction in public interest. That under the Constitutional scheme, it is not open to the State to curtail freedom of speech and expression to promote the general public interest. This freedom is important, as we need to tolerate unpopular views. A fear of serious injury cannot justify suppression of free speech and assembly; that there are three concepts which are fundamental in understanding the reach of this most basic human right. The first being discussion, the second being advocacy and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a) and it is only when such discussion or advocacy reaches the level of incitement that Article 19(2) is attracted. It is thus contended that in the present case, whether reporting as undertaken has reached that level of incitement is yet to be tested and is a disputed question of fact, which cannot be looked into. This, particularly when the content of the right under Article 19(1)(a) remains the same whatever the means of communication including internet communication and television news reporting. It is also necessary to consider as to whether the action complained of affects the masses or the individual, as any individual right must give way to the larger interest/right to know of the public guaranteed under Article 19(1)(a) of the Constitution. It is also material to consider as to whether the news reporting has the tendency to present a clear and present danger or is it incitement to an offence.

59. It is next contended that there is no violation of any statutory provision and more particularly of the CTVN Act and the rules framed thereunder by this respondent. There is no violation of any of the provision of the Programme Code in telecasting the news related to the

actor's death. It is then contended that this respondent has used its sources and aids in exercise of its journalistic rights, ethics and duties to unearth the intricacies involved in this case to inform the public at large. It is contended that no particular person has been targeted without any reason. The contents telecast in the news reports are backed by reliable sources and corroborated with the progress of the investigations. Such investigative journalism resorted to by this respondent cannot be alleged to be intended or calculated to influence or affect the ongoing investigations by the three independent investigating agencies. It is next contended that the telecast is required to be seen as a whole. The formats of TV news debates are that an anchor or host begins and moderates the show which focuses on a specific topic, usually a significant current newsworthy event and, the debate is opened for discussion, amongst the invitees/guests, who either speak for or against the topic, and invariably some tend to take a neutral or extreme position. The debates are largely live, and it is not possible to control the extreme views of the invitees/guests. It is thus necessary that the entire discussion must be seen in that light. It is next contended that there is no violation of any guidelines namely the alleged violation of Code of Ethics and broadcasting standards or regulations. The respondent has relied on the Norms of Journalistic Conduct issued by the PCI particularly Norm No.26 in regard to investigative journalism, which speaks about investigative journalism so as to include the following two norms:- (a) That the investigative reporter should, as a rule, base his story on facts investigated, detected and verified by himself and not on hearsay or on derivative evidence collected by a third party, not checked up from direct, authentic sources by the reporter himself; (b) There being a conflict between the factors which require openness and those which necessitate secrecy, the investigative journalist should strike and maintain in his report a proper balance between openness on the one hand and secrecy on the other, placing the public good above everything.

Counter affidavit of Republic TV

60. Affidavit of Shri. Sivasubramanian Sundaram, Chief Financial Officer, is placed on record. At the outset, it is contended that the petition has been filed with ulterior motive and with an ultimate aid to curtail the freedom of press enshrined under Article 19(1)(a) of the Constitution of India, by seeking a relief of temporary postponement of news reporting including telecasting, publishing reports/articles, and/or carrying out discussions/debate in relation to the unfortunate, sudden and mysterious demise of the actor. It is contended that the petitioners under the garb of the present petition is not only seeking gag order against all media houses from making any publication but also attempting to deprive the public of information in relation to suspicious demise of the actor. The petition is thus an abuse of the process of law.

61. It is apprehended that the petitioners are directly or indirectly connected with the film industry and this is relevant in view of the fact that various members of the film industry are being regularly probed by the investigating agency in relation to the death of the actor. It is contended that this respondent has reasonable apprehension that the present petition has been filed not only to curtail the rights of the press but also with a malafide intention to safeguard the interest of such people who apprehend disclosure] of their names due to the ongoing investigation in relation to the death of the actor. It is contended that legitimate investigative journalism as carried out by this respondent as also other media houses have brought in unexplored angles and exposed the inconsistencies pertaining to death of the late actor.

62. This respondent contends that this petition is nothing more but a futile attempt to gag the media from reporting on the actor’s death case. It is contended that it has been a long fight of more than forty-seven days of investigative journalism by the media who has unearthed the pile of evidence in the case and put it before the people of India. It is

contended that given the alleged mis-handling of crucial evidence right at the start of the case by the previous investigating agency and the questions raised *vis-a-vis* the initial investigation, this respondent believes that it is the urgent duty of the media to contribute in the fight for justice in the actor's death case "by contributing in uncovering the truth". It is contended that in the seventy-four years old history of our democracy, there have been multiple instances of media having played pivotal role in gathering evidence that poured into a massive campaign for justice. The examples being Jessica Lal murder case, Nitish Katara murder case, Rocky Yadav's case among the plethora of others which are prime examples when the media came together with the people of India in the fight for justice to prevail.

63. The affidavit narrates the facts brought in light by this respondent in relation to the death of the actor which is stated to be the evidence of un-impeachable character in relation to the unfortunate death in question. This respondent alleges grave irregularities which had taken place in the investigation. It is contended that such reporting has brought into public domain the material facts and documents as also to the notice of the investigating authorities. It is stated that this respondent has carried out the investigative journalism in order to bring correct facts and truth to the larger public and highlighting material facts which have been ignored while conducting inquiry by the previous investigating agency in relation to unnatural death of the actor. The affidavit has also set out the instances as being stated to be pointed out to the Court which are instances from June 2020 till August 30, 2020.

64. It is stated that Republic TV is a media house of repute in the media fraternity and hence has a responsibility to provide comprehensive and objective information to the public. It is stated that this channel has published as also carried out discussions and debates in relation to the demise of the actor with the sole intention to unfurl the truth to the public at large. It is stated that people have a right to be

aware and be informed about events which relate to public figures. Referring to the decision of the Delhi High Court in **Surya Prakash Khatri Vs. Madhu Trehan**, reported in 2001(92) DLT, it is contended that a free and healthy press is indispensable to the functioning of a true democracy. The Court has recognized the right of public to be kept informed about the current political, social, economic and other burning topics and important issues of the day to enable them to consider and form broad opinion about the same and that the primary function of the press is to provide comprehensive information of all such aspects. It has an educative and mobilising role to play and plays an important role in moulding the public opinion and can be an instrument of social change.

65. The affidavit then refers to the norms of investigative journalism and comments on the journalistic conduct published by the PCI (Edition 2010), according to which the basic element of investigative journalism would be that it has to be the work of the reporter, not of others he is reporting; the subject should be of public importance for the reader to know; and an attempt is being made to hide the truth from the people. It is stated that although the norms of Journalistic Conduct published by the PCI are not binding on this respondent, as the PCI has a recommendatory role and not a binding role; however, this respondent has maintained, in keeping with the essence of high standards of journalistic conduct, such conduct while publishing information in regard to the said incident. It is stated that time is testimony of the fact. It is next contended that investigative journalism has unearthed matters of grave concern and interest to the society at large. The Court has time and again recognized the legitimacy of instances of investigative journalism which have played an important role to reveal the issue which pertains to larger cause and serve public interest. In paragraph 23 of the affidavit, the instances wherein the investigative journalism of the respondent has aided the investigating agency to a large extent in the interest of public is set out, which are the instances of the Sunanda

Pushkar case, the Sheena Bora murder case and the role played by them in breaking the Commonwealth Games scam, the ‘Kargil for profit’scam, the Devas-ISRO scam, the Aircel Maxis deal, and the Lalit Gate scandal among others. It is stated that it is in the interest of justice and persistence of the truth that the respondent should be allowed to continue this method of investigative journalism in order to aid the law and order machinery in the case while keeping the public duly informed. It is next contended that investigative journalism by the media is in accord with the principles of freedom of speech and expression as enshrined under Article 19(1)(a) of the Constitution and is in consonance with the basic and fundamental right and duty of the media to raise and discuss issues of public concern and interest. In this context, reference is made to the decision of the Delhi High Court in the case ‘**Court on its own motion** (supra), wherein the Court has made observations emphasizing the importance of investigative journalism.

66. It is next contended that the petitioners are trying to obstruct the cause of investigative journalism and are also attempting to deprive the masses of its right to information about current affairs. The petition is therefore required to be dismissed failing which it would have grave and wide ramifications and would serve as a death-knell for the freedom of speech/press enshrined under Article 19(1)(a) of the Constitution.

67. The affidavit comments on freedom of press and rights of media to state that in the preamble to the Constitution of India, liberty of thought and expression of citizens has been secured. It is stated that the Constitution affirms the right to freedom of expression, which includes the right to voice one’s opinion. It is stated that the freedom of press is regarded as a 'specie' of which freedom of expression is a 'genus'. Referring to the decision of the Supreme Court in **Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors.** (supra), it is

contended that the Court emphasized on the role of the press and the right of the citizens to be well informed of the issues concerning public interest. It is contended that in the petition there is no case made out for curtailment of right of freedom of speech and expression.

68. A reference is also made to the decision of the Supreme Court in **Romesh Thapar** (supra), to contend that the freedom lies at the foundation of all democratic organizations, for without free political discussion, there can be no public education which is quintessential to the proper functioning of the democracy. The decision of the Delhi High Court in **Shashi Tharoor Vs. Arnab Goswami and Anr.,** reported in AIR 2019 (NOC 134) 43 is relied to contend that the Delhi High Court held that free and healthy press is indispensable to the functioning of a true democracy and in a democratic set up there has to be an active and intelligent participation of the people in the affairs of their community as well as the State. Also referring to the decision of the **Association of Democratic Reforms** (supra), it is contended that the Supreme Court has held that one-sided information, disinformation, misinformation and non-information all equally create an informed citizenry which makes democracy a farce.

69. As to what would be "the Chilling Effect of the Media", the decision of the Supreme Court in **S.Khushboo** (supra)**,** is relied to contend that any blanket ban or gag order in the form of injunction restraining the broadcast of true facts will impinge upon the people's right to know and will have a chilling effect on the right to free speech of the media. The respondents also rely on the decision of the Supreme Court in **Shreya Singhal vs. Union of India (UOI),** reported in AIR 2015 SC 1523 to submit that virtually any view expressed on any matter may cause annoyance, inconvenience or may be grossly offensive to someone; however, this does not justify curtailing the liberty to express such opinions, nevertheless by causing a total chilling effect on free speech. It

is further contended that it is right of this respondent to provide public with access to true and correct facts by undertaking the journalistic right to inform. It is contended that not only in the fitness of things but a necessary concomitant of democratic functioning, that the lives of public figures is subjected to scrutiny. As the public have the right to information in relation to public figures, this respondent being a responsible media house deemed it reasonable and essential to raise question concerning the peculiar circumstances around the unfortunate demise of the actor. This respondent has highlighted the obvious questions that remained and continue to remain unanswered in relation to the death of the actor. It is thus contended that it is obviously in public interest, that the role of Indian media is to expose the malaise which plagues the Indian system in different spheres, thereby stalling the progress as expected in a country which adheres to the rule of law and the highest standards of criminal jurisprudence. Thus, the right to freedom of speech cannot be curtailed merely on the basis of bald allegations and vague aspersions of a media trial and of creating false sensationalism as alleged in the petitions. A reference is made to the decision of a learned Single Judge of this Court in **Sunil Baghel & Ors. vs. State of Maharashtra and Ors.** (Cri. WP No.5434 of 2017) to support this contention.

70. It is next contended that right of public to access true and correct facts is required to be recognized. This ensures overall fairness in the functioning of the justice delivery system which is achieved by publishing reports and carrying out discussions and debates providing the public access to facts which was being undertaken by this respondent concerning the unnatural death of the actor. The right to public access also emanates from section 327 of the Cr.P.C. which reaffirms the principle of“open trial”and access of public towards such open trials or criminal trials. This achieves public confidence in the administration of justice. It is contended that discussions and debates

are required to be conducted openly, fairly and fearlessly to ensure that machinery like the police and other public servants are not being misused. In this context, a reference is made to the decision of the Supreme Court in **Kehar Singh & Ors. vs. Delhi (State Administration),** reported in 1988 AIR 1883.

71. It is next contended that all the publications and media debates as undertaken by this respondent are in consonance with the provisions contained in the CTVN Act and CTVN Rules including the Programme Code prescribed therein and do not violate the same as alleged by the petitioners. This respondent practices ethical journalism very seriously. This respondent is not a member of the NBA-respondent no. 3. Hence, the Code of Ethics and broadcasting standards issued by the NBA does not apply to this respondent. It is contended that the reporting in relation to the demise of the actor and bringing about material facts pertaining to the same in the public eye should not be considered as violation of the provisions of the CTVN Act and Rules, inasmuch as the same has been done within the domain of legitimate investigative journalism and with the sole objective of bringing the truth out in the open.

72. It is next contended that the petition is not maintainable and is liable to be dismissed, as the petitioners have no locus standi to seek preventive relief of temporary postponement of news reporting, as the petitioners are neither the accused persons nor the aggrieved persons whose right to fair trial has been allegedly curtailed in any manner by the publication made by this respondent. This would also be the position in law as recognized by the Supreme Court in its decision in **Sahara India Real Estate Corporation Ltd.** (supra) when it is held that preventive relief of postponement of publication may be availed by any accused or aggrieved person who apprehends that a particular publication has real and substantial risk of prejudicing the proper

administration of justice or the fairness of his/her trial.

Counter affidavit on behalf of Zee Media Corporation Ltd.

73. This respondent has contended that the petition is *per se* not maintainable against the respondent inasmuch as the petitioners have not shown any material to substantiate their allegations that this respondent has been involved in reporting/conducting a media trial or a parallel investigation which has been involved in reporting/conducting a 'Media Trial'/'Parallel Investigation' which directly or indirectly hampers the investigation into the FIR in question registered by the CBI on August 6, 2020 in relation to the unnatural death of the actor. This respondent has not reported, published or telecast in the nature of debates or discussion any material which could tantamount to "Media Trial"/ "Parallel Investigation". Neither it has examined or cross examined any witnesses or has interfered in the investigation process. The petition is also not maintainable, as the petitioners have an alternate efficacious remedy of filing a complaint before the NBSA, which has the power to appropriately deal with its members like this respondent in case of violation of its code of conduct. Also, the petitioners have no locus standi to seek the relief of temporary postponement of news reporting in any manner, as the petitioners are neither the accused persons nor the aggrieved persons whose right to fair trial has been curtailed in any manner.

74. Also, there is no violation of the Programme Code, as laid down in the CTVN Act and the Rules. This respondent in fact has engaged itself in legitimate and lawful investigative journalism without making any attempt to interfere with the ongoing investigation by the CBI. Any blanket ban or gag order in the form of injunction restraining the broadcast of true facts will encroach upon the people's right to know and violates the right to free speech. This will have a devastating and

detrimental effect on the functioning of news channel. This respondent being the member of the NBA adheres to the Code of Ethics and broadcasting standards framed by the NBA and will continue to adhere to the same. The respondent has accordingly sought for dismissal of the petition.

Counter-affidavit on behalf of Narcotic Control Bureau

75. A counter-affidavit has been filed on behalf of the NCB-respondent No.12. The affidavit states that the only allegation as made against this respondent is in paragraph 8 of the petition that this respondent is not maintaining secrecy and leaking information pertaining to the investigation to the media. It is denied that the NCB is leaking information to the media and/or is not maintaining secrecy in regard to the ongoing investigation to the media as alleged by the petitioner. It is stated that the NCB has maintained sanctity and integrity of the ongoing investigation and confidential details of the investigation have never been leaked in any manner.

Counter-affidavit on behalf of Directorate of Enforcement.

76. A counter-affidavit has been filed on behalf of the ED-respondent No.3. The affidavit states that the ED was impleaded as respondent in pursuance of this Court's order dated September 10, 2020 and more particularly in the context of observations as made in paragraphs 3 and 8 of the said order which records the contention of the petitioner that "*although the CBI has maintained secrecy, the other agencies may not have been so particular and that information, supposed to be kept confidential, is being leaked*". The deponent states that as regards the allegations of the petitioner of the ED not maintaining secrecy and leaking information in regard to the investigations to the media is concerned, it is submitted that the ED is one of the premier investigating agencies of India with impeccable record and unquestionable integrity in conducting investigations within the

statutory limits. It is stated that the ED neither entertains media in course of any investigation nor indulges into leaking any information to them. It is stated that confidentiality in any ongoing investigation is an established parameter being practiced in the ED. ED maintains maximum secrecy and confidentiality with regard to its investigations and none of the confidential details pertaining to the investigation of this case have been leaked by ED in any manner whatsoever is what is contended. It is therefore prayed that the PIL be dismissed qua the ED.

Additional affidavit on behalf of the Ministry of Information and Broadcasting

77. There is an additional affidavit on behalf of the MI&B-respondent No.1 filed in pursuance of the order dated September 10, 2020 passed by this Court, whereby all the respondents were directed to file composite reply affidavits dealing with the PIL petitions. As a preliminary submission, MI&B contends that the Government upholds the freedom of press. It is contended that the PCI is a statutory autonomous body which has been set up under the PCI Act to maintain and improve the standards of newspapers and news agencies, i.e., print media in India and also to inculcate principles of self-regulation among the press. In furtherance of the objectives of the PCI, 'Norms of Journalistic Conduct' have been framed under section 13(2)(b) of the PCI Act which cover the principles and ethics regarding journalism, viz. accuracy and fairness, pre-publication verification, caution against defamatory writings, trial by media etc. and the print media is expected to adhere to the said norms. Also, an advisory was issued on August 28, 2020 by the PCI referring to the alleged suicide by the actor to the media to adhere to norms framed by the PCI. It is stated that the PCI takes cognizance, *suo-motu* complaints, or of the contents in print media which are in violation of the 'Norms of Journalistic Conduct'. As per section 14 of the PCI Act, the PCI after holding an inquiry warns, admonishes or censures the newspaper, the news agency, the editor or the journalist or disapproves the conduct of the editor or the journalist,

as the case may be. Therefore, in regard to any grievance relating to contents published in the print media, the person aggrieved can approach the PCI directly, in accordance with the provisions of complaint mechanism.

78. It is stated that in regard to the electronic media, as per existing regulatory framework, the content telecast on private satellite TV channels is regulated in accordance with the CTVN Act and the Rules framed thereunder. It is stated that section 5 of the CTVN Act provides that 'No person shall transmit or re-transmit through a cable service any programme, unless such programme is in conformity with the prescribed programme code". The Programme Code, prescribed under rule 6 of the CTVN Rules, contains the whole range of parameters governing telecast of programmes on private satellite/cable TV channels. It is stated that section 19 of the CTVN Act provides that where any authorized officer thinks it necessary or expedient to do so in the public interest, he may, by order, prohibit any cable operator from transmitting or re-transmitting any programme or channel, if it is not in conformity with the prescribed Programme Code referred to in section 5 and Advertisement Code referred to in section 6, or if it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings or enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquility. It is stated that sub-section (2) of section 20 of the CTVN Act makes a provision that where the Central Government thinks it necessary or expedient so to do in the interest of the (i) sovereignty or integrity of India; or (ii) security of India; or (iii) friendly relations of India with any foreign State; or (iv) public order, decency or morality, it may, by order, regulate or prohibit the transmission or re-transmission of any channel of programme; sub-section (3) of section 20 of the CTVN Act provides that where the Central Government considers that any programme of any channel is not in conformity with the prescribed Programme Code

referred to in section 5 or the prescribed Advertisement Code referred to in section 6, it may by order regulate or prohibit the transmission or re-transmission of such programme. It is stated that the Government of India has also notified guidelines for up-linking and down-linking of TV channels in India for grant of permission for up-linking/down-linking private satellite TV channels. As per para 5.2 of the guidelines for up-linking from India, one of the basic conditions/obligations of the company permitted to up-link registered channels is that the company shall comply with the Programme Code and the Advertising Code prescribed under the CTVN Act and the Rules framed thereunder. Further down-linking guidelines also carry similar stipulations under para 5.1 thereof. It is thus stated that the permission granted to any private satellite TV channel operating company, under the guidelines also binds the company to comply with the Programme Code.

79. It is stated that the up-linking and down-linking guidelines have also made provisions for penalties. It is stated that as per para 8.1 of the said guidelines, in case a channel has been found to have been used for transmitting any objectionable/unauthorized content inconsistent with public interest, the Central Government has the power, *inter-alia*, to revoke the permission granted. Also, as per para 8.2 of the up-linking guidelines, Central Government has the power to impose penalties for violation of any of the terms and conditions or other provisions of the said guidelines as set out in paragraph 8.2.1 and 8.2.3. It is stated in paragraph 8.2.1 that in the event of first violation, suspension of the permission of the company and prohibition of broadcast/transmission up to a period of 30 days is provided for. In the event of second violation, suspension of the permission of the company and prohibition of broadcast up to a period of 90 days is provided for and paragraph 8.2.3 provides, in the event of third violation, for revocation of the permission of the company and prohibition of broadcast up to the remaining period of permission. It is stated that similar provisions have been made in the down-linking guidelines as

contained in paragraphs 6.2.1, 6.2.2. and 6.2.3.

80. The affidavit further states that MI&B has also set up Electronic Media Monitoring Centre (EMMC) to monitor the content of private satellite TV channels with reference to the violation of the Programme and Advertising Codes. Further the MI&B has also issued directions to States to set up State Level and District Level Monitoring Committees (DLMC) to regulate content telecast on cable TV channels. The Committee takes a decision on the complaints received by it. The DLMC provides a forum where the public may lodge a complaint regarding content aired over any television distribution platform (cable, DTH, HITS or IPTV), private FM Channels and Community Radio Stations operating in the District and act on the same as per the procedure prescribed in the Office Memorandum dated April 26, 2017. The mandate of the DLMCs includes keeping a watch on the content carried by Television Distribution Platform Operator at local level and ensuring that it is in conformity with the prescribed Programme and Advertising Codes and to also ensure through authorized officers that no un-authorized channels are carried and local content that is aired is presented in balanced and impartial way and not in a a manner which is to offend or incite any community. It is further stated that so far in 19 States and 5 Union Territories, SLMCs have been set up. Also, DLMCs have been constituted in 329 Districts.

81. The affidavit further states that the MI&B has also constituted an Inter-Ministerial Committee (IMC) under the Chairmanship of the Additional Secretary (I&B) and comprising of officers drawn from various Ministries of Central Government i.e. Ministry of Home Affairs, Defence, Women & Child Development, Health & Family Welfare, External Affairs, Law & Justice, Consumer Affairs and a member from the industry is a representative from Advertising Standards Council of India (ASCI), to look into specific complaints regarding violation of the Programme Code, as defined in Rule 6 of the

Cable Television Networks Rules, 1994. The IMC accords focused and careful attention to the cases of violation of Programme Code and makes appropriate recommendations to the MI&B. A copy of order for constitution of IMC is also placed on record. It is stated that appropriate action is taken against TV channels in case any violation of the Programme Code is established. It is stated that action against TV channels may extend from issue of warnings or advisories to comply with the Programme Codes or directing channels to run apology scrolls on their channels and can extend up to taking the channels off-air temporarily for varying periods depending on the gravity of the violation. The affidavit also sets out the details of action taken against authorized private TV channels for violation of Programme and Advertising Codes during the period of 2015 – 2020. A tabular statement in the affidavit shows that about 173 actions which are in the nature of advisories, **specific channels**, common warning orders for apology scrolls have been made of which about 18 are "Off-air Orders".

82. The affidavit further states that apart from the above regulatory framework, Government has encouraged self-regulation in broadcasting industry. The affidavit sets out the self-regulatory mechanism established by industry bodies which deal with complaints about programmes and advertisements on TV channels viz. (i) NBA, representative body of news and current affairs TV channels, has set up the NBSA headed by retired Judge of the Supreme Court/High Court, to consider complaints against or in respect of broadcasters relating to content of any news and current affairs telecast on TV channels; (ii) The Indian Broadcasting Foundation (IBF), representative body of non-news and current affairs TV channels, has set up a Broadcasting Content Complaints Council (BCCC) headed by a retired Supreme Court/High Court Judge to examine the complaints relating to the content of television programmes; (iii) Advertising Standards Council of India (ASCI), established in 1985, has set up Consumer Complaints Council (CCC) to consider the complaints in respect of advertisements. In

conclusion, the affidavit avers that in regard to the content violation in the print and electronic media, the petitioner may approach the appropriate forum as per details as set out in the affidavit and that these forums can take necessary action on the representation in accordance with the existing guidelines/rules/ regulations. Hence, according to the deponent, no case is made out against the Government of India and the petition needs to be dismissed qua the respondent.

Counter affidavit of respondent no. 14-ABP News

83. At the outset, it is contended that this respondent has been arrayed to enable the Court to address the issues raised in the PIL petitions effectively as observed in the order dated September 10, 2020. It is contended that there are no allegations against this respondent. This respondent has, throughout the course of reporting of the case on the surrounding circumstances of the death of the actor, abided by ethics of journalism, broadcasting standards and professional conduct as expected and required under the CTVN Act and Rules and the News Broadcasters Standard Regulations and the applicable laws and regulations. This petition is only an attempt to gag and block the entire media from reporting true and relevant facts on the mysterious circumstances surrounding the death of the actor only because of the manner and mode in which certain news channels are covering the said case disregarding the ethics of journalism, engaging into media trials. It is in fact the prime duty of the media to provide information at large and highlight true and correct facts. Both the judiciary and the media are engaged in the similar task, i.e., to discover the truth, to uphold the democratic values and to deal with social, political and economic problems. The media has been called the handmaiden of justice, the watchdog of society and the judiciary, the dispenser of justice and the catalyst for social reforms. Hence, it is the utmost responsibility of all the media houses, news channels and press to report in a responsible manner. It is contended that because of the chaotic reporting and

demeanor of certain news channels, the other media houses should not and cannot be put under any adverse blanket orders. Article 19(1) of the Constitution guarantees the Right to Freedom of Speech and Expression, i.e., right to hold opinions without any interference in all forms. The Freedom of Press in India, although like the United States of America is not a separate guaranteed right, it is still covered and is given the status of freedom under Article 19 by the Supreme Court of India. There is already a framework of law under the CTVN Act and the Rules, the PCI Act and the Self-Regulations as adopted under the auspice of the NBA to look into any complaints against the electronic media. It would be the jurisdiction of the NBSA to adjudicate all issues as against members of the NBA and the NBSA should be given recognition as a statutory body to bring adjudications against all media houses under one umbrella. It is, accordingly, submitted that no adverse orders be passed against this respondent.

Counter affidavit on behalf of the India TV

84. The contention, at the threshold, is that the Writ Petition does not contain any specific allegation against the respondent no.15 and it is for this reason that this respondent was not impleaded as a party by the petitioner. However, subsequently in view of the order dated September 10, 2020, this respondent has been arrayed as one of the parties to the present proceedings and hence this respondent be dropped from the proceedings. It is contended that the public interest lies in the public being well informed and made aware of important news and events. This petition is not a bonafide petition but has been filed for grabbing the public's attention and somehow stop the reporting of the news and events pertaining to the Bollywood links to the events mentioned in the petition thereby having a chilling effect on the media. The media is the fourth pillar of the democracy and it is the duty of this pillar of democracy to keep all other authorities within the constitutional bounds. It is for this reason that the Freedom of Press has been secured

and protected as a Fundamental Right under Article 19(1)(a) of the Constitution. The rights guaranteed under Article 19(1)(a) are only subservient to Article 19(2) of the Constitution. Hence under the constitutional scheme, the right under Article 19(1)(a) can only be reasonably restricted by law made by the State for the reasons specified under Article 19(2). Thus, by virtue of this petition, the right guaranteed to the media channel cannot be throttled and would not be permissible in law and any such curtailment would strike at the heart of the Constitution thereby hitting the basic structure of the Constitution. In this context, a reference is made to the decision of the Supreme Court in **Virendra vs. The State of Punjab,** reported in AIR 1957 SC 896, wherein the Supreme Court has observed that :

> "It is certainly a serious encroachment on the valuable and cherished right of freedom of speech and expression if a newspaper is prevented from publishing its own or the view of its correspondents relating to or concerning what may be the burning topic of the day."

85. It is thus contended that the "content regulation" cannot be done by any public authority; however, as a responsible news channel along with other like-minded news channels, the respondent has itself submitted to the Regulations of the NBSA and the guidelines as laid down by this body. NBSA has an appropriate mechanism to entertain complaints of any violation of the standard and code as prescribed by it and is also authorized to impose appropriate penalties as prescribed. NBSA also recommends to the MI&B to cancel the licence of news broadcasters in case of serious violation of any of the standards/code as prescribed. It is contended that the NBSA has already heard various news broadcasters including this respondent on the issue of news coverage of the death of the actor and has reserved its order. The petition, therefore, is required to be relegated to the NBSA being the correct forum. This respondent has also raised an objection to the maintainability of this petition similar to the one as raised by the other

respondents – TV channels on the ground that the petitioners are not aggrieved persons as explained by the Supreme Court in the decision **Sahara India Real Estate Corporation Ltd.** *(supra).*

Counter affidavit on behalf of respondent no. 16 – News Nation

86. At the outset, it is contended that there are no averments against this respondent in this petition and the respondent has been impleaded only to cause harassment to this respondent. The affidavit is on similar lines as in the case of the preceding two respondents in regard to the contentions on Freedom of Speech and Expression.

Counter affidavit on behalf of respondent no. 17 – News Broadcasters Federation

87. It is contended that the public interest petitions seeking relief of temporary postponement, inter alia, of news reporting in relation to the unfortunate death of the actor are not only in effect attempting to restrain all media houses from making any publication but is in fact an attempt to deprive the public of information in relation to the said unfortunate incident. The relief, if granted, would curtail the freedom of press enshrined under Article 19(1)(a) of the Constitution of India. There is apprehension that the petition involves elements of private interest and is directly or indirectly connected with the film industry as seen from the petition. Also, the petition filed by the retired police officials is not maintainable being motivated. The intention is to suppress the shortcomings in the investigation carried out by the police force in Maharashtra and muzzle the media from bringing forth these details before the public at large.

88. It is contended that this respondent is a private association consisting of various regional news channels and current affairs broadcasters which is about 60 members and is a single representative body which presents a unified and credible voice before the various

regulatory authorities, government departments and other key stakeholders for the purpose of ensuring effective growth of the industry for all its members.

89. The counter affidavit highlights the right of the media as guaranteed under Article 19(1)(a) referring to the decision of the Supreme Court in **Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors.** (supra)**;** **Romesh Thapar** (supra) and **Association for Democratic Reforms** (supra)**.** Also, a reference is made to the decision in **Shreya Singhal** (*supra),* which lays down out principles on the chilling effect and overbreadth of provisions that curtail the freedom of speech and expression.

90. The affidavit states that this respondent has formulated “Broad Framework on Editorial Guidelines” for its member-channels which explicitly states that members of this respondent shall refrain themselves from certain actions which are set out in paragraph 22. It is contended that there is a procedure for strict compliance of this guidelines. Also, a complaint redressal mechanism has been formulated. In case of any violation, a complaint can be made to the designated grievance cell and after hearing the alleged erring channel, if it is found that there is violation of any of the norms, the panel issues order/warning directing the defaulting member- channel to run an apology scroll specifying the date and time and such other action to be taken. Repeated violation by the defaulting member-channel is also penalized with an order/warning to run an apology scroll for 2 days and removal of the defaulting anchor for upto three months and/or a financial penalty up to Rs. 5 lakhs. Any repeat violations by such defaulting members would also attract a financial penalty up to Rs.10 lakhs.

91. It is contended that the petitioners thus have an efficacious

and alternate remedy to have their grievances redressed by filing a complaint. The affidavit justifies action taken by the TV channels in respect of alleged complaint as made in the petition filed by the retired police officials. It is contended that these petitioners do not have any locus standi to maintain such petition on vague averments as made in the petition. In support of these contentions, reference is made to the decisions of the Supreme Court in **Kehar Singh & Ors.** (supra)**, Firoz Iqbal vs. Union of India & Ors.** [WP (Civil) No.956 of 2020] and **R & M Trust vs. Koramangla Residents Vigilance Group,** reported in (2005) 3 SCC 91**.**

COUNTER AFFIDAVIT OF UNION OF INDIA IN PUBLIC INTEREST LITIGATION NO.1774/2020 (M.N. SINGH'S CASE)

92. Shri.Prem Chand, Under Secretary, Ministry of Information and Broadcasting, Government of India has filed a counter affidavit which is identical to the affidavit filed in the above Public Interest Litigation filed by Mr. Nilesh Navlakha to which we have referred in extenso; therefore, we do not refer to the contentions.

COUNTER AFFIDAVIT ON BEHALF OF THE NEWS BROADCASTING ASSOCIATION.

93. This respondent has filed 3 affidavits dated September 29, 2020, October 6, 2020 and October 11, 2020. These affidavits are of Ms. Annie Joseph, Secretary General of the NBSA. Affidavit dated September 29, 2020 is identical to one filed in Nilesh Navlakha's petition, which we have discussed hereinabove.

94. In the affidavit dated September 29, 2020, the NBSA has informed the Court that in regard to the complaints received by it on the issue of news coverage of the death of the actor, the NBSA is in the process of adjudicating and passing its orders on such complaints which was being undertaken after hearing the complainants and news broadcasters as set out in the affidavit. The affidavit also sets out the

position of the NBSA and the procedure which the NBSA would adopt to adjudicate such complaint.

95. In the affidavit dated October 6, 2020 it is stated that the NBSA has passed orders on the complaints received by it in respect of member-broadcasters on telecast relating to the death of the actor. Orders passed by the NBSA are placed on record, which would be binding on its members. NBSA has stated that orders have been passed by it based on whether the member-broadcasters have violated the Code of Ethics, various guidelines and advisories issued from time to time. Clarificatory observation is made at the end of each order that in the statement by both the parties in proceedings before the NBSA, while responding to the complaint and putting forth their view points, any finding or observation by the NBSA in regard to the broadcasters in its proceedings or in such order, are only in the context of examination as to whether there are any violations of any broadcasting standards and guidelines; they are not intended to be "admissions" by the broadcaster nor intended to be "findings" by the NBSA in regard to any civil/ criminal liability.

96. In the additional affidavit dated October 11, 2020, it is stated that the NBSA has always dealt with the complaint received by it as expeditiously as possible and has also decided several complaints in respect of broadcasting and reportage on the unnatural death of the actor. In regard to concern of the petitioner on media trial on such death, it is submitted that the NBSA has issued additional advisories and guidelines which would clarify the doubt that even on the aspect of media trial, there are already such instructions issued by the NBSA. It is stated that there are well established fundamental principles of Code of Ethics and Broadcasting Standards which the members of the NBA are bound to follow while telecasting its programmes. The Ethics includes that the broadcasters should report fairly with integrity and independence, adhere to the highest possible standards of public service

and recognize that they have a special responsibility since they have the most potent influence on the public opinion. There are specific guidelines covering the reportage to deal with the fact that information gathered should be reported accurately and the facts should be clearly distinguishable from and not be mixed up with opinion, analysis and comment.

97. It is contended that in furtherance of principles and regulations, the broadcasters are bound to follow rules laid down by the guidelines for conducting 'sting operations'. It is stated that the NBSA has laid down specific guidelines that requires the broadcasters to strictly vet and edit the reportage of sensitive matters and to ascertain its veracity and credibility. The broadcasters should not make any defamatory, derogatory, derisive or judgmental statements. It is stated that also specific guidelines are formulated for reporting the court proceedings. In view of all these guidelines, it can be inferred that the NBSA can adjudicate upon complaints received by it on several aspects that impact the trial or investigation by the police and action can be taken against any broadcaster who has violated the Code of Ethics and guidelines.

COUNTER AFFIDAVIT ON BEHALF OF T.V. TODAY NETWORK LIMITED (INDIA TODAY GROUP)

98. It is stated that the petition does not involve any public interest and is clearly aimed at espousing the cause of certain individuals presently occupying positions within Bombay police. The petitioners themselves were part and parcel of the Maharashtra Police. Hence, it is necessary that claims and assertions in the petition are put to strict scrutiny when the petition seeks to place restraint upon media on the basis of perceived fear of jeopardy to the reputation of police and about loss of faith of public in the system and in police administration. It is set out that even police administration is susceptible to aberrations, mal-functioning and corruption due to various internal and external

factors. It is submitted that not only relating to the death of the actor but in most of the so-called high-profile cases, this respondent has been dutifully performing the role of a watchdog against possibility of injustice upon any individual, be it a victim or the accused. In a case they may be unnoticed because common people are overawed by the glitz of the police machinery. The petitioners cannot expect that the media should turn a blind eye to the shortcomings of the police when on one hand the media channels also shower praise on their achievements and successful investigation. It is submitted that the petitioners have themselves interrogated with the media frequently with the intent of gaining publicity for their official acts while they were in service. Such information is available on Google Search. It is, however, unfair for them to expect that the media should refrain from showing the other side of the police to the people of India. The petitioners' fear of the people losing faith in media is completely imaginary and baseless. Expecting the media to be censored till completion of investigation and thereafter till the Court's verdict would mean that the petitioners are keen to postpone a healthy and timely public debate and are concerned more about personal and vested interest of policemen rather than any public interest. If matters are left exclusively to "official police machinery" and if there is no public awareness and awakening about the ongoing process of investigation as also about ongoing trial proceedings in a Court of Law, it may be too late when the follies are realized and in such situations there would be irreparable harm and injury to justice itself. Hence, prayers made by the petitioners factually seek to glorify and justify the static nature of system when the system needs constant scrutiny, constructive criticism and corrective measures are required to be encouraged. Hence, omnibus prayers ought not to be granted. Rest of the contents of this affidavit are similar to the points of this respondent's counter affidavit filed in the case of Nilesh Navlakha and others.

Counter affidavit on behalf of Zee Media

99. Mr.Akash Mehta, authorised representative of Zee Media Corporation has filed this affidavit dated October 6, 2020 which is on the same lines as the affidavit filed in the PIL filed by Nilesh Navlakha. In this affidavit, it is contended that the petition is without any basis and of cause of action, as no specific allegations are made against this respondent. Also, the petition is not maintainable, as the petitioners have alternate efficacious remedy of filing the complaint before the NBA. The petitioners have no locus standi to maintain this petition, as the petitioners are neither the accused nor aggrieved persons, whose right to fair trial have been allegedly curtailed in any manner by the respondent. The petitioners have also not been subjected to any breach or violation of the Programme Code as laid down in the CTVN Act and Rules framed thereunder. No material whatsoever has been produced in that regard. This petition has been filed with ulterior motive to curtail Freedom of Press enshrined under Article 19(1)(a) of the Constitution. Such an attempt to thwart the liberty of thought and expression is not maintainable.

Counter affidavit on behalf of ABP News

100. The reply affidavit on behalf of this respondent is of Mr. Raj Kumar Variar dated October 1, 2020, which is similar to the reply affidavit as filed in the petition of Nilesh Navlakha & Ors., the contents of which are already noted by us above.

Counter affidavit on behalf of India TV

101. The reply affidavit on behalf of this respondent dated October 1, 2020 which is almost similar to the reply affidavit as filed in the petition of Nilesh Navlakha & Ors., the contents of which are already noted by us above.

Rejoinder affidavit on behalf of the petitioners

102. Nilesh Navalakha, petitioner no. 1 has filed a rejoinder affidavit dated October 10, 2020 dealing with the reply affidavit filed by respondent no.1-UOI primarily contending that the affidavits as filed on behalf of the MI&B have not addressed the principal issue before this Court, namely of media trial. The affidavits of the MI&B are completely silent as to what steps have been taken by the MI&B in respect of media trial qua the death of the actor and whether the electronic media has complied with their mandatory obligations under the Programme Code as mandated in Rule 6 of the CTVN Rules. It is stated that the UOI/MI&B has abdicated its primary role of calling for accountability or implementing the role of law and obligations under the Uplinking and Downlinking guidelines, more particularly when in the reply affidavit of the UOI it is recognized as a self-regulatory mechanism created by the electronic media. It is submitted that self-regulation can only be in addition to the existing legal framework and cannot be in substitution of it. It is stated that when the complaint of the petitioner was referred to the NBSA, it is clear that the UOI/MIB had abdicated its primary role of calling for implementing the rule of law under the Uplinking and Downlinking guidelines. It is stated that the UOI has also established Electronic Media Monitoring Centre (EMMC) with the view to monitor and record the content of satellite TV channels with regard to violation of Programme and Advertisement Codes under the CTVN Act and Rules, which is supposed to be equipped to monitor and record around 900 channels. It is stated that if the EMMC is in existence and functional and content on the TV channels is claimed to be monitored, it is not known as to how the repeated violations of the Programme Code enshrined under the CTVN Act and Rules escape the scrutiny of the committee.

103. By this affidavit the Uplinking and Downlinking guidelines

of 2011 are placed on record under which permission for satellite TV channels are granted under two categories, namely, 'News and Current Affairs TV channels' and Non-News and Current Affairs TV channels'. A condition is imposed under the General Terms and Conditions (Condition No. 5.2) which apply the Programme and Advertising Codes and the rules framed under the CTVN Act and Rules.

104. It is stated that as regards the broadcasting media industry in India, it is divided into two different bodies to represent television news channels - i) NBA; and (ii) NBF. It is stated that neither of these two bodies have any statutory recognition. They are merely private bodies, which claim to be a part of the self-regulatory mechanism for the electronic media. The bodies cannot be a total replacement for the statutory and other obligations as mandated by the Rule of Law. It is submitted that restrictions under Article 19(2) can be only imposed by the State and not by any private body. Hence, the mechanism of self-regulation as a substitution for Government regulation is not only contrary to the scheme of the 'Constitution' but also arbitrary. Self-regulatory mechanism can be in addition to the rule of law but not in substitution. Also, there is no mechanism for enforcement of the orders of the private self-regulatory bodies and non-compliance has no consequences.

105. It is stated that the UOI/MI&B has been selective for the reasons best known to itself in imposing its own Programme Code and has sought to depend upon a non-statutory organization to adjudicate upon the complaints made against its members. UOI has not made any attempts to even ensure that the orders passed by the NBSA are also enforced in letter and spirit. This inaction on the part of the UOI smacks of malafide and is arbitrary.

106. A reference is made to an order passed by the Delhi High Court in Writ Petition No. 6568 of 2020 emanating from the present issue wherein the High Court has reprimanded UOI and directed MI&B to issue interim directions to the media houses. Pursuant thereto, the UOI after almost four months of miscarriage of justice has on October 9, 2020 issued advisory to the media channels to adhere to the Programme Code. In these circumstances, it is contended that the petition is required to be allowed.

107. There is a consolidated rejoinder to the counter/reply affidavits filed by the respondent nos.4, 12 and 13 by the petitioner no.1-Nilesh Navalakha dated October 10, 2020, whereby the petitioners have placed on record several instances being extracts of the programmes of different channels which according to the petitioners was not a media **(sic)** but vilification campaign severely affecting the rights of free and fair trial and affect a fair investigation. It is contended that the broadcasters have telecast highly sensitive/confidential information including Whatsapp chats, CDRs etc. which are in fact obtained from the investigating agencies. Following paragraphs in the counter affidavit according to the petitioners affect the conduct of the investigating agencies and news channels as may be noted:

> "5. I say that the Hon'ble Supreme Court and several High Courts have time and again deprecated the conduct/practice of the investigating agencies selectively leaking the sensitive and confidential information with respect to the status of investigation or the personal information of the accused or the complainant to the media.
>
> 6. I say that various broadcaster have telecasted highly sensitive/confidential information in connection with ongoing criminal investigations, where the news outlet have made various statements based on purported disclosure statements made by the accused and other witnesses to the Investigating officers

attributing the source of information to be from the investigating agencies. It is submitted that the news channel have also on their shows displayed the questions/interrogations made by the officer to the accused or witnesses. It is submitted that such information to which only the officers or the person being question should be privy to have reached the media channels.

7. I say that further, private Whatsapp chats exchanged between the accused, the deceased late actor, and other witness etc. were displayed on the programmes. It is submitted that disclosures if any by the investigating agencies amount to vilifying and severely prejudice the fair trial rights of the accused and badly affects the sanctity of the investigation of the sensitive cases.

8. It is submitted that a prominent anchor of Times Now during the course of hearing of a case on Media Trial before the NBSA on 24.09.2020 orally admitted that the whatsapp chats, CDRs. Etc. are not being manufactured by them, rather they gain them from the Investigating agencies.

……….

11. I say that in response to para 5 it is submitted that in view of the broadcasts as enumerated in the preceding paras it is evident CBI has not maintained secrecy and confidentiality in the ongoing investigation into the death of Sushant Singh Rajput. Several confidential and key details pertaining to this ongoing investigation have been leaked in the media and the same have been blatantly published by several media outlets.

12. I say that the contents of para 6 needs no response in terms of the admission by the respondent/CBI that reporting by the media amounting to parallel investigation adversely results in prejudicing the image of accused in the eyes of public along with having a negative impact on the reputation of CBI.

13. I say that the contents of para 7 and 9 are denied. It is submitted that if CBI has not leaked any information related to the

investigation of the case, why no inquiry has been initiated against such media channels who are broadcasting the information. The instances of such confidential details being leaked has been already enumerated in the petition, Supplementary affidavit as well as in para above. It is also denied that such reporting by the media is not having adverse impact on the administration of justice as well as the ongoing investigation by the respondent.

…….

16. I say that the averments made by the respondent in para 3 are denied. It is submitted that the respondent has not maintained secrecy and confidentiality in the ongoing investigation into the death of Sushant Singh Rajput. Several confidential and key details pertaining to this case have been leaked through the respondent in the media and the same have been blatantly published by several media outlets. It is submitted that the petitioner by way of petition as well as supplementary affidavit, additional affidavit dated 11.09.2020 and the rejoinder to the reply filed by other respondents have placed before this Hon'ble Court several such instances.

……

19. I say that the contents of para D as far as it relate to the Respondent being one of the premier investigating agencies in India are accepted. However, it is submitted that Respondent has not maintained secrecy and confidentiality in the ongoing investigation in this case. Several confidential details that can be accessed only through the Respondent have been leaked in the media and the same have been published by several media outlets. It is submitted that blatantly published by several media outlets. It is submitted that the Petitioner by way of Petition as well as supplementary Affidavit, Additional Affidavit dated 11.09.2020 and the rejoinder to the reply filed by other, Respondents has placed before this Hon'ble Court several such instances. A few of such instances are listed here below:

i. On Sep 6,2020 Times Now on its twitter

handle posted a video wherein the anchors reveal the inside details of the Rhea Chakraborty's interrogation by the Respondent. The tweet **read as "Inside scoop of ***'s questioning by the NCB. Sources: *** is being evasive during the questioning**." The video is available at: https://twitter.com/TimesNow/status/1302575251772112897?s=20

ii. On Sep 11, 2020 Times Now on its twitter handle again posted a video wherein the anchor states they have accessed 3 names namely …., ….., and designer …. from the list of 25 A listers named by *** during the interrogation with the Respondent. The link to this video is https://twitter.com/Times Now/status/1304456612753494016 2=24.

iii On Sep 3, 2020 Republic World broadcasted a video titled "xxx's **Case: Major Disclosure By NCB On B'wood Drug Cartel Remand Copy Accessed'** wherein the anchors states that they have accessed the Petitioner by way of supplementary Affidavit and Additional Affidavit dated 11.09.2020 and the rejoinder to the reply filed by other Respondents has placed before this Hon'ble Court several such instances. A few of such instances are also listed hereinbelow

i) On 7 August, 2020 Times Now broadcasted a show with a headline **'xxx death case: TIMES NOW accesses ED questionnaire for ***** wherein the anchor states that they have accessed the questionnaire for *** by the Respondent. Further, states that she will be interrogated, inter alia, regarding her financial details, business activities of xxx, bank account details of xxx, companies owned by her with xxx and if she was allowed to use the credit cards of xxx.

ii) On August 15, 2020 Times Now broadcasted a show with a headline **'xxx Death Probe: Gadgets seized by ED**

> **pertaining to data retrieval from deleted messages**' wherein the anchor states that inside sources from the Respondent has revealed to them that seized gadgets from the prime suspect has been sent to the ED forensic lab for data retrieval pertaining especially to the deleted messages. Subsequently in the same show, the reporter also goes on to reveal other key details including the Call detail records of ***."

108. There is a consolidated rejoinder affidavit filed by the petitioners to the reply filed by respondent no.3-NBSA and respondent no.17-NBF to contend that these are private bodies comprised of the private corporate media channels formed by the channels in a bid to regulate themselves. The jurisdiction of the said bodies extends only to the private members who expressly submit to their jurisdiction so as to be bound in a self-regulatory mechanism. He states that the NBSA was formed as a separate offshoot of the NBA pitching itself as a completely distinct and independent body. It is stated that as one of the news channel, Republic TV, was not inclined to tender an unconditional apology as ordered by the NBSA, the said news channel withdrew its membership of the NBA and instead of abiding by the directions of the NBSA, formed the NBF as an alternate self-regulatory body. It is submitted that NBF has no grievance resolution mechanism. UOI/MIB has not even recognized or have even mentioned the presence of the NBF as a self-regulatory body. It is contended that there are several small and large news channels which are not members of either the NBA or the NBF and thus, continue to air or broadcast anything in the garb of free speech. NBA including the NBSA and the NBF have been rendered merely as rubber-stamps and paper-tigers and are ineffective when it comes to regulation of media channels or any substantial reasonable restriction on the transgression, abuses and misuse of free speech

thereof. The adjudicatory authorities like the NBSA are bodies against the fundamental and cardinal principle of natural justice that 'no one can be a Judge in its own cause' and all proceedings of such authorities accordingly stand vitiated and always coloured with prejudice and bias in favour of its constituent members. It is submitted that in view of the ineffective grievance mechanism and failure of the self-regulating organization, several petitions across the country are filed seeking effective guidelines and mechanism, the details of which are set out in paragraph 15 of the rejoinder affidavit. It is contended that there is an ongoing turf/war between the NBA and the NBF constituents, as if two belligerent TRP thirsty factions or gangs fighting for supremacy and dominance over one another. It is a sorry state of the media today that in the dirty skirmish for TRPs, the truth is the first of the casualties.

109. There is also a consolidated rejoinder affidavit to the counter/reply affidavits filed on behalf of the respondent nos. 6, 7, 8, 11, 14, 15 and 16 whereby the petitioners denied the factual and legal stand taken in the reply affidavits of these respondents.

110. We need not discuss in detail the contents of these affidavits. Suffice it to note that the petitioners by this affidavit would urge that the entire media reporting of the actor's death amounts to a media trial offending the Programme Code prescribed under the CTVN Act and Rules and action in this regard were required to be taken by the UOI.

Additional Affidavit in PIL of M.N. Singh & Ors.

111. There is an additional affidavit dated 8 September 2020 by Satish Chand Mathur on behalf of respondent No.7. By this affidavit, the petitioner has brought on record certain videos and its transcripts highlighting the conduct of the members of respondent Nos.3 and 4 which according to them is material to decide the present petition. The

petitioners contend that they have prayed for a direction against respondent Nos.2 to 4 to ensure that reporting of crimes and criminal investigations are carried out in a balanced, ethical, unbiased and objective manner and not to turn such reporting into media trial and a vilification campaign against the police, investigators and others. In supporting this contention, the petitioner has annexed copies of certain screen-shots of the broadcasts against Mumbai police in contending that, such screen-shots would demonstrate a vicious campaign run by the members of respondent Nos.3 and 4 and how unfair aspersions are cast on Mumbai Police by the media. Such material is placed on record to urge that irresponsible and maliciously false propaganda was made by the media houses against Mumbai police stated to be clear from the videos of the broadcast. Such grievance as raised by the petitioner is against the Republic T.V., Times Now and Aaj Tak of their broadcasts on various dates as set out in paragraph 5 of the affidavit. It is contended that although there was caution to the media to exercise restraint by an order dated 3 September 2020 passed by this Court, there was a total contravention of the said order by the members of respondent Nos.3 and 4 who continued the unabated barrage of allegations and running a vilification campaign against Mumbai police thereby transforming the crime reporting into media trial, hampering the ongoing investigations. The transcripts of the videos broadcasted by the Republic TV on 3 September 2020, and 4 September 2020, subsequent to the order dated 3 September 2020 passed by this Court are placed on record along with a Compact Disk.

112. There is another additional affidavit dated 22 September 2020 filed on behalf of the petitioners again to bring on record certain videos and its transcripts highlighting the conduct of the members of respondent nos. 3 and 4 stated to be in breach of the orders dated 3 September 2020 and 10 September, 2020 passed by this Court urging members of respondent nos. 3 and 4 to show restraint in the media

reporting pertaining to the death of actor. The primary grievance in this affidavit is again against Republic TV and the debates being held on this channel between 9 p.m. to 10. p.m. on 11 September, 2020, 13 September, 2020, 14 September 2020, 15 September 2020, 18 September 2020 and 20 September 2020. The affidavit gives extracts of the objectionable contents to contend that such telecast were in absolute disregard to the spirit of the orders passed by this Court on 3 September, 2020 and 10 September, 2020.

Submission of Advocate Mr.Kamath on behalf of the PIL petitioners - Nilesh Navlakha and others:-

113. At the outset Mr.Kamath has submitted that the present PIL raises an issue as to whether a media trial of the kind unleashed by the respondent-news broadcasters on the death of the actor can be said to be legal and permissible expression of the right under Article 19(1)(a) of the Constitution. The second issue raised is as to whether the contract/licence entered into between the broadcaster and the UOI under the Up-linking/Down-linking guidelines would be binding on the broadcasters. The third issue which he raises is as to whether the MI&B being the Nodal Ministry has abdicated its statutory functions under the CTVN Act and the Rules read with the policy guidelines of 2011 and the licence executed with the broadcaster, to the private bodies like NBSA and NBF.

114. It is submitted that the need to file the present PIL petition had arisen in view of the spectre of media trials by the news broadcasters (media channels) which have become the order of the day. Such media trials, according to him, not only impede the right to a fair trial guaranteed to accused persons but is also an overreach of the freedom under Article 19(1)(a) of fair and proportionate reporting. It is contended by him that the case of the petitioners is that in the garb of

'public interest', the news broadcasters have exploited the unfortunate death of the actor for generation of TRP, by sensationalizing the investigation relating to his death and conducting a parallel media trial. Such coverage, according to him, is not only in bad taste, but also antithetical to the rule of law. Hence strict action against news broadcasters conducting a parallel media trial and for violating the Programme Code needs to be taken.

115. It is submitted that although the right of freedom of speech and expression as enshrined in Article 19(1)(a) of the Constitution is the hallmark of a democracy, thereby protecting the right of the free press and the free media, however, like every fundamental right, the freedom of the press and media cannot be unlimited or unfettered. This even if it is accepted that necessity of a free media for the proper functioning of a democratic polity cannot be undermined. In this context, a reference is made to the observations of Justice Oliver Wendell Holmes Jr., in **Schenck vs. United States,** reported in 249 US 47, when His Lordship observed "……. *The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic* ……"

116. It is submitted that the guarantee of the right to freedom of speech and expression in India, is different from the First Amendment to the American Constitution, which proscribes the Houses of Congress from making any laws "abridging the freedom of speech, or of the press" and provides for reasonable restrictions imposable by law as provided in Article 19(2). Hence under the Indian Constitution the freedom of speech and expression guaranteed to the citizenry is not unlimited. It is submitted that right of the press and the media cannot be higher than the rights of the common citizenry, especially when the media claims to be exercising the said right in 'public interest'.

117. He further contended that the right to freedom of speech and expression enjoyed by the press and the media is in actuality the

right enjoyed by the private owner of the news broadcaster (media channel). In this context a reference is made to the observations made by Mr.Laurence H. Tribe, constitutional scholar, who observes *"...... People have come increasingly to rely on television and radio for information. Newspapers, still a viable means of communication, are increasingly concentrated in the hands of a few large chains. In short, more and more of the most important forums and means of communication are coming under the control of fewer and fewer private owners."*

118. In the above context, a reference is also made to the observations of the Supreme Court in **Virendra** (supra) wherein the press has been recognized as an institution with immense and enormous power on the minds of the readers. The Court observed that the wide sweep of the reach of the newspapers and the modern facilities for their swift circulation to territories, distant and near, must all enter into the judicial verdict and the reasonableness of the restrictions imposed upon the press has to be tested against this background. It is contended that the same would be true in the case of electronic media where the power would be much higher than those of the newspapers. In this context, reliance is placed on the decision of the Supreme Court in **S. Rangarajan vs. P. Jagjivan Ram**, reported in (1989) 2 SCC 574, in which the Court was dealing with a question of prior restraint on cinematographic films under the Cinematograph Act, 1952. It is submitted that what would be the influence of such media on the mass audience who are generally not selective about what they watch, becomes all the more relevant in the present context.

119. It is hence submitted that dissemination of news being available to the public at large in their homes, without any hindrance and restriction in real time, the news broadcasters have a powerful influence on the public opinion and public discourse. It is submitted

that although prior restraint on the exercise of freedom of speech on the news broadcaster is not desirable, it cannot be said that the power exercised by the broadcaster cannot be without accountability or responsibility. In this context, Mr.Kamat has referred to the thoughts of John Stuart Mill, in his treatise - 'On Liberty', when he observed:

> "........ The acts of an individual may be hurtful to others, or wanting in due consideration for their welfare, without going to the length of violating any of their constituted rights. The offender may then be justly punished by opinion, though not by law. As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. ...."

120. It is submitted that media trial is an affront to the rule of law and interferes with administration of justice. To buttress this, the petitioners have presented in the pleadings several instances of a parallel media trial pertaining to the death of the actor, carried out by the Respondents-news broadcasters. It is submitted that these news broadcasters with impunity have attempted to influence public opinion on the guilt or otherwise of suspects, discussed material evidence, cross examined witnesses on live television, etc. According to the petitioners, such coverage is antithetical to the rule of law, and also in direct contravention of the right to fair trial, right to reputation, etc. of persons. Such media trial is an affront to two foundational principles of our Constitution, namely, the Rule of law and the administration of justice by the Courts.

121. By referring to the 200th Law Commission Report as to what constitutes a "Media Trial", it was urged that the Law Commission of India has categorized 10 types of publications in the media as prejudicial to a suspect or accused:

(i) publications concerning the character of accused or

previous conclusions;

(ii) publication of confessions;

(iii) publications which comment or reflect upon the merits of the case;

(iv) photographs;

(v) police activities;

(vi) imputation of innocence;

(vii) creating an atmosphere of prejudice;

(viii) criticism of witnesses;

(ix) premature publication of evidence;

(x) publication of interviews with witnesses.

122. It is submitted that the malice of media trials has been adversely commented upon by the Supreme Court in a plethora of judgments whereby it is held that a trial by press, electronic media or public agitation is the very antithesis of the rule of law and it can well lead to miscarriage of justice. To buttress this submission, reliance is placed on the decisions in **Rajendra Jawanmal Gandhi** (supra)**; M.P. Lohia** (supra)**,** and **Sidhartha Vashisht @ Manu Sharma** (supra)**.**

123. It is submitted by Mr.Kamat that the telecasts on the death of the actor contained details of the investigation, which were leaked by sources, and the media is speculating about the same on prime time. In this regard, referring to the decision of Supreme Court in **Rajendran Chingaravelu v. R.K. Mishra**, reported in (2010) 1 SCC 457 [Pg. 465], he submitted that the Supreme Court has held that "Premature disclosures or "leakage" to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law." This principle has also been reiterated in a subsequent decision in **Romila Thapar v. Union of India,** reported in (2018) 10 SCC 753.

124. Next, it is submitted that the UOI being the repository of the resource of the “airwaves” is duty bound to ensure that the conditions for grant of airwaves are strictly complied with. In this regard, he submitted that under Entry 31 of List 1 of the 7th Schedule to the Constitution, the UOI would have exclusive power to make laws in respect of broadcasting. The exclusive privilege of granting licenses for the use of air waves, lies with the Central Government, under Section 4 of the Telegraph Act, 1882. The licenses are granted to broadcasters. The broadcasters apply for grant of licenses to use this public property (air waves) for commercial exploitation, upon satisfaction of the conditions laid down in the Up-linking/Down-linking guidelines under which permission is granted by the MI&B and subsequently, a license is granted.

125. It is urged that the broadcaster, while using airwaves (public property) for broadcast, cannot claim immunity from being regulated or be accountable qua the public interest. In supporting this submission, reliance is placed on the decision of the Supreme Court in ***Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal***, reported in (1995) 2 SCC 161 to contend that the Supreme Court has held that airwaves constitute public property and must be utilized for advancing public good. The Court has also held that it is the duty of the State to see that airwaves are so utilized so as to advance the free speech rights of the citizens which is served by ensuring plurality and diversity of views, opinions and ideas. It is submitted that the free speech right guaranteed to every citizen of this country does not encompass the right to use these airwaves at his choosing, and conceding such a right would be detrimental to the free speech rights of the body of citizens, in as much as only the privileged few, powerful economic, commercial and political interests, would come to dominate the media. It is thus submitted that it is incumbent upon the State to ensure that there is a balancing of rights of various stake holders. In the

event of the failure of the State, it is submitted that this Court and the Supreme Court, in exercise of the wide powers of judicial review, must direct the State to balance the rights. The petitioners, thus, seek a direction to the State/UOI to implement the tenets of the Programme Code', which the news broadcasters are bound to comply, in the case of the on-going media trial on the death of the actor. It is submitted that unlike the PCI Act, there is no statutory regulator for the electronic news broadcasters (media channels) in India, although there is a regulatory mechanism in terms of the contractual obligations under the permission to uplink/downlink.

126. It is next submitted that the Up-linking/Down-linking guidelines bring about contractual obligations on the broadcasters, which include the news broadcasters. The broadcasters are governed by the CTVN Act and the Rules framed thereunder, by virtue of the contract entered into by the broadcaster. In this context, a reference is made to section 5 of the CTVN Act which provides for the Programme Code and it was urged that the broadcaster is also governed by the Up-linking/Down-linking guidelines under which two types of permissions are granted by the UOI, firstly, permission for news and current affairs and secondly permission for non-news and current affairs. The petition although concerns the first category, it is argued that the general terms and conditions as stipulated under the guidelines for Up-linking/Down-linking are relevant in as much as any violation of the CTVN Act and the Rules framed thereunder would entail penalties including prosecution.

127. It is submitted that in an application as made by the broadcasters and for grant of a licence when a broadcaster undertakes to comply with the tenets of the Programme Code and the Advertising Code as prescribed under the CTVN Act and the Rules framed thereunder that too by filing affidavit alongwith the application form, in respect of the contents broadcast, the broadcasters in that event are

bound by all the terms and conditions of such rules and regulations revolving around it. A reference is also made to the "proforma affidavit" under which the broadcasters applying for a permission undertake that the permission/approval granted can be withdrawn if the broadcasters do not adhere their broadcast as per the Programme/ Advertising Codes. There being a binding contract between the Government of India and the broadcasters, it is thus not open to the broadcasters to canvass a self-regulation contrary to the conditions of approval as imposed on them by the Government. The regime of self-regulation can be recognized, provided there is no such licence and the binding effect of these guidelines and the rules and regulations is withdrawn. Such is not the case according to the petitioners. The kind of self-regulation, as being canvassed by the respondents, is an extra-legal mechanism which is not recognized, rather is completely alien to the CTVN Act and the Rules. It is submitted that in any case it is not the case of the broadcasters that what has been prescribed by the rules namely the Programme Code and/or the restrictions under the licence and as imposed by the Up-linking and Down-linking guidelines are in any manner violative of their fundamental rights guaranteed under Article 19(1)(a) of the Constitution. In fact, the broadcasters also recognize these rights as valid restrictions imposed under Article 19(2) of the Constitution. It is thus submitted that the Programme Code has been incorporated to regulate the content of the broadcasters within the permission for Up-linking/Down-linking which is binding on the broadcasters not only under the provisions of the CTVN Act and the Rules framed thereunder, but also as per the Up-linking/Downlinking guidelines. In this context, as per the mechanism, any complaint for the violation of the Programme Code/Advertising Code as against a broadcaster (including news broadcasters), is required to be made to an Inter-Ministerial Committee of the UOI, and a suitable penalty as per the contractual obligation under the permission for Up-linking/Down-linking can be imposed. The Inter-Ministerial Committee can also act *suo motu*.

128. Mr.Kamat submitted that in the event there is contravention of the Programme Code, the necessary corollary is that the consequences specified under the Up-linking/Down-linking guidelines will follow. He further submitted that conducting an unfettered media trial will be in contravention of the tenets of the Programme Code, and therefore, it is imperative for the UOI to check the content of the broadcast in respect of the media trial in relation to the death of the actor, followed by consequences in the event of contravention. Next, he submitted that there are obligations on the UOI under the guidelines for permission to uplink/downlink of television channels which cannot be abdicated by the Government to private bodies. In this regard, he submitted that the UOI has a duty to ensure that the Programme Code is complied with by the broadcaster. It was also submitted that UOI has a duty cast upon it, to ensure that the air waves (public property) are not used in a manner which are contrary to the tenets of the Programme Code, since the Programme Code mirrors the restrictions enumerated in Article 19(2), and also is an expression of general public interest in respect of news broadcast. Hence, it is submitted that the UOI is duty bound to ensure that the larger public interest is not compromised by the news broadcaster, more particularly when it is exploiting public property for a commercial purpose. To support this submission, reliance was placed on the decision of the Supreme Court in **Commissioner of Police, Bombay vs. Gordhandas Bhanji,** reported in 1952 SCR 135, wherein the Supreme Court held that it is the duty of the person in whom power is conferred to exercise the power in a manner as prescribed when called upon to do so. As the Government has a mechanism in place to deal with the violations of the Programme Code, *suo motu* or upon a complaint, it is not open to the holder of the resource, not to achieve compliance of the Programme Code. This is more so when the statutory body for the print media, namely, the PCI, has issued an advisory to the print media on August 28, 2020 reminding

the media to follow the norms of journalistic conduct in reporting on issues relating to the death of the actor. Considering all this, the inaction of the UOI has led the petitioners to file this PIL petition, as the complaint regarding the insensitive media reportage of the death of the actor as well as insensitive remarks qua the Indian Army made on June 20, 2020 remained unattended, much less decided. According to the petitioners, it is surprising that such complaint was forwarded by the UOI to the NBSA which is a private body. This action of the UOI, according to the petitioners, is nothing but an act of abdication of a core function, viz. ensuring compliance of the conditions of the permission to use natural resources (air waves), which is impermissible. The news broadcasters ought to have been brought to book, instead of forwarding the complaints of violation of the Programme Code to the NBSA, and action should have been taken by the UOI for non-compliance and proportionate consequences ought to have been imposed on the news broadcaster. The broadcasters are also bound by the Up-linking/Down-linking guidelines and the terms and conditions thereof. The news broadcasters, given the mandate of Rule 6 of the CTVN Rules had no option, but to follow the tenets of the Programme Code, even while reporting on an ongoing trial. It is submitted that the tenets of the Programme Code cannot be sacrificed at the altar of what is perceived as "public interest" in the individual opinion of the news broadcaster. To support this contention, reliance is placed on the decision in ***New Bihar Biri Leaves Co. v. State of Bihar***, reported in (1981) 1 SCC 537 when the Supreme Court observed that when a person with his eyes open and on his own accord accepts the conditions in a contract entered with the State, he is bound by such conditions as may be contained in the contract. He cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. It is submitted that the maxim *qui approbat non reprobat* (one who approbates cannot reprobate) squarely becomes applicable in the

present context. A reference is also made to the decision of the Supreme Court in the case of **Excise Commr. vs. Issac Peter**, reported in (1994) 4 SCC 104 to submit that when a person enters into a contract freely with the State, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State.

129. It is thus submitted that the petitioners seek that the conditions of permission to uplink/downlink be complied with by the news broadcasters, in the coverage/telecast of the investigation/trial in respect of the death of the actor, and in the event of non-compliance, the UOI be directed to impose consequences in accordance with the terms and conditions of the permission to uplink/downlink. It is submitted that when the news broadcasters have themselves agreed to comply with the Programme Code in terms of an affidavit of undertaking, the news broadcasters are estopped from resisting implementation of the conditions and the consequences for non-compliance, on a plea of Article 19(1)(a).

130. It is submitted that the regime of self-regulation by the news broadcasters cannot be a substitute for the failure of the UOI to discharge its obligations under the licence issued to the news broadcasters. This, more particularly when the NBSA and the NBF are private bodies, comprised of the private corporate media-channels, formed by the channels in a bid to self-regulate. The jurisdiction of these bodies extend only to the private members who expressly submit to their jurisdiction, so as to be bound in a 'self-regulatory' mechanism. NBSA is a private-body, headed by a former Hon'ble Judge of the Supreme Court, formed so as to internally adjudicate upon violations, transgressions and non-compliances of its own Code of Ethics & Broadcasting Standards. This mechanism is available only in respect of the members

of the NBA, and only to those news broadcasters who agree to subject themselves to the jurisdiction of the NBSA. Also, the NBF was formed as an offshoot of the NBA, pitching itself as a completely distinct and independent body of broadcasters, parallel to the NBA. As per the reports available in public domain on November 09, 2019, the NBSA, the self-regulatory authority, had directed an English news channel, Republic TV (Respondent No.8), to air an unconditional apology for previously undermining the authority of the NBSA in a case of ethical violations. Instead of complying with the directions of the NBSA, Respondent No. 8 withdrew itself from the membership of the NBA and formed an alternate “self-regulatory” body named NBF, which has no grievance resolution mechanism. The submission is that it is possible to have different self-regulatory mechanisms at the hands of TV channels, when in our country there are more than 700 channels and all of them are not part of the self-regulatory mechanism. It is an argument advanced by the news channels that they would not permit the UOI to exercise its control. It is submitted that it is not the first time that the members of the NBA have withdrawn from its membership. The other broadcasters which include India TV had withdrawn from their membership only to avoid non-compliance of the norms of the NBA as imposed by the NBSA. It was thus submitted that the self-regulatory mechanism being championed by the Respondents is totally illusory, there is no real check on violations of even the Ethical Code, let alone the mandatory Programme Code as prescribed under section 5 of the CTVN Act. It is submitted that both the NBA (including the NBSA) and the NBF (which remains unrecognized by the UOI) have not been able to effectively regulate the news broadcasters and implement the Programme Code, which is being continually violated. In any event, the State’s regulatory mechanism cannot be replaced by self-regulatory mechanism, especially when it is concerning the use of public property, namely the air waves. The self-regulatory bodies also do not adjudicate upon the violations of the Programme Code and merely adjudicate the

violation of their own broadcasting guidelines. It is submitted that a broadcaster has no option but to comply with the Uplinking-Downlinking guidelines as well as the Programme Code; therefore the NBA/NBSA and the NBF admittedly have no jurisdiction to implement the violation of the Programme Code and it is only the UOI which has jurisdiction. This is the reason that neither have the petitioners sought any relief against the NBSA nor can the NBSA replace the UOI for implementation of the legal framework. It is next submitted that the adjudicatory structure of the NBSA and the NBF as adjudicatory authorities, go against the very fundamental and cardinal principle of natural justice, viz. that 'No one can be a Judge in its own cause,' though such body could be headed by a former Judge of the Supreme Court or of the High Court. These are private bodies having no authority in law to adjudicate upon any violations of the Programme Code or to ensure that errant news broadcasters are visited with consequences. There is also absolutely no enforcement mechanism for the orders of the self-regulatory authority. While the self-regulation mechanism may be in addition to the existing regime, it is submitted that it cannot replace the mechanism for enforcing the terms and conditions of the permission to uplink/downlink given to a news broadcaster. This is more so, when the news broadcasters themselves undertake to comply with the 'Programme Code' and the 'Advertising Code', and accept that in the event of non-compliance, consequences will ensue. It is submitted that the NBSA being a private body, its decisions are not subject to the jurisdiction of the High Courts or the Supreme Court under Article 226 or Article 32, respectively. The maximum punishment for an infraction of the Code of Ethics of the NBSA is merely a fine of Rs.1 lakh, which is a paltry sum for a news broadcaster, and disproportionate to the effect of the infraction.

131. The next contention of Mr.Kamat is that the possibility of abuse cannot be a ground to validate the failure of the UOI to discharge

its obligations under the regulatory regime. It is submitted that a doomsday picture has been painted on behalf of the NBA/NBSA as also by the media channels when they contend that UOI ought not to be permitted to regulate the media space as it could lead to a situation akin to the "1975 Emergency" and the excesses meted out to the Press. According to him, such an argument is misconceived for several reasons. First, neither the UOI nor any of the broadcasters have sought to question the present regulatory regime consisting of the Uplinking-Downlinking guidelines read with the terms and conditions of the license. There is even no challenge by the broadcasters to the existing legal regime. In this background, neither the UOI nor the broadcasters can escape their obligations under a binding agreement resting on some apprehensions of abuse of power by the UOI. In the absence of any challenge to the validity of the existing legal regime, the Respondents cannot wish away the same and seek the imprimatur of this Court on the admitted deviations from the binding contract between the UOI and the news broadcasters. Secondly, it is a well settled legal position that the mere possibility of abuse is not a ground to deny the existence of a power. In this context, reliance is placed on the decision of the Supreme Court in **Mafatlal Industries Ltd. vs. Union of India,** reported in (1997) 5 SCC 536, wherein the Court referring to the case of **Collector of Customs vs. Nathella Sampathu Chetty**, reported in 1962 AIR 316, observed that *"(T)he possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity."* The Court, also referring to the decision in **State of Rajasthan v. Union of India**, reported in (1977) 3 SCC 592, observed that the wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief and it must be remembered that merely because power may sometimes be abused, it is not a ground for denying its existence. What emerges is that it is not the question as to whether the mechanism is good or bad, adequate or inadequate, but the question is when there are mandatory conditions for

the exploitation of public property for commercial purposes, whether the consequences for the non-compliance of those conditions are imposed by the UOI or not. It is then submitted that all the news broadcasters have admitted to the binding nature of the Programme Code in relation to the content of the news broadcast, in addition to the admission given at the time of applying for permission. Also, there is no challenge to these guidelines or to the Programme Code. It is thus submitted that the regime under the Up--linking/Down-linking guidelines cannot be disputed by the private bodies and the news broadcasters. In this context, reference was made to the decision of the Supreme Court in **State of U.P. vs. Harish Chandra**, reported in (1996) 9 SCC 309 to contend that no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law and that the same principles have been reiterated by the Supreme Court in a subsequent decision in **Union of India vs. S.K. Saigal**, reported in (2007) 14 SCC 556. It is next submitted that the judicial review by constitutional courts is the best check on abuse; hence, any action under the prevailing mechanism is subject to challenge by invoking judicial review jurisdiction of this Court when there is abuse of power by the State. Such abuse is not immune from a challenge and judicial scrutiny. It is submitted that this Court may direct that procedural safeguards be complied with by the UOI while it exercises power under the prevailing mechanism, in terms of providing of an opportunity for hearing and general compliance of the time honoured principles of natural justice. It is submitted that this Court may direct that any adverse order as against a news broadcaster will remain in abeyance for a period of 15 days or so as to enable the news broadcaster to approach the appropriate Court. It is submitted that the process of action under the prevailing mechanism may be time consuming, as the prevailing mechanism is consequential in nature, and not as a prior restraint. In this regard, it is submitted that for the purposes of prior restraint, it is always open to the aggrieved parties to

approach the jurisdictional Courts for injunctive relief complaining of a content proposed to be broadcast by the news broadcaster. However, that cannot be in substitution of the contractual obligations under the permission envisaged in the Up-linking/Down-linking guidelines, and mandate of the Programme Code, that a news broadcaster is duty bound to comply with, and face the consequences that follow for non-compliance thereof.

132. Mr.Kamat next submitted that the respondents' case relying on the decisions of the Supreme Court in **R.K. Anand** (supra)**; Common Cause v. Union of India,** reported in 2017(2) Scale 169; **and Destruction of Public & Private Properties** (supra) to canvass that the Supreme Court has supposedly approved the self-regulatory mechanism, is not a correct argument in the present context as the enforceability of the Up-linking/Down-linking guidelines are conditions of the license were not the subject matter of any of these decisions. In none of these decisions any binding contract was placed before the Court as also it was never the case that the binding contract would be overcome by self-regulation and self-regulation be permitted. It is submitted that the observations are required to be read in the context in which the controversy arose in these cases. In this regard, the observation of Lord Halsbury in **Quinn v. Leatham,** reported in (1901) AC 459 is relied on wherein it was observed that a case is only an authority for what it actually decides and it cannot be quoted for a proposition that may seem to flow logically from it. It was also submitted that in **Sahara India Real Estate Corp. Ltd. (supra)** the Court was seized with the limited issue of laying down of guidelines for media reporting of Court trials and concerned about the issue in regard to pre-publication of materials to be produced in the Court by the media outlets as clearly seen from paragraphs 6 to 9 and 12 of the said decision. It is thus submitted that the scope of the said decision is very limited and in no way encompasses the issues raised in the present case

which, *inter alia*, raises an issue of enforceability of the terms and conditions of the license issued by the UOI to the news broadcasters. On these submissions, it is submitted that the prayers in the writ petitions be allowed.

Submissions of Mr. Aspi Chinoy, learned Senior Advocate on behalf of the petitioners M.N. Singh & Ors.

133. At the outset, Mr.Chinoy submitted that in this petition the Court should clarify and direct that all television channels in the course of a news report, panel discussion or otherwise shall not make observations, statements, suggestions, or otherwise create a perception that any person is guilty of an offence, or that any such person should be arrested, regarding an ongoing police investigation, or a pending criminal proceedings. The reasons being that such a media trial/pre-judgment interferes with or obstructs the administration of justice and constitutes contempt of court and is covered by the prohibition contained in rule 6(f) of the CTVN Rules which provides that *'No programme should be carried in the cable service which contains anything amounting to contempt of court'*.

134. In relation to the self-regulatory framework, it is submitted that the News Broadcasting Standards Regulations provide for a Code of Conduct under which the authority (NBSA) would entertain complaints and take actions. The maximum fine to be imposed by the authority is Rs. 1,00,000 and in addition to this power, for the reasons to be recorded in writing, it may warn, admonish, censure, express disapproval against and/or impose a fine upon the broadcaster and/or recommend to the concerned authority for suspension/ revocation of license of such broadcaster. It is submitted that the "Code of Ethics and Broadcasting Standards" also makes no provision in regard to contempt of court or media trial or a pre-judgement. There are specific guidelines covering reportage as issued by the NBA. In paragraph 3.3 it is provided

that “Reports on crime should not amount to pre-judging or pre-deciding a matter that is, or is likely to be subjudice”. In paragraph 3.4 of these guidelines, it is provided that “No publicity should be given to the accused or witnesses that may interfere in the administration of justice or be prejudicial to a fair trial.” It is submitted that despite the statutory & self regulatory framework, in regard to the ongoing criminal investigation into the death of the actor, certain TV Channels for the past few months were conducting a persistent media trial and have been running programmes/hashtags calling for the arrest of the actress. It is submitted that the record establishes that no action whatsoever has been taken against such TV Channels/ broadcasts either by the UOI or by the news broadcasters. Such persistent inaction in the face of repeated broadcasts over a number of months, must result in a conclusion of total abdication of their duty/obligation by the UOI/EMMC and by the NBA to stop such offending broadcasts. It is submitted that it is a mis-apprehension that such media trial or a prejudgment during the pendency of a criminal investigation, does not affect the administration of justice and does not constitute contempt of court. In either of these situations, it is felt just and necessary that this Court clarifies and directs that such media trial/pre-judgement, during a pending criminal investigation, or the pendency of a criminal proceeding, affects the administration of justice, constitutes contempt of court and is covered by the prohibition contained in section 5 of the CTVN Act read with rule 6(f) of the CTVN Rules. The Government be accordingly directed to take steps under section 20(3) of the CTVN Act to prohibit the transmission or retransmission of such programmes and/or broadcasts.

135. Mr.Chinoy then submitted that the legal position that a media trial/pre-judgement during a pending criminal proceeding, would constitute criminal contempt under sec 2(c)(ii) & (iii) of the CoC Act, is well established by numerous judgements. This also constitutes a

criminal contempt under section 2(c)(iii) of the CoC Act. Reference was made to the decision in **Sahara India Real Estate Corporation Ltd.** (supra) to canvass a proposition that the power conferred on the High Court and the Supreme Court to see that the administration of justice is not perverted, prejudiced, obstructed or interfered with is recognized in Articles 215 and 129 of the Constitution, respectively. He submitted that the words "due course of justice" in section 2(c) or section 13 of the CoC Act are wide enough and are not limited to a particular judicial proceeding. Also, trial by newspaper comes in the category of acts which interferes in the course of justice or due administration of justice. The Court also recognized that presumption of innocence is held to be a human right.

136. In the above context, reference was also made to the decision of the Delhi High Court in **Naveen Jindal vs. Zee Media Corporation Ltd**,, reported in 2015 SCC Online Del 7810, to contend that the Court considered and decided this precise question as to whether these principles of interference with the administration of justice were applicable even at the stage of a criminal investigation and in a situation when there was no actual proceeding pending. The Court referring to the decision in **Sahara India Real Estate Corporation Ltd.** (supra) and in **Sidhartha Vashisht @ Manu Sharma** (supra) and to earlier judgments of the Delhi and Kerala High Court concluded that media trial conducted even at the stage of a preliminary enquiry by the police, would constitute interference with the course of justice/administration of justice.

137. It was next submitted that a reference by the respondents to the decision of the Supreme Court in **Destruction of Public Property** (supra) *and* **Common Cause,** reported in (2018) 13 SCC 440, to contend that the Court should not issue any directions, as prayed for, are misplaced. It is pointed out that the petitioners do not seek that this

Court regulate the media, as the case of the petitioners is that the Court should clarify that rule 6(f) of the CTVN Rules covers within its scope and ambit media trials and pre-judgement, both at the stage of police investigation and during the pendency of proceedings. Such clarification/exposition of the legal position is necessary in the facts of the case.

Submissions of Ms.Neela Gokhale on behalf of the petitioner "In Pursuit of Justice"

138. It is submitted that the requirement of criminal contempt, as defined in section 2 of the CoC Act, comprises of two relevant elements in the present context : the first being that section 2(c)(ii) contemplating a publication which interferes or tends to interfere with the due course of any "judicial proceeding" and the second being that section 2(c)(iii) contemplates a publication which interferes or tends to interfere or obstruct the administration of justice "in any other manner". It is submitted that section 3(2) of the CoC Act qualifies and explains and/or is an exception to publication when there is no pendency of any judicial proceeding. However, as far as section 2(c)(iii), there is complete absence of any qualification or explanation when it speaks of a contempt covered by any publication of the nature as specified in the said provision, as clear from the words "in any other manner" as used in the provision.

139. According to the petitioner, the first position relates to invocation of the CoC Act in respect of publication even in the absence of pendency of a judicial proceeding as per the explanation to section 3(2), to include only those proceedings wherein a challan has been filed or any other cases where cognizance is taken. It is urged that judicial proceedings must be said to have commenced when an FIR is filed.

Hence any obstruction during the course of the investigation by the concerned police on account of irresponsible or misleading publication should attract an action for criminal contempt. It is submitted that investigation eventually forms the basis of cognizance leading to framing of charges and the trial. It is submitted that publication which tends to obstruct or mislead the process of investigation would vitiate the trial on account of coerced witnesses, misleading publication and broadcast confessions, tampered medical and forensic evidence etc. All this would lead to violating due process as provided under Article 21 of the Constitution of India mandating free and fair trial. It is submitted that even the term "pendency of judicial proceeding" be viewed in its strictest perspective. An FIR has to be reported to the area Magistrate under section 157 of the Cr. P.C. Such dual object is to clothe the Magistrate with the jurisdiction of monitoring the investigation. Thus, the pillar of defence is that the pendency of judicial proceedings for the purpose of the CcC Act commences from the stage of investigation. Any publication, which obstructs the investigation in any manner gives rise to invocation of the CoC Act.

140. On the second proposition, namely, in regard to the invocation of the CoC Act, in the absence of pendency of any judicial proceedings, it is submitted that section 2(c)(iii) gets attracted when any publication is criminally contumacious and it obstructs the administration of justice "in any other manner". Such words as used in the said provision are inclusive. Hence such publication which obstructs the administration of justice when the publisher is aware that the proceedings are imminent would attract the CoC Act.

141. It is submitted that doctrine of imminent proceedings would emanate from the law as laid down by the Supreme Court in **A.K.Gopalan vs. Noordeen,** reported in (1969) 2 SCC 734, in which the Supreme Court has considered the factum of 'imminency of

proceedings', to be of material significance, when juxtaposed with the ambit of the Fundamental Rights of the free speech concerning matters which are either pending before the Court or when proceedings are imminent. It was held that proceedings in the context of the CoC Act would be required to be considered pending from such date whereafter the proceedings against the accused would become imminent. It is submitted that the Court propounded that contempt of court may be committed by a person when he knows or had good reason to believe that criminal proceedings are imminent. The test is whether the circumstances in which the alleged contemnor makes statements are such, that a person of ordinary prudence would be of opinion that criminal proceedings would soon be launched. It is submitted that the doctrine of imminent proceedings, as laid down in this decision has been accepted in the subsequent decisions, namely, **Sahara Real Estate Corporation Ltd.** (supra), **State of Bihar vs. Shanker Lal Khirwal and Anr**, reported in 1960 SCC OnLine Pat 199, **Sushil Sharma vs. the State (Delhi Admin.) and Ors**, reported in ILR (1997) 1 Delhi, **Court on its own motion vs. the Publisher, Times of India Chandigarh and Ors.**, reported in 2013 SCC OnLine P&H 6997, **Swatanter Kumar vs. the Indian Express Ltd. and Ors.**, (2014) SCC OnLine Del. 210 and **Devangana Kalita vs. Delhi Police**, reported in 2020 SCC OnLine Del.867. It is submitted that the doctrine of imminent proceedings enunciated in **A.K. Gopalan** (supra) has also been commented in the 200th Law Commission Report.

141. Hence, an unnecessary, unwarranted, unscrupulous and unprofessional reporting by the media would not be protected under Article 19(1)(a) of the Constitution of India and would fall in the reasonable exception as provided in Article 19(2) of the Constitution and would be covered within the ambit of the jurisdiction of this court under Article 215 read with sections 2(c)(iii) and 3(2) of the CoC Act. Referring to section 3(2) of the CoC Act, it is submitted that the explanation clause

to any provision does not expand or limit the scope of any provision unlike a proviso to a clause which qualifies the main provision.

142. It is next submitted that there is a difference between criminal contempt as provided in the CoC Act, 1971 and the concept of contempt inherently vested in the Supreme Court as also the High Courts by virtue of Articles 129 and 215 of the Constitution of India.

143. It is lastly submitted that directing the Government to regulate the media is bound to be counterproductive. The essence of Article 19(1) (a) will be lost. The existence of Article 19(2) is a sufficient fetter on unrestricted use and abuse of Article 19(1)(a) of the Constitution of India. It is submitted that there is a thin line between free speech and unlawful activity which may lead to obstruction in the administration of justice. Thus, the contours need to be defined. It is hence urged that a line is required to be drawn by the Court and in such cases by invoking the CoC Act.

Submissions of Mr. Anil Singh, learned ASG on behalf of UOI/Ministry of Information and Broadcasting

144. It is submitted that there is sufficient regulatory framework in place for regulating electronic media which primarily consists of "statutory regulation" and "self regulation". The statutory regulatory framework is contained, *inter-alia*, in the CTVN Act and the Rules framed thereunder read with the Up-linking and Down-linking guidelines for the TV channels. It is submitted that compliance with the Programme Code is mandatory. As regards self regulatory framework, it is submitted that such framework in respect of news channels which has been recognized and accepted by several judicial pronouncements takes place through the News Broadcasters Association and the News Broadcasting Federation. It is submitted that in addition to the above, an aggrieved person has a right to approach the Courts and seek relief

in terms of defamation or affecting the administration of justice in the contempt jurisdiction. It is submitted that the UOI has considered the several authoritative pronouncements of the Supreme Court and has voluntarily imposed a self restraint on itself in favour of the mechanism of self- regulation. This, however, does not and cannot mean that the UOI has abdicated its duty. The UOI has the power to regulate and penalise violations of the Programme Code and has been exercising the power to penalise the TV channels. TV Channels have even been suspended in the past and multiple actions have been taken; as also, advisories have been regularly issued by the Ministry.

145. It is submitted that such regulatory mechanism seeks to penalise the actual broadcast and not a proposed broadcast, in accordance with the dictum of the decision of Supreme Court in **Sahara India Real Estate Corpn. Ltd.** (supra). This would also not mean that the period during which a channel or programme is being telecast in violation of the Programme Code is free to run the same subject only on fear of admonishment in future. As held by the Courts, action can be taken by the Authorised Officer under the CTVN Act, namely, by the District Magistrate or the Police in terms of section 19 or by the higher judiciary by way of contempt proceedings or proceedings seeking injunction in case of defamation etc. It is submitted that to ensure that the freedom of press is not fettered by the Government and media continues to act as a pillar of democracy, the present system as evolved. Hence, it is not as if the field is unregulated. The argument that the field is unregulated is said to have been waived by the petitioners who assert that there is an abdication of failure by the Government to exercise its powers. Hence, there is no need for framing of guidelines or regulations and the same has also been held by several judicial pronouncements.

146. It is next submitted that there is no failure to exercise power

or any abdication of duty, as the UOI is acting in accordance with the said mechanism identified and has not breached or abdicated any of its duty. If the UOI is of the opinion that there are violations, which have not been addressed or even otherwise, it may exercise its power. The argument of abdication and failure fail to recognise two crucial and significant aspects, namely, the aggrieved persons or affected persons have till date not complained or made any protest that the broadcasts have affected their rights and secondly, pre-censorship is not permissible and hence, the Government acts on the basis of the actual publication. A delicate balancing of the right of the media and press as against the rights of the affected individuals is required to be brought about. There cannot be a straight-jacket formula in such cases and each case would be required to be tested on its own merits. A broad-brush mechanism would impinge upon the freedom of the press and affect a pillar of democracy. Hence, Courts have always guarded against over regulation of the media but emphasized the need for a case to case analysis. It is submitted that moreover the UOI although has dealt with the issue as raised by the petitioners, however, the UOI has objection to the maintainability of the petition on the ground that the petitioners are not the aggrieved persons and hence they cannot approach the Court and on this ground itself the petitions are liable to be dismissed.

147. It is submitted that the case of abdication of duty by the Ministry is not a case pleaded in any Petition. In fact, all petitions proceeded on the basis that there is a lack of statutory and/or regulatory framework. This case of abdication has been urged in oral arguments and the petitioners have sought to raise this ground in their additional affidavits/rejoinder affidavits. Detailed submissions are made on the statutory framework as contained in the CTVN Act and the Rules thereunder as also in the Policy guidelines for Up-linking and Downlinking TV channels in India. It is submitted that this statutory mechanism has been recognized on multiple occasions as being a

sufficient statutory framework by the Courts including the Supreme Court. It is submitted that it is the case of the UOI that the High Courts and Supreme Court have wide powers under the law of contempt jurisdiction as clarified in the decisions of the Supreme Court including the judgment in **Sahara India Real Estate Corpn. Ltd.** (supra). The decision in the Supreme Court in **A.K. Gopalan** (supra) is referred to contend that the Supreme Court has recognized that contempt jurisdiction would be available even prior to filing of the challan or chargesheet in a given case. It is submitted that although this judgment was passed prior to the CoC Act being brought into force, the said decision was duly considered in the decision of the Supreme Court in **Sahara India Real Estate Corpn. Ltd.** (supra). It is submitted that the UOI is only relying on the decision in **A.K. Gopalan** (supra) to show that the Supreme Court has recognized that contempt powers are wide and can be exercised even prior to filing of challan/charge sheet. Hence, any acts which would affect the administration of justice can be prevented by the High Courts and Supreme Court by exercising their inherent powers of contempt jurisdiction as observed in paragraphs 33 and 34 in **Sahara India Real Estate Corpn. Ltd.** (supra).

148. It is submitted that whilst any acts which would affect the administration of justice can be prevented by the High Courts and the Supreme Court by exercising their inherent powers of contempt jurisdiction, the argument of the PIL petitioner to the effect that section 3(2) of the CoC Act must be declared to mean that it applies from the stage of registration of FIR ought to be rejected. The said contention completely negates and renders nugatory the 'Explanation' to section 3(2) of the CoC Act and hence, such an exercise would be impermissible. It is thus contended that there is sufficient statutory legal framework in place, which not only establishes the Programme Code and makes broadcasts contrary thereto impermissible and illegal but several mechanisms of enforcement for such wrongful broadcasts are also

provided for in addition to the self regulatory mechanism, the importance of which has been upheld by the Supreme Court. To support this submission, reliance is placed on the decision of Supreme Court in **Destruction of Public and Private Properties** (supra) and more particularly to the observations as made in paragraph 30 to paragraph 32 of the decision recognizing a self- regulatory mechanism, namely, the recommendations of the Committee of Shri. F. S. Nariman, Senior Advocate approving the NBA model as a process that can be built upon both at the broadcasting service provider level as well as the industry level and recommended that the same be incorporated as guidelines issued by the Supreme Court under Article 142 of the Constitution as was done in Vishaka case. However, as observed in paragraph 33 of the said decision, the Supreme Court left it to the appropriate authorities to take effective steps for their implementation, as the Court was not inclined to give any positive directions. In support of the submissions, reference is also made to the order dated 29th October, 2014 passed by the Full Bench of the Kerala High Court in **S. Sudin vs. Union of India & Ors.,** the decision of the Supreme Court in **Common Cause** (supra) and the order dated 20th August, 2020 passed by the Division Bench of Kerala High Court in **Halvi K.S. vs. State of Kerala & Ors** [WP(C) No.16349 of 2020(S)].

149. On the contention of the petitioners that guidelines be framed, it is submitted that it is trite that in cases of a Legislative void, the judiciary may frame guidelines in cases of violation of Fundamental Rights, however, in the present case, there is no legislative void as also held by several Courts including the Supreme Court. As regards the issue of enforceability of the self- regulatory mechanism, it is submitted that it is the area of concern which is being considered by the UOI. It is submitted that the Ministry is also undertaking an exercise of proposing certain amendments to the CTVN Act and a proposal in that regard was prepared and placed in the public domain on 15th January 2020 inviting objections and suggestions from various stakeholders. The UOI, in its

further limited affidavit filed before the Supreme Court in the case of **Firoz Iqbal Khan** (supra), has expressly stated as under:

> "16. It is respectfully submitted that the self-regulatory mechanism for redressal of complaints in case of all the aforesaid organisations are, by and large, effective and ensures impartiality. The membership of either of them, not being compulsory, does require examination as no broadcaster can be compelled to become a member of any of the voluntary organizations compulsorily. This question is under examination of the Central Government as regards the manner and procedure to ensure one statutory umbrella mechanism redressal of grievances while completely ensuring journalistic freedom, honouring and respecting the freedom of speech and expression and ensuring a mechanism which would ensure impartiality. This being an issue still under active consideration, it is advisable not to dwell much on this issue."

150. It is thus submitted that considering the observations of the Supreme Court in paragraph 50 in **Sahara India Real Estate Corporation Ltd.** (supra) and in case of **Jaipur Shahar Hindu Vikas Samiti vs. State of Rajasthan & Ors.,** reported in (2014) 5 SCC 530, these PILs are not maintainable.

151. Referring to the decision of the Supreme Court in **State of Himachal Pradesh & ors. vs. Satpal Saini**, reported in (2017) 11 SCC 42, it has been submitted that the High Courts cannot direct the State to frame a law.

Submissions of Mr.Kunal Tandon, learned Counsel on behalf of Respondent no.7-Times Now.

152. It is submitted that the statutory regime presently in operation can be traced out from the history as to how the relevant laws and regulations have developed in respect of regulation of TV channels.

It is submitted that in 1992, India saw advent of few foreign television channels who started uplinking signals of these television channels from territories outside India and the Cable Television Networks to use of umbrella like satellite dish antennas, started downlinking those channels into India. Thereafter there was haphazard mushrooming of networks in India. On 29 September 1994 the Cable Television Networks (Regulations) Ordinance was promulgated by the President of India as also the Cable Television Networks (Regulations) Bill was introduced before the Parliament. On 25 March 1995, the CTVN Act, was passed and notified with a view to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto. The CTVN Act was to regulate the operation of the cable television networks and not the broadcasters. It is submitted that in the year 1995, the Supreme Court in **Cricket Association of Bengal** (supra), observed that the airwaves which are used for the purposes of telecom and broadcasting services, constitute public property and must be utilized for advancing public good. It was also held that the airwaves can be used for the purpose of broadcasting only when allowed to do so by a statute or in accordance with the statute. In the year 1997, in pursuance of the said judgment of the Supreme Court, the Government of India decided to create two authorities namely, the Telecom Regulatory Authority of India (hereafter the "TRAI" for short) and the Broadcasting Regulatory Authority of India (BRAI). In the year 1997, the Telecom Regulatory Authority of India Act ('TRAI Act') was passed with a view to regulate the telecommunication service which at the relevant time was telecom service only. Section 2(1)(k) as it existed in 1997, excluded broadcasting services. At the time when TRAI Act was passed, the broadcasting industry was developing in such a way that there seemed no immediate or urgent need for a legislation such as the TRAI Act and till date no significant step towards the same has been considered.

153. In the year 2000, both the TRAI Act and the CTVN Act were amended. In the TRAI Act, the amendment provided for creation of an Appellate Tribunal, known as the Telecom Disputes Settlement and Appellate Tribunal and further amended sections 2(1)(ea)-Licensor, 2(1)(j)-Service Provider and 2(1)(k)- Telecommunication Service, were incorporated. In the definition of "telecommunication service", the amendment allowed the Central Government to notify other services to be Telecommunication Service including Broadcasting Services. The CTVN Act was also amended with effect from 1 September 2000, thereby adding the definition of "Authorized Officer" and cognizance of offences to be taken upon a complaint by the Authorized Officer, and most importantly amended sections 19 and 20 of the Act, allowing the Authorized Officer/Central Government to prohibit transmission of programmes and operation of the CTVN Act, channels in public interest or in the event, the same was found to be not in conformity with the programme/ advertisement code. It is submitted that another set of amendments was carried out in the CTVN Act and most importantly the contravention of Section 4A was made a cognizable offence.

154. It is submitted that on 9 January 2004 in exercise of powers under proviso to Section 2(1)(k) of the TRAI Act, the broadcasting services were notified to mean the telecommunication service, and accordingly the powers to regulate distribution related activities of broadcasting services, were given to the TRAI. In the year 2006, the Broadcasting Services Regulation Bill of 2006 was promulgated, however, the same was never passed by the Parliament. The Bill came to replace both TRAI Act for the purposes of broadcasting and CTVN Act. Again in the year 2006, the CTVN Rules including Rule 6 of the Programme Code and Rule 7 of the Advertising Code, were substantially amended and the Code for self regulation in advertising as adopted by the Advertising Standard Council of India was given statutory recognition by incorporation of Rule 7(9) in the 1994 Rules. In the year

2007, the CTVN Act was further amended and thereafter further amended in the year 2011 to allow the transmission of programmes through Digital Addressable Systems (DAS), and the powers to seize and confiscate equipment, power to make rules were also amended, keeping in view the changes in the technology from time to time. It is submitted that keeping in view the aforesaid history and development of guidelines in respect of content available on television channels, the safeguards and powers available with various authorities and courts, can be divided into three heads namely (1) Safeguards which would be (a) Constitutional Safeguards, (b) Statutory Safeguards, and (c) Self Regulatory Mechanism; (2) Pre Publication Injunction in case of interference with the administration of justice; and (3) Pre Publication Injunction in case of defamation.

155. It is submitted that in regard to the Constitutional safeguards, the Constitution itself recognizes certain rights as basic to the human rights and one of those rights is enunciated under Article 19(1)(a)–Freedom of Speech and Expression. This right is curtailed/restricted solely on grounds available under Article 19(2). As to how the right has been considered and interpreted, a reference is made to the decisions of the Supreme Court in **Romesh Thapar Vs. The State of Madras** (supra); **Sakal Papers (P) Ltd. and Others** (supra); **Shreya Singhal** (supra); and **Anuradha Bhasin vs Union Of India**, reported in (2020) 3 SCC 637 to contend that the freedom of speech and expression lay at the foundation of all democratic organizations, that press is ark/fourth pillar of the democracy, and importance of freedom of speech and expression was necessary to tolerate unpopular views.

156. Referring to the judgment of the Supreme Court in **R.K. Anand** (supra) and **Sahara India Real Estate Corporation Ltd.** (supra), it is submitted that despite certain excesses the Supreme Court clearly held that it was not necessary to control or regulate the media in any

manner. It is observed that the norms to regulate the media and to raise its professional standard must come from inside, thereby in a way accepting the self regulation mechanism of the broadcasting industry. Also power to the Court to injunct or postpone a publication was available considering Article 129 and Article 215 of the Constitution of India which was held to be wider than the definition of criminal contempt under Section 2(c) of the Contempt of Courts Act. The Supreme Court was considering the width of the postponement orders and to balance the curtailment right under Article 19(2) with the Constitutional protection under Article 21 namely of fair trial and openness of trial, the Supreme Court propounded a principle of real and substantial risk of prejudice to the proper administration of justice or fairness of trial. It is submitted that the Supreme Court created restrictions by reading Article 19(2) which contains the word 'in relation to' 'contempt of court' in Article 19(1)(a) without referring to and/or creation of principles like exceptional circumstances, balancing of rights, real and substantial risk and neutralizing devices. The creation of such principles is to ensure a balancing act between a right available under Article 19(1)(a) to the press and the right available to the general public to know and openness of the trial, both under Article 19(1)(a) and Article 21. The Supreme Court did not simply exercise the curtailment available under Article 19(2), which it could have otherwise provided.

157. It is contended that there are statutory safeguards available under the up-linking and down-linking guidelines of the Ministry of Information and Broadcasting, Government of India, which are in place since July, 2000 and which have been continuously updated/amended as per the requirement from time to time. The requirement of these guidelines is in adherence to the programme and advertising code under the CTVN Act and the Rules, and any failure can result in revocation of the permission granted. It is submitted that the power to issue the up-linking and down-linking guidelines can be traced in the decision of the

Supreme Court in **Cricket Association of Bengal** (supra) which holds that airwaves are public property and must be distributed in accordance with the applicable statute and also referring to Section 4(1) of the Indian Telegraph Act. Referring to the decision of the Supreme Court in **Total Telefilms Vs. Prasar Bharati** [Petition 183(C) 2008], it is contended that the permission granted under Section 4(1) of the Indian Telegraph Act, is deemed to be a license under the said provision.

158. It is submitted that the CTVN Act and the Rules provide for a sufficient safeguard considering the provisions of Sections 5 and 6 which prescribe the Programme Code and the Advertising Code respectively. Rules 6 and 7 of the CTVN Rules are the relevant provisions prescribing the Code required to be followed by the electronic media. It is submitted that there are other sufficient powers available under the CTVN Act. A reference in this regard is made to the provisions of Section 20 of the CTVN Act. In regard to the self regulatory mechanism, it is submitted that the same is accepted by the Government of India since the year 1985, as evident from the establishment of the Advertising Standards Council of India (ASCI) in the year 1985 which regulates advertising. It is submitted that ASCI is a voluntary self regulation council like NBA (News Broadcasters Association) and IBF (Indian Broadcasting Federation). The code for self regulation in advertising was given statutory recognition referring to Rule 7(9) of the CTVN Rules. In the similar manner, the self regulatory guidelines have been created for news broadcasters and the authority under the News Broadcasters Association, called the News Broadcasting Standards Authority (NBSA), which regulates the news broadcasters and the broadcasting contents, a 'Complaints Council' under the aegis of Indian Broadcasting Federation which regulates all television channels other than news.

159. This apart, there are remedies available under the law

namely pre-publication injunction in case of interference with the administration of justice and in case of defamation. The relevant Articles being Article 129 and 215 of the Constitution read with the CoC Act. This submission is supported by referring to the decisions in **Sushil Sharma** (supra), and the judgment in **Devangana Kalita vs. Delhi Police**, (WP Cri. 898 of 2020) also a reference is made to the decisions in **Sahara India Real Estate Corporation Ltd.** (supra) and **Shreya Singhal** (supra). It is hence submitted that the Court has refrained from passing any order to gag the media and formulated a neutralizing device by issuing order directing not to issue any communication, naming any accused or any witness till the charges, if any, are framed and the trial is commenced, so as to protect the interest of the persons involved in the criminal proceedings. It is thus submitted that the injunction on pre- publication or postponement is available only in exceptional circumstances.

160. In regard to an issue on defamation, it is submitted that the decisions in **Khushwant Singh vs. Maneka Gandhi,** reported in AIR 2002 Delhi 58 and **Shashi Tharoor vs. Arnab Goswami,** [CS(OS)273 of 2017] are relevant. It is submitted that in both the judgments, the principles culled out are (i) that there may be views and unpopular views and people have a right to hold such view; (ii) that the publication must be seen wholly and not in parts; (iii) that the publication must be seen from a man of average thinking's point of view and not from a man of conservative point of view. Also in Dr.Shashi Tharoor's Case the Delhi High Court has laid down the principle denying an injunction and observed that **(i)** Freedom of expression excludes freedom of media and constitutes one of the essential foundations of the democratic society, which is restricted/curtailed by Article 19(2); **(ii)** There is a balance between strike of competing rights; **(iii)** After considering the rule in England for an injunction that the Court must be satisfied that it would inevitably come to a conclusion that the publication was defamatory, the

Court held that in India, the Courts have the power to pass pre-publication injunction, if the two pronged tests of necessity and proportionality are satisfied and there are no reasonable alternative methods or measure are available to prevent the said risk; **(iv)** A public figure additionally has to prove that the publication was precipitated by malice; **(v)** The Court must take care that any order passed does not result in a gag order or a super injunction; **(vi)** There is a need to balance competing rights, which can be done only on a case to case basis; and **(vii)** In a live debate or an interview, it is not possible to run a disclaimer as no broadcaster can predict or know in advance what a participant or an interviewer is going to state.

161. In regard to the question as to how the reporting by media affects the investigation by the investigating authority, it is submitted that like a law officer or a judge are unlikely to get affected by media reporting, the same equally applies to an investigating agency, more so as the investigating agency is fully bound by the procedures provided in the Criminal Procedure Code. In regard to the influence of media reporting on the mind of the witness, it is submitted that in most cases witness is aware of his/her role in the investigation process and is made aware that he/she has to state the truth as and when questioned by the investigating authorities. It would also be right to presume that the witness is also made aware of the consequences/safeguards provided in law, in the event the witness refrains from the truth or turns hostile or his/her credibility is questioned etc. It is therefore, difficult to state whether media reporting on an ongoing investigation is capable of influencing a witness or can influence his/her mind in the investigation process. It is submitted that certain principles in relation to the investigative journalism and trial by media are already in place, as circulated by the Press council of India as well imbibed in the guidelines issued by the News Broadcasting Standards Authority.

162. It is submitted that raising pertinent issues in public interest and questioning a process or apparent drawbacks in a process by the media is only with the intent to highlight those issues and not to malign or defame any person or entity, like any Police Officer or an investigating officer. Seeking answers and clarifications to key issues in the interest of the public, is the backbone of fearless journalism. It is submitted that it is wrong to state that media reporting in an ongoing investigation and is targeted to malign any officer or investigating authority, although no doubt such reporting must take place within the rights enunciated under Article 19(1)(a) and so that a particular reporting steers clear of restrictions/curtailment provided under Article 19(2) or any law framed, which is in consonance with the curtailment provided under Article 19(2).

Submissions of Mr.Arvind Datar, learned Senior Counsel on behalf of News Broadcasters Association (NBA)

163. Mr.Datar has made the following submissions on the core issues which, according to him, arise for consideration. The same are as under:-

(I) Whether there is a legal vacuum in relation to remedies for adverse consequences of media reporting (or 'trial by media') on criminal investigation at the "pre-chargesheet stage"?

(a) Whether courts are empowered to address such consequences under the CoC Act?; and

(b) Whether courts are empowered to address such consequences under any other framework?

(II) If in the affirmative, whether this Court should lay down guidelines or obligations for media reporting in this regard?

(III) Whether this Hon'ble Court should lay down guidelines on any other connected issue?

164. In answering these questions, it is submitted that at present there are robust, preventive, ameliorative as well as punitive remedies available against adverse consequences of media coverage at any stage of criminal proceedings – including at the pre-chargesheet stage which consists of (i) statutory safeguards under the CTVN Act and the Programme Code thereunder; (ii) Judicial remedies under the CoC Act; (iii) Judicial remedies under the inherent contempt jurisdiction of the high courts and the Supreme Court of India; (iv) Judicial remedies under the Common Law of Contempt; (v) Judicial remedies under the Code of Civil Procedure, 1908; (vi) Remedies under the IPC and (vii) Remedies under the Cr.P.C.; and (viii) Self-regulatory remedies.

165. It is thus submitted that it may not be necessary for this Court to lay down any additional guidelines in this regard. However, an opportunity be taken to clarify that the said remedies equally apply in relation to pre-chargesheet and pre-trial criminal matters, thereby providing much-needed precedent and guidance on the issue.

166. The broad propositions as canvassed on behalf of the NBA are as under:-

> “I. That there is no legal vacuum as regards the adverse consequences of excessive media coverage of criminal matters at the pre-chargesheet stage.
>
> i. The extant statutory framework provides robust and comprehensive powers.
>
> ii. Further, the high courts and the Supreme Court are adequately empowered to address such matters under the CoC Act.
>
> iii. Without prejudice, even if the CoC Act would

> not cover such matters, the high courts and Supreme Court may act under their inherent contempt jurisdiction.
>
> iv. Without prejudice, the high courts and the Supreme Court may act at the pre-chargesheet stage under the common law of contempt.
>
> v. Without prejudice, courts exercising civil/original jurisdiction are also empowered under the Code of Civil Procedure 1908 to take preventive measures to protect parties to a criminal investigation.
>
> vi. Over and above the preceding remedies, additional remedies exist under criminal law and self-regulatory mechanisms."

167. It is thus not necessary for this Court to issue additional substantive guidelines in relation to media coverage on criminal investigation. It is submitted that this Court may consider to clarify and lay down a law around the following issue:-

i. Clarifying that existing powers in relation to Contempt of Court clearly extend to matters at the pre-chargesheet stage;

ii. Clarifying and providing a framework for the exercise of remedies by affected parties;

iii. Clarifying the need for law enforcement agencies to formulate policies and take concrete steps to prevent and take action against leak of materials relating to an ongoing criminal investigation; and

iv. Evolving judicial mechanism to improve the speedy dispensation of remedies in urgent cases.

168. On behalf of the NBA, detailed submissions are made in regard to existing legal framework as contained under the CTVN Act and

the CTVN Rules, to submit that a robust framework of statutory mechanism under the CTVN Act 1995 and CTVN Rules exist. Under this framework every channel should adhere to the Programme Code as referred to in rule 6 and the relevant clauses being (a), (d), (f), (g), (i) and (k) may apply to scenarios where media coverage (or 'trial by media') may have adverse consequences for ongoing criminal investigations. It is submitted that significantly none of these provisions are restricted in their application to any stage of the criminal justice process and they will apply to cover coverage from the moment a FIR is registered on a complaint or arrest, till conviction or appeal, as well as the stages before and after this process. It is submitted that these prohibitions are not without teeth and sufficient provisions are made under the CTVN Act, to attract serious consequences for television channels. In this regard, a reference is made to section 11 which is a power to seize equipment used for operating cable television network. Section 16 provides for punishment for contravention of the provisions of the CTVN Act. Section 19 provides for power to prohibit transmission of certain programmes in public interest. It is submitted that the MI&B has regularly enforced these provisions by issuance of advisories, warnings, and orders. It is also submitted that there is no analogue in any other sector of media where a regulatory violation attracts a wholesale ban/blackout. Where such an order is issued, a television channel is essentially asked to cease all operations and sever all sources of revenue for a prescribed period. Hence, there is no regulatory or enforcement vacuum from the point of view of the statutory framework.

169. It is next submitted that the regulatory framework is supplemented by wide powers that courts possess to punish parties who act in their contempt. Referring to section 2(c) of the CoC Act, which defines criminal contempt, it is urged that the "Explanation" to section 3 of the CoC Act, clarifies that in relation to criminal matters, a judicial proceeding is said to be pending: (i) where it relates to the commission of

an offence, when the charge-sheet or challan is filed, or when the court issues 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. Although it is argued that the powers of the Court under the CoC Act do not apply in relation to criminal matter at a pre-chargesheet stage, however, such a view is erroneous, as it is made clear by the text of the 'Explanation'. This definition only applies in relation to conduct which may attract contempt under section 2(c)(ii) of the Act, which relates to judicial proceedings. As a whole, section 3 (and the Explanation thereto) has limited significance in relation to defining the sweep of contempt under section 2(c). To support such contention, reliance is placed on the decision of the Supreme Court in **Rachapudi Subba Rao vs. Advocate General, Andhra Pradesh**, reported in (1981) 2 SCC 577, wherein the Supreme Court has observed on the narrow scope of section 3 of the CoC Act to hold that the phrase "the administration of justice in any other manner" used in section 2(c)(iii) has been substituted in section 3(1) by the narrower phrase "the course of justice in connection with any civil or criminal proceeding pending at the time of publication." It is submitted that no case can be made out that this Explanation in any way applies to restrict the scope of section 2(c)(iii) of the Act, which is significantly broader and relates to the "administration of justice" as a whole, and that "administration of justice" is a broad term which not only relates to the pending judicial proceedings but to a wide spectrum of activities involved in the judicial system. This has also been explained in paragraph 14 of the decision in **Rachapudi Subba Rao** (supra).

170. It is next submitted that *"administration of justice"* in section 2(c)(iii), when interpreted purposively, must be understood to include any matter which can affect the administration of justice at any stage of the criminal process. Excessive publicity, leakage of evidence, and vilifying coverage can affect public confidence in the judicial system even

at the earliest stages of the criminal process. Hence, it could not have been the intent of Parliament that the CoC Act would only address mischiefs arising subsequent to charge-sheet under this clause. This rule of interpretation has been well-entrenched through several decisions of the Supreme Court. In this context, reliance is placed on the decision of the Supreme Court in **Bengal Immunity Co. vs. State of Bihar**, reported in AIR 1955 SC 661, to canvass the principle of interpretation required to be followed would be as laid down in **Heydon's case**. It is submitted that applying this approach, it must be concluded that *"administration of justice"* must be understood to include all possible influences and threats which may pollute the stream of justice. It would include conduct from the commission of the crime onwards. It is hence submitted that even if pre-chargesheet stage matters would not be pending judicial proceedings for the purposes of section 2(c)(ii) of the CoC Act, they would be covered by the much broader and 'residuary' clause, namely section 2(c)(iii). As a result, the court would be sufficiently empowered in its discretion under the CoC Act to initiate criminal contempt where any conduct may affect *"administration of justice"*. This would equally apply in cases of adverse consequences of excessive media coverage of pre-chargesheet criminal investigations. It is submitted that as there is no direct authority on this point to the knowledge of the respondent, this Court may consider laying down the law in this regard.

171. It is next submitted that there are remedies under inherent Contempt Jurisdiction of the high courts and the Supreme Court. The powers of the high courts under Article 215 and under Articles 129 and 142 of the Supreme Court to punish for contempt cannot be in any manner restricted by statute. Such powers are plenary in nature and they occupy a different plane. In this context reliance is placed on the decision of the Supreme Court in **Pritam Pal vs. High Court of Madhya Pradesh**, reported in 1993 Supp (1) SCC 529, in which the Supreme

Court taking a review of the several decisions, has held that power of the Supreme Court and the high courts being the Courts of Record as embodied under Articles 129 and 215 of the Constitution, respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the CoC Act and their inherent power is elastic, unfettered and not subjected to any limit.

172. It is submitted that this principle in law, if applied to the present case, it would be clear that such powers are sufficiently broad for Courts, such as this Court to mould remedies to account for any given situation which may adversely affect *"administration of justice"*. Also, in **Sahara India Real Estate Corpn. Ltd.** (supra), the Supreme Court affirmed the view that "the meaning of the words 'contempt of court' in Article 129 and Article 215 is wider than the definition of 'criminal contempt' in section 2(c) of the CoC Act.

173. Referring to the decision of the Supreme Court in **Supreme Court Bar Association vs. Union of India**, reported in (1998) 4 SCC 409, it is submitted that whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions, the CoC Act, which provides a special jurisdiction, can be exercised although sparingly and with caution. It is submitted that any alleged media trial would impugn the administration of justice. The adverse or excessive coverage would either be directly in relation to the Court proceedings or dehors Court proceedings in relation to witnesses, victims, or evidence. In this context, referring to the effect of selective disclosures and media briefings by police, fair trial and the administration of justice, a reference is made to the decision of the Delhi High Court in **Devangana Kalita** (supra), to submit that the Court after considering the powers of a high court under Article 215 of the Constitution, directed that no

further statements or communications naming any accused or any witness be made "till the charges, if any, are framed and the trial is commenced". A reference is also made to the decision of the Kerala High Court in the case **Jollyamma Joseph v. State of Kerala** (Bail Application No.5390 of 2020) to submit that such court considered the issue on leakage of confessions and other police evidence and the effect which it would have on the administration of justice. It is submitted that these are cases where courts, comprehending that the conduct of the police or media may compromise the pre-chargesheet criminal justice process, took action under their inherent powers to protect the administration of justice. It is thus submitted that the high courts and the Supreme Court possess wide powers to take preventive as well as punitive measures in exercise of contempt jurisdiction under the Constitution. This would be without prejudice to the extant powers available under the CoC Act and such powers may be exercised where courts apprehend any interference with the administration of justice. There is nothing to prevent these powers being extended to pre-chargesheet matters in the context of criminal proceedings.

174. It is then submitted that adjunct to the breadth of the inherent powers of the high courts and the Supreme Court, is its subsumption of the common law of contempt. It is submitted that the development of the common law of contempt demonstrates that this facet is capable of being adapted effectively to prevent any threat or potential threat to the administration of justice. There is now little doubt that the common law supplements the powers under the CoC Act and the broad inherent powers of the constitutional courts. What was implicit is now explicit by the decision of the Supreme Court in **Sahara India Real Estate Corp. Ltd.** (supra) which enunciates that Article 19(2) of the Constitution preserves the common law of contempt as 'existing law'. Even section 22 of the CoC Act provides that the CoC Act is in addition to other existing laws on contempt. A reference is made to

Article 372 of the Constitution where the phrase "laws in force" was interpreted to include the common law of England in e **Director of Rationing and Distribution vs. Corporation of Calcutta,** reported in AIR 1960 SC 1355. It is thus submitted that the common law of contempt forms part of the jurisprudence, that the high courts or the Supreme Court may draw upon in addressing any matter which may affect the administration of justice. It is also clear from the examination of development of the common law that it clearly confers powers upon courts to address any matter that may affect the administration of justice ~ including those at the preliminary stages of the criminal justice process. In this context, a reference is made to the decision of the Queen's Bench in **Attorney General vs. News Group Newspapers Plc.**, reported in (1989) Q.B. 110, where the Court was asked to consider if contempt, at common law, could only extend to "active proceedings" or those that were imminent. It was held that the common law is not a worn-out jurisprudence rendered incapable of further development by the ever-increasing incursion of Parliamentary legislation. It is a lively body of law capable of adaptation and expansion to meet fresh needs calling for the exertion of the discipline of law. A reference is also made to the decision of the Court of Appeal in **Jet 2 Holidays Ltd. vs. Hughes and Anr.**, reported in (2019) EWCA Civ 1858, where the Court has held that it is well established that an act may be a contempt of court even though carried out before proceedings have begun.

175. It is next submitted that the common law of contempt has evolved to account for situations where there is prejudice or risk of prejudice even prior to the existence of "active", "pending" or "imminent" proceedings. It is asserted that the law of contempt is versatile and is meant to be extended to cover even novel scenarios, and is not static. Thus, the Court may clarify and lay down the law on this point in the Indian context. Also, there are remedies under the Code of Civil Procedure, 1908. It is also submitted that courts, exercising

original/civil jurisdiction, are fully empowered to intervene where there are concerns that media coverage of a criminal matter is causing prejudice to the proceedings or to the parties, and it is fully open for a court to grant injunctive or other relief to restrain publication of any material which may prejudice any pending proceedings. In this context, a reference is made to the decision of the of the Delhi High Court in **Naveen Jindal** (supra), where the Court has held that the power of the high court to order a restrain on publication in the media would clearly encompass the stage when the criminal case against the accused is at the preliminary enquiry or investigation stage, as held by the Supreme Court in **Sidhartha Vashisht @ Manu Sharma** (supra)**.**

176. It is submitted that there are also sufficient provisions under the criminal law where the actions of any third-party, whether the media or otherwise, transgress from being mere interference in the criminal justice system to malicious conduct intended to cause injury/harm. A reference in this regard is made to the provisions of sections 182, 192, 202, 203 and 211 of the IPC, which are provisions illustrative of punitive responses to scenarios where third parties tend to pervert the course of criminal justice. These are the provisions which are equally applicable to account for excesses by the media, or other third parties, in relation to the coverage of criminal investigations or proceedings. None of these provisions are restricted to applying to any specific stage of the criminal justice process. As a result, they would equally apply at the pre-chargesheet stage if the facts are made out.

177. In regard to the self regulatory remedies, it is submitted that the news media is also subject to self-regulation under the authority of the NBSA, the Chairperson of which is a retired judge of the Supreme Court of India. The Chairperson is assisted by four eminent persons with special knowledge in various fields, as well as four eminent editors

employed with broadcasters. The NBSA considers complaints against Members and Associate Members for violations of the “Code of Ethics & Broadcasting Standards” of the NBA. This Code enumerates several fundamental principles to be followed by news channels including in relation to impartiality and objectivity, neutrality, and safeguards to ensure that violence and crime are not glorified. The Code is applicable in all situations. It is submitted that since its establishment in 2008, the NBSA has received total 3975 complaints, which includes complaints received at the first level of redressal and complaints received at the second level of redressal. NBSA has passed 106 orders/decisions. Fines were issued in total 14 cases. Apologies were mandated in several cases. In addition to proceedings commenced after complaints were received, also *suo motu* proceedings were initiated by the NBSA in 9 cases.

178. In regard to the question that fine of Rs. One Lakh which may be levied by the NBSA may not be adequate, it is submitted that the fine is without prejudice to any other remedies that may lie against an erring news channel. It is submitted that news channels found in violation of the Code are required to display prominent apologies, which occupy a large portion of the screen at prime time and would read aloud serving as a robust deterrent as well as punitive measure to check against media excesses. In actuality, the apologies not only hurt the credibility of a channel but also have adverse commercial consequences in that they last for at least one minute or more depending on the text during a prime time telecast.

179. It is submitted that the Supreme Court bearing in mind the balance of various interests, has approved the model of media self-regulation and emphatically rejected a state-intervention mode. In **Destruction of Public and Private Properties** (supra), a three-judges bench of the Court approved the conclusions of the Nariman Committee, which recommended a self-regulatory approach for media regulation.

The Court held that the recommendations of the Committee shall be operative as guidelines.

180. It is thus submitted that where the Supreme Court as well as the Central Government, has expressed a clear preference to the model of self-regulation, it may not be appropriate for this Court to revisit or disturb this status quo. In regard to the petitioners' contention that there is need for issuance of guidelines by this Court, it is submitted that the field of regulation vis-a-vis news channels is occupied by several robust and overlapping frameworks to check against and, if necessary, punish the abuse and hence, it is not appropriate for this Court to provide additional substantive guidelines on this matter. It is necessary that there is an effective balance that preserves the cherished fundamental right to free speech and expression but prevents its abuse, and checks the violation of the right to privacy and damage to reputation of persons before and during any civil and criminal proceedings is maintained. Any guidelines laid down may apply regardless of whether the concerned news channel is a member of any self-regulatory mechanism, and that efforts shall be taken to bring more channels within the self-regulatory fold. It is submitted that this Court may consider issuing directions, laying down the law, and providing guidance on the following indicative matters:-

i. Clarifying that the powers of contempt (under statute/common law/inherent powers) clearly extend to cover matters under the pre-chargesheet stage.

ii. Issuing directions to the Home Secretary or DGP of Maharashtra to frame and enforce guidelines on the lines set out by the Ministry of Home Affairs in advisory dated April 1, 2020 [extracted at paragraph 52 of the decision of the High Court in **Devangana Kalita (supra)**].

iii. Issuing directions to the Home Secretary or DGP of

Maharashtra to create a press officer for the police of the State of Maharashtra. It is the press officer who will alone hold periodic briefings in sensational cases or incidents that are likely to affect the public at large (for e.g. communal violence, riots etc.).

iv. Issuing directions to the EMMC and other monitoring infrastructure of the MI&B at the state/district levels to immediately alert the MI&B of any breach of the Programme Code in sensational cases or criminal cases affecting the public at large. The Monitoring Committee may also be requested to inform the NBSA so that *suo motu* cognizance can be taken.

v. Issuing appropriate directions to create an Emergency Application procedure (EA procedure) so that an aggrieved person can approach the high court, on an expedited basis, to prevent the broadcast/telecast of any programme that violates the Programme Code. To prevent abuse of the EA procedure, there should be a provision for implementation of heavy costs of one lakh for frivolous applications. The EA procedure will enable a judge of the high court to hear such applications on Saturdays and Sundays, or at other odd hours, if the need arises. Pending amendment of the rules, this can be in the form of a direction.

Submission of Mr.Siddharth Bhatnagar, Senior Advocate, on behalf of News Broadcasters Federation:-

181. At the outset, it is submitted that the case of the petitioners that guidelines be issued on media reporting from the stage of registration of FIR till the filing of the charge-sheet, needs to be rejected. Any such restriction on reporting by media, would tantamount to no crime ever being reported and would amount to silencing of the press. It would also infringe upon the pubic rights to be informed and would also override and nullify rights of the victims and their families. This kind of

media control ought not to emanate from the facts of one case and would not bode well for democracy. Such restrictions on the right of the press are unprecedented and disproportionate in the facts of the present case. It would be an anathema to the rule of law to state that there can ever be restrictions or an embargo on reporting the truth or the suppressed facts in a matter of public importance. If such blanket protection is granted to the Government and its instrumentalities, it would give rise to brazen abuse of power. The police would have unbridled powers and stature would be protected from any legal consequences. It may also lead to numerous crimes being brushed under the carpet, tardy investigation and other chilling ramifications. It is submitted that such control of media can only exist in an ideal State. Illustratively incidences like custodial death, police brutality, misuse of power and corruption, are realities faced by a common citizen everyday which requires a vibrant and robust press. It is hence submitted that the entire media cannot be silenced for the protection of a few people. If at all, the line is crossed in reporting by any media organization, there are enough remedies in law for the protection of the aggrieved party.

182. At the further outset in regard to the petitions filed by Mahesh Narayan Singh & others and Nilesh Navlakha & others, it is submitted that the petitioners have no locus standi to file these petitions as they are neither accused persons nor aggrieved persons whose right to fair trial have been allegedly curtailed in any manner by any publications made by the media channels. To support these submissions, reliance is placed on the decision of the Supreme Court in **R&M Trust vs. Koramangla Residents Vigilance Group**, reported in (2005) 3 SCC 91). It is next submitted that these petitions have been filed to curtail the freedom of press enshrined under Article 19(1)(a) of the Constitution of India and seeks a gag order against all media houses from making any publications, which is impermissible in law. The submission is that even citizens have a right to be informed about

matters of public and national interest. Also, the Supreme Court has held that preventive relief of postponement of publication can be availed only by any accused or any aggrieved person who apprehends that a particular publication has real and substantial risk of prejudicing the proper administration of justice or the fairness of his or her trial. This more particularly when none of the petitioners are directly or indirectly related to the cause the petitioners canvassed in the petitions, namely, the death of an actor. Hence, applying the test as laid down by the Supreme Court in **Sahara India Real Estate Corporation Limited** (supra), the petitions ought not to be entertained.

183. It is submitted that even otherwise, no grounds have been shown to justify that the restraint orders sought against the media houses in relation to any publication concerning the unfortunate death of the actor has not posed any real or substantial risk of prejudicing the proper administration of justice or the fairness of trial against the petitioners. The petitioners have alleged disputed questions of fact and lack any exceptional circumstances warranting interference by this Court. It is submitted that similar prayers have been sought in a petition filed before the Supreme Court in **Reepak Kansal vs. Union of India** [W.P. (C) No. 762 of 2020], wherein prayers are made to restrain broadcasting news, debates and interfering in the administration of justice. The Supreme Court has issued notice on the said petition on 7th August 2020. In regard to the factual aspect, it is submitted that the facts that have been unearthed by respondent No.8 in relation to the demise of the actor and another person related to the film industry which is due to the constant efforts of this respondent in 'investigative journalism'. Such efforts have brought to light matters of grave concern in the interest to the society at large. Even in the past, the Courts have time and again recognized the legitimacy of instances wherein investigative journalism has been pivotal to reveal issues which pertain to a larger cause and serve public interest. It is submitted that the

respondent No.8 is a media house of a considerable repute in the media fraternity, hence it has a responsibility to provide comprehensive and objective information to the public. The debates, which are carried out on the issue in question by the respondent No.8, are strictly in conformity with the provisions of the CTVN Act and the Rules and such broadcasts and debates are also in consonance with Programme Code prescribed thereunder and do not violate any provisions of the CTVN Act and the Rules.

184. It is next submitted that in carrying out its investigative journalism, the respondent No.8 follows the norms of journalistic conduct published by the Press Council of India (Edition 2010) which lay down certain basic elements of investigative journalism, namely, it has to be the work of the reporter, not of others; the subject should be of public importance for the reader to know; and an attempt is being made to hide truth from the people.

185. Submissions are made to contend as to how there was a deficiency in the investigation being undertaken and an attempt on the part of the State investigating agencies to interfere in the investigation being undertaken by a Central Authority. It is submitted that even the NCB has appreciated the efforts and cooperation of the media and has stated that they had been unearthing a lot of information in the case.

186. In regard to the petitioners' allegation of violation of various provisions of the CTVN Act and the Rules framed thereunder by the respondent No.8, it is submitted that media reporting on the death of the actor has been a long fight of more than 47 days for investigative journalism by the media and that has unearthed a pile of evidence in the case and the media has played a key role to use its skill in investigative journalism to bring key testimonies, evidence, corroborations and inconsistencies into the public domain. He

submitted that this has assisted the investigating agencies which is publicly acknowledged.

187. It is submitted that given the alleged mis-handling of crucial evidence right at the start of the case by the previous investigating agency and the questions raised vis-à-vis the initial investigation, the respondent No.8 believed that it is a duty of the media to contribute in the fight for justice in the said case by uncovering the truth to the extent possible and also assist the investigating agency in the process.

188. It is submitted that the tweets referred to on behalf of the petitioners (page 123 in PIL filed by Mahesh Narayan Singh) were made in the light of the incriminating evidence raising suspicion against one of the accused, which was further enforced by the tardy investigation of the local investigating agency and the fact that an FIR was registered by such agency. The tweets are without *mala fides* and were made in good faith and in the larger public interest. It is submitted that even the reporting in the case of another person, connected with the film industry, was done solely on the basis of post-mortem report filed in the case. Also, a petition is pending before the Supreme Court seeking court monitoring CBI probe in the death of such person.

189. It is submitted that the whole intention in such reporting was to bring about correct facts in the eyes of the public and bringing to justice the family of the victims who were running from pillar to post. In such process, this respondent has not in any manner violated any guidelines. Moreover, as a result of this reporting, ultimately on 25th July 2020, Patna Police registered an FIR in the matter which was subsequently transferred to the CBI after the orders were passed by the Supreme Court.

190. It is submitted that the key issues sought to be canvassed

by the petitioners appear to be, a lack of a grievance redressal mechanism in cases of media trial. In this regard, the respondent No.8 adopts the submissions made by the counsel for the News Broadcasters Association (NBA) and reiterates that no judicial intervention is required to issue guidelines for the electronic media as there exist a functional self-regulation mechanism to deal with similar issues. In support of the submission, reliance is placed on the decision in **Vineet Narain vs. Union of India**, reported in (1998) 1 SCC 226; more particularly, referring to the observations made in para 56, it is submitted that even the Supreme Court has taken note of the need to have an investigative journalism being of value to a free society. It is submitted that in a democratic society, public must have access to the information which is sought to be achieved by investigative journalism. The submission is supported by referring to the decision in **Maria Monica Susairaj vs. The State of Maharashtra**, reported in 2009 Cri LJ 2075. Also, reliance is placed on the decision of the Delhi High Court in **Court on its Own Motion vs. State and Ors.**, **reported in** 2008 (105) DRJ 557 (DB), wherein the court has observed that even if investigative journalism comes to an end, media has a role to play. It is submitted that before a cause is instituted in a court of law or is otherwise not imminent, the media has full play in the matter of legitimate investigative journalism. This is in accord with the Constitutional principle of freedom of speech and expression and is in consonance with the right and duty of the media to raise issues of public concern and interest. Relying on the decision in **Rajendra Sail vs. M.P. High Court Bar Assn**., reported in (2005) 6 SCC 109, it is submitted that for rule of law and for an orderly society, a free responsible press and independent judiciary are both indispensable. The Supreme Court has recognized that the power and reach of the media, both print as well as electronic, is tremendous and it has to be exercised in the interest of pubic good, as a free press is one of the very important pillars on which the foundation of rule of law and democracy rests.

SUBMISSIONS ON CONTEMPT OF COURTS ACT, 1971:

191. It is submitted that prior to the CoC Act, the position in law was that as soon as a complaint was lodged in the police station and investigation started, the matter became sub-judice attracting the judicial power of the Court to punish for contempt (Reference is made in this context to pages 64-65 of the 200th Report of Law Commission of India).

192. It is submitted that during deliberations, which led to framing of the CoC Act, a Governmental committee headed by the then Solicitor General of India (the Sanyal Committee) made a report dated 28th February 1963. A legislative bill drafted by this Committee underwent many changes and ultimately, when the bill was introduced in the Rajya Sabha, a motion for reference to a Joint Committee of the Houses was adopted on 27th November 1968. The Lok Sabha adopted the motion on 14th December 1968. Another Joint Committee (the Bargava Committee) made a detailed inquiry and submitted its report on 20th February 1970.

193. The Sanyal Committee had recommended contempt qua "imminent proceedings". The Sanyal Committee (at Chapter VI, titled 'Contempt in relation to imminent proceedings') had observed as under:-

> "(iv) Criminal cases.- In respect of criminal matters, however, a slightly different approach is necessary. As in the case of pending proceedings, if a person is able to prove that he has no reasonable grounds for believing that the proceeding is imminent, it should completely absolve him from any liability for contempt of court. Perhaps such a defence is already available to an alleged contemner, but we would prefer to give it statutory expression particularly as under English law, from which

our law of contempt is derived, lack of knowledge would not excuse a contempt though it may have a bearing on the punishment to be inflicted. We would also like to go a little further and provide for certain additional safeguards. It has been observed in several cases that once a person is arrested it would be legitimate to infer that proceedings are imminent. But in actual fact that result may not invariably follow. We have already said that it should be a valid defence for an alleged contemner to prove that he had no reasonable grounds for believing that a proceeding was imminent. To this we would like to add that where no arrest has been made a presumption should be drawn in favour of an alleged contemner that no proceedings are imminent."

The Sanyal committee concluded as follows:-

"Chapter XII-Conclusion:

"(8) The rule of contempt in relation to imminent proceedings may be abolished so far as civil cases are concerned. As regards criminal cases, want of knowledge should be a complete defence as in the case of pending proceedings. Further, where in respect of an offence, no arrest has taken place, a presumption should be drawn in favour of the alleged contemner, that proceedings are not imminent."

194. It is submitted that the Bhargava Committee, however, deleted the word "imminent" and replaced it with "actual pendency in Court". It was stated as follows :-

"The Committee felt that the word "imminent" in relation to an impending proceeding is vague and is likely to unduly interfere with the freedom of speech and expression. The Committee is of the view that it is very difficult to draw a line between cases where proceedings

may be said to be "imminent" and cases where they may not be, especially in criminal cases. The Committee have, therefore, deleted the reference to "imminent" proceedings from the clause and sub-clause (1) has been suitably modified."

195. On this backdrop, referring to the provisions of section 2(c) (definition of criminal contempt), section 3 (Innocent publication and distribution of matter not contempt) and section 13 (Contempts not punishable in certain cases) of the CoC Act, following submissions are made:-

(i) the prior law that provided for the judicial power to punish for contempt upon lodging of a complaint and commencement of investigation was changed to pendency of a criminal proceeding upon filing of the charge-sheet or challan;

(ii) the recommendation of the Sanyal Committee of a test of proceedings being "imminent" (i.e. before arrest) to be the starting point for pendency was not accepted;

(iii) it is only for interference/obstruction in the course of justice for pending criminal proceedings (upon filing of charge-sheet or challan) that the CoC Act can be attracted;

(iv) there is further a safeguard in section 13, namely, that contempt should be of a nature that substantially interferes or tends to substantially interfere with the due course of justice."

196. It is submitted that the 200th report of the Law Commission has become relevant which proposed amendments to the CoC Act. It is submitted that Law Commission recommended the amendments to section 3 of the CoC Act, *inter-alia*, by proposing the following amendment to the Explanation to section 3 :-

"(iii) for clause (B)(i), the following clause (B)(I) shall be substituted, namely,

"(i) where it relates to the commission of an offence, when a person is arrested or when the charge-sheet or challan is filed or when the Court issues summons or warrant, as the case may be, against the accused, whichever is earlier, and".

197. It is submitted that, however, this Report of the Law Commission was not accepted by the Government as is clear from the following decision:-

200	Trial by Media: Free Speech vs. Fair Trial (Amendment to the Contempt of Court Act, 1971)	29.04.2013	Partly accepted. The recommendation for amendment of Contempt of Court Act not accepted in view of various judgments of the Supreme Court.

198. Hence the Government, as a matter of essential legislative policy, has not accepted the 200th Report of the Law Commission (which, *inter-alia*, contained a recommendation to shift the pendency of a matter from the date of filing a chargesheet or challan to the date of arrest). In **Sahara India Real Estate Corpn**. (supra), the Supreme Court declined to lay down guidelines though it is submitted that such guidelines be laid down under Articles 141, 142 and 144 of the Constitution.

SUBMISSIONS ON FRAMING OF GUIDELINES:

199. It is submitted that the Supreme Court did not frame guidelines, in particular, for the pre-trial stage as seen from the decision

of the Supreme Court in **Sahara India Real Estate Corporation Limited** (supra). It is submitted that in the said case a specific contention was raised before the Supreme Court that the Supreme Court could issue guidelines which would be an exercise in the interest of press and electronic media and that the frame work of the guidelines would be well within the inherent powers of the Supreme Court, specifically under Article 142 of the Constitution [paragraphs 3-6 of the summary of arguments of Mr. K. K. Venugopal, Senior Advocate (pages 629 @ 629 of the SCC Report)]. However, the Supreme Court refrained from framing any guidelines. In this view of the matter, the petitioners cannot pray that guidelines be laid down by this Court.

SUBMISSION ON ROLE OF THE MEDIA IN REPORTING:

200. It is submitted that the media's interest in a case is whether the same is being investigated or not. A pending case or any court proceedings cannot be equated with media trial. Media debate on the core issues involved in a case involving public interest is not media trial. It would be a question of fact whether, in a particular case, the investigation or the rights of the accused are being affected by the publication by the media, by interfering or obstructing the course of justice. In that eventuality, there are sufficient safeguards, statutory and self-regulatory. It is submitted that the number of cases where the media has played a positive role in the delivery of justice, including investigative journalism, are beyond enumeration. It is next submitted that 'investigative journalism' would entitle the media to ascertain the facts and report on them. It is part of the fundamental duty of a journalist to place facts in the public domain. The fact that the Supreme Court and various High Courts, at times, refer cases to Special Investigation Teams/Central Bureau of Investigation, etc. itself shows that every investigation cannot be presumed to be fair and untainted. In cases where there is a doubt as to the investigation, the media is entitled to bring such facts in the public domain, without being asked

mandatorily to give information to the Investigating Officer/Police, as that would be a self-defeating exercise. It is submitted that, on balance, Police excesses and tainted investigation are far more dangerous than reporting by the media. It is submitted that the existing guidelines and statutory provisions balance the rights of the fair trial and freedom of speech and expression. There are already pre-existing rights to seek postponement orders of Court proceedings, contempt of Court proceedings (if the course of justice is substantially interfered with), apart from the right to seek injunction against publication in the print, electronic and social media of pending investigation as well. It is reiterated that guidelines as to the pre-trial stage were not framed by the Supreme Court in the case of **Sahara India Real Estate Corpn Ltd**. (supra), though submissions were made to frame such guidelines. Even, "normative guidelines" were not framed. The Supreme Court did not frame guidelines for the pre-trial stage, providing, however, for postponement orders qua reporting of certain phases of the trial. Such postponement orders are to be for a short duration and only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial.

Submissions on behalf of Respondent no.17 News Broadcasters Federation

201. It is submitted that the National Broadcasters Federation (NBF) is a private Association having the largest membership organization of the news fraternity, and consists of various national and regional news channels and current affairs broadcasters. It is submitted that NBF serves as the most-democratic and largest congregation of news broadcasters, representing the news broadcasting industry across the length and breadth of the country. The NBF has presently more than sixty members and is a single representative body which presents a unified and credible voice before various regulatory authorities. The NBF operates an independent self-regulatory body upholding the principles of journalism and freedom of speech and expression called the NBF

Professional News Broadcasting Standards Organization (self-regulatory) (NBF-PNBSO). This body oversees fair reporting amongst its members. The NBF-PNBSO would constitute nine members- one Chairman appointed from a pool of retired judges of the Supreme Court of India, four Editorial members and four eminent citizens. It is submitted that the members of NBF, who are also a signatory to NBF-PNBSO, abide by the broad framework on editorial guidelines and exercise restraint in respect of issues which are akin to the issues as set out in the Programme Code under the CTVN Rules. There is complaint redressal mechanism which is available in case of any violation and the panel will issue a warning including a channel to run an apology scroll specifying the date and time, an action to be taken complied and reported back to NBF-PNBSO within seven days of the order. In second/repeat or serious violations would attract a financial penalty upto Rs.5 lakh. The third violation by the channel/anchor would be penalized with a warning to run an apology scroll for two days with specific date and time, removing the anchor upto three months and/or a financial penalty upto Rs.10 lakh. As regards the regime of regulation, the case of NBF is not different from the case of NBSA that already a robust statutory framework under the CTVN Act and CTVN Rules is available alongwith the regulatory framework. Hence, there is no need for this Court to issue any guidelines. A reference in this regard is made to the decision of the Supreme Court in **Sahara India Real Estate Corpn. Ltd.** (supra) and the decision in **Common Cause** (supra).

202. It is submitted that there is a robust self-regulatory mechanism in existence, apart from a statutory framework which, *inter-alia*, would be sufficient to balance the freedom under Article 19(1)(a). It is submitted that self-regulation of the media has been found to exist not only in India but in other liberal democracies around the world. Self-regulation essentially combines standards and sets out appropriate courses vital and necessary to support freedom of expression. Thus, self-regulation preserves independence of the media and most importantly

protects it from Government interference, which a free media must frequently criticize. It is submitted that the media's right and duty to project exchange of idea and opinions is not only necessary in a democracy, it would be entitled to the highest protection and freedom from State interference. The media is entitled not only to embark on investigative exercise as part of its duty to confer information to the public but also to project its views as editorial decisions in respect of events. The media has right to criticize and present their version of events, even though the public or certain sections of it may not agree with these views. It is seen that in the present case even otherwise, many debates on the electronic media are live streamed, where views are expressed by various panelists and many of these views may be unpalatable to the Government and exercise of coercive rights over the media would be highly detrimental. It is the duty of the media to report against Government action/inaction including the role of investigation agencies in various cases. In particular, instrumentalities of the State are always open to criticism and comments by the media, including investigation agencies. It is submitted that the CBI, which has been entrusted with the investigation, has not complained of any interference by the media.

203. By referring to the provisions of the CoC Act, it is submitted that after its enactment the prior law that provided for the judicial power to punish for contempt upon lodging of a complaint and commencement of investigation was changed to pendency of a criminal proceeding upon filing of the chargesheet or challan. The recommendation of the Sanyal Committee that proceedings being "imminent" (i.e. before arrest) would be the starting point for pendency was not accepted. It is only for interference/obstruction in the course of justice for pending criminal proceedings (upon filing of chargesheet or challan) that the CoC Act can be attracted. There is a further safeguard in section 13 that contempt should be of a nature that substantially interferes or tends to substantially interfere with the due course of justice. Even the 200th

Report of the Law Commission proposed amendment to section 3 to substitute clause (B)(i), so as to include commission of an offence, when a person is arrested or when the chargesheet or challan is filed or when the Court issues summons or warrant, but it was not accepted by the Government. Also, as seen from the decision of the Supreme Court in **Sahara India Real Estate Corp. Ltd.** (supra), the Supreme Court did not frame guidelines in particular for pre-trial stage, as in number of cases the media has played a positive role in the delivery of justice, including investigative journalism. Hence, the Supreme Court itself has not framed guidelines for pre-trial stage providing however, for postponement orders qua reporting of certain phases of the trial. It may not be appropriate for the petitioner to pray for such blanket order.

204. The submissions of the parties having been noted, it is now time for us to appreciate the same and to tread the path of adjudication.

DISCUSSION/DECISION:

205. Prior to embarking on our onward journey to trace the important legal questions that emerge and deserve to be addressed, we deem it proper to dispose of the preliminary objection raised by the media houses to the maintainability of PIL (ST) 1774 of 2020 and PIL (ST) 92252 of 2020 in the Public Interest Litigation jurisdiction, as noted above. According to them:

(i) The petitioners have no locus standi, since they are neither arraigned as accused nor are persons whose right to fair trial has been curtailed by reports/publications made by the particular channels;

(ii) The writ petitions have been filed to curtail the freedom of press enshrined under Article 19(1)(a) of the Constitution of India, and seeking a gag order against all media houses from making any publications in relation to the death of the actor and the continuing investigation is impermissible in law;

(iii) Preventive relief of postponement of publication may be availed of only by any accused or aggrieved person who apprehends that a particular publication has real and substantial risk of prejudicing the proper administration of justice or the fairness of his/her trial and the decision in **Sahara India Real Estate Corpn. Ltd.** (supra) has been relied on in this behalf; whereas, in the present case, none of the petitioners are directly or indirectly related to the case of unfortunate death of the actor;

(iv) No grounds have been shown warranting passing of restraint orders referring to any publication, which could pose any real or substantial risk of prejudicing proper administration of justice or fairness of trial;

(v) The High Court should entertain a public interest litigation only in a rare case where the public at large stand to suffer and not when it is instituted for serving private ends and professional rivalry, and in this regard the decision in **R&M Trust** (supra), has been relied on;

(vi) The petitions allege "disputed questions of fact" and lack any exceptional circumstances warranting interference by this Court; and

(vii) Similar prayers have been made in a petition filed before the Supreme Court being W.P. (Civil) No. 762 of 2020 [**Reepak Kansal v. Union of India**], including restraining the respondents in the said petition from broadcasting news/debates interfering in the administration of justice and notice has been issued to the respondents by an order dated August 7, 2020.

206. Although not vociferously urged but still a submission has been advanced on behalf of the UOI, relying on the decision of the Supreme Court in **Jaipur Shahar Hindu Vikas Samiti** (supra), that the persons aggrieved could themselves approach the Court and no petition in public interest ought to be entertained.

207. None of the objections, in our considered view, has merit.

208. In **Railway Board Vs. Chandrima Das**, reported in (2000) 2 SCC 465, the Supreme Court was considering a civil appeal wherein an order passed by the Calcutta High Court on a writ petition instituted by an advocate in public interest was under challenge. A foreign national was gangraped in a 'yatri niwas' at Howrah railway station and the petitioning advocate had sought for diverse relief including compensation for the victim. The High Court while making a slew of directions, *inter alia*, granted Rs.10 lakh as compensation to be paid to the victim by the Railway. The only question that the Supreme Court was urged to consider was, whether the Railway could be made liable to pay compensation to a victim and that too to a foreign national, without the perpetrators of the crime being fastened with such liability. The Court traced its earlier decisions on the distinction between 'public law remedy' and 'private law remedy' and cases where compensation was granted to victims of medical negligence and to the next of kin of under-trials/accused suffering custodial death even on a petition under Article 32/226 of the Constitution. Ultimately, the objection that the petitioning advocate had no *locus standi* to approach the High Court was overruled. Certain passages from the decision throw light on the development of law in India in relation to petitions instituted in public interest and we consider it useful to reproduce the same for our guidance:

> "15. The existence of a legal right, no doubt, is the foundation for a petition under Article 226 and a bare interest, maybe of a minimum nature, may give locus standi to a person to file a writ petition, but the concept of "locus standi" has undergone a sea change, ***
>
> 17. In the context of public interest litigation, however, the Court in its various judgments has given the widest amplitude and meaning to the concept of locus standi. In *People's Union for Democratic Rights* v. *Union of India, (1982) 3 SCC 235,* it was laid down that public interest litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to court. [See

> also *Bandhua Mukti Morcha* v. *Union of India, (1984) 3 SCC 161,* and *State of H.P.* v. *A Parent of a Student of Medical College, (1985) 3 SCC 169,* on the right to approach the court in the realm of public interest litigation.] In *Bangalore Medical Trust* v. *B.S. Muddappa, (1991) 4 SCC 54,* the Court held that the restricted meaning of aggrieved person and the narrow outlook of a specific injury has yielded in favour of a broad and wide construction in the wake of public interest litigation. The Court further observed that public-spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on a technical or conservative yardstick of the rule of locus standi or the absence of personal loss or injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is much wider and it takes in its stride anyone who is not a mere 'busybody'.
>
> 18. Having regard to the nature of the petition filed by respondent Mrs Chandrima Das and the relief claimed therein it cannot be doubted that this petition was filed in public interest which could legally be filed by the respondent and the argument that she could not file that petition as there was nothing personal to her involved in that petition must be rejected."

209. Based on our reading of the aforesaid decision, the *locus* of the petitioners does not appear to us to be in doubt. There is a specific challenge to the inaction and/or refusal of the MI&B to act under the CTVN Act and the CTVN Rules as well as the Up-linking and Down-linking guidelines in regard to the offending programmes. Orders have also been prayed for to temporarily postpone news reports that tantamount to a media trial or 'parallel investigation'. To what extent, if at all, postponement orders can be issued is a matter concerning the merits. We propose to examine these matters at a later part of this judgment. However, we see little reason to hold that the writ petitions, in its present form, are not maintainable.

210. Having read paragraph 49 of the decision in **Jaipur Shahar Hindu Vikas Samiti** (supra), we have failed to comprehend as to how the observations made therein would afford a ground not to address the concerns expressed in these writ petitions. The interest that is sought to

be protected and/or the controversy or dispute sought to be resolved is not open to adjudication by a mechanism created either under the CTVN Act or any other statute and, thus, there is no question of relegating the petitioners to such mechanism.

211. **R&M Trust** (supra) dealt with a belated petition, and that too related to construction work. Much water has flown under the bridge since the decision in R&M Trust (supra) was delivered. In present times, it is not the law that litigation in public interest can only be instituted for the welfare of the downtrodden. The Supreme Court in **State of Uttaranchal vs. Balwant Singh Chaufal**, reported in (2010) 3 SCC 402, has laid down broad guidelines for entertaining a public interest litigation in paragraph 181 thereof. To the extent relevant, the same is quoted below:

> "181. *** In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:
>
> (*1*) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
>
> (*2*) ***
>
> (*3*) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.
>
> (*4*) The Courts should be prima facie satisfied regarding the correCTVN ess of the contents of the petition before entertaining a PIL.
>
> (*5*) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.
>
> (*6*) ***
>
> (*7*) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
>
> (*8*) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

The aforesaid passage provides a clear and complete picture in relation to the points that a Court entertaining a 'Public Interest Litigation' ought to bear in mind.

212. Contentions have been raised by the petitioners that the media houses have crossed the 'Lakshman Rekha' while reporting/discussing/debating the death of the actor, thereby violating the Programme Code; thus, the adverse impact of alleged 'trial by media' or parallel investigation by the media, while police investigation under the Cr.P.C. is in progress, forms a part of the crux of these writ petitions. Rather than seeking to curtail the 'Freedom of the Press' guaranteed by Article 19(1)(a) of the Constitution by obtaining a gag order without cogent reason, the petitioners have urged a Constitutional court to step in and set the wrong right in view of apathy of the UOI/MI&B to control what the petitioners in the relevant writ petitions allege is reckless and irresponsible reporting. We are of the firm opinion that these writ petitions are aimed at redressal of genuine public harm or public injury and involve substantial public interest; also, the same are not at the instance of busybodies for extraneous or ulterior motives warranting rejection of the claims without examining the same on merits. Deriving guidance from the decision in **Balwant Singh Chaufal** (supra), we are inclined to the view expressed above in favour of not rejecting the writ petitions on the ground that they are not maintainable. That apart, pendency of the writ petition of **Reepak Kansal** (supra) before the Supreme Court does not in our view impede examination of the concerns raised by the petitioners. It has not been shown that the Supreme Court has passed any order that matters/petitions questioning 'media trials' shall only be heard by such Court and no other Court. Refusal to address the concerns expressed would amount to failure on our part to discharge our judicial duty. The objection, we are constrained to observe, is one in desperation and merits outright rejection.

213. We, therefore, overrule the objections of the media houses to the maintainability of the writ petitions making it clear that those of the grounds urged in support of the objections to the maintainability thereof touching upon the merits of the matter are not dealt with at this stage.

THE QUESTIONS BEFORE THE COURT

214. Based on the pleadings, the exhibits forming part of the writ petitions, the erudite arguments that we have heard from the Bar as well as the authorities cited by learned counsel, we consider it appropriate, first, to address the following important legal questions:

1. What does the expression *"administration of justice in any other manner"* in section 2(c)(iii) of the Contempt of Courts Act, 1971 connote, and whether trial by media/pre-judgment while a police investigation is in progress could lead to interference with/obstruction to *"administration of justice"*, thereby constituting criminal contempt under the aforesaid section?
2. Is it necessary to construe *"judicial proceedings"* in section 3 of the Contempt of Courts Act, 1971 to have commenced with registration of an FIR? Also, is it at all necessary to read section 3 of the Contempt of Courts Act, 1971 in the manner the petitioner in PIL (St.) 2339 of 2020 urges us to read?
3. Whether media trial in respect of matters pending investigation of a criminal complaint, fall within the restrictions as contained in the Programme Code as postulated under section 5 of the Cable Television Networks (Regulation) Act, 1995 and the rules framed thereunder?
4. Whether the regime of self-regulation adopted by the news channels would have any sanctity within the statutory framework?

5. While emphasizing on the need to strike the right balance between freedom of speech and expression and fair investigation/right to fair trial, to what extent, if at all, should press/media reporting be regulated if the same interferes with or tends to interfere with, or obstructs or tends to obstruct, *"administration of justice"*?

215. Depending on the answers to these questions, we propose to address the following incidental questions emerging from the pleaded cases: -

A. Are the guidelines for reporting cases of deaths by suicide sufficient? If insufficient, should further guidelines be laid down for reporting cases of deaths by suicide?

B. Has the media coverage complained of in these writ petitions interfered with/obstructed and/or tends to interfere with/obstruct *"administration of justice"*, and thus amounts to criminal contempt within the meaning of section 2(c)(iii) of the Contempt of Courts Act, 1971? and whether, criticism of Mumbai Police by the electronic media is fair?

C. Is the accusation that the Ministry of Information and Broadcasting, Government of India, being the Nodal Ministry, has abdicated its statutory functions [under the Cable Television Networks (Regulation) Act and the rules framed thereunder read with the Policy Guidelines of 2011 and the license executed with the broadcaster] of deciding complaints received in respect of offending programmes, by forwarding the same to private bodies like the News Broadcasting Authority (NBA) and the News Broadcasters Federation (NBF), justified?

D. Should an order be made, on facts and in the circumstances, postponing reporting of events by the media in respect of investigation by the CBI into the FIR registered by it pursuant to the complaint of the actor's father? Also, is it necessary for the Court to suggest measures for regulating media coverage of

incidents such as the one under consideration to address the concerns expressed in these writ petitions?

and, thereafter, record our conclusions in respect of the fate of each of the writ petitions.

GUIDING PRINCIPLES

216. The controversy before us lies in a narrow compass but raises questions of contemporary importance touching upon the right of the press/media to express views freely, the right of the deceased to be treated with respect and dignity after death, the need to ensure investigation of crime to proceed on the right track without being unduly prejudiced/influenced by press/media reports based on "investigative journalism", and the right of the accused to a free and fair trial as well as the right not to be prejudged by the press/media.

217. Our discussion ought to commence acknowledging that the right guaranteed by Article 19(1)(a) of the Constitution is not merely a right of speech and expression but a right to freedom of speech and expression. Noticeably, reference to freedom is absent in enumeration of the other rights in clauses (b) to (g).

218. In paragraph 32 of the decision in **Indian Express Newspapers (Bombay) Private Ltd.** (supra), the Supreme Court highlighted the need to protect the 'Freedom of the Press', which is the heart of social and political intercourse.

219. A passage from the decision of the Supreme Court in **LIC vs. Manubhai D. Shah (Prof.)**, reported in (1992) 3 SCC 637, brings out the flavour of the right to freedom of free speech and expression, so very relevant in the present context. It reads:

> "8. The words 'freedom of speech and expression' must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this free country, therefore, has the right to air his or her

views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution. It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Once it is conceded, and it cannot indeed be disputed, that freedom of speech and expression includes freedom of circulation and propagation of ideas, there can be no doubt that the right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him. Every free citizen has an undoubted right to lay what sentiments he pleases before the public; to forbid this, except to the extent permitted by Article 19(2), would be an inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. It is manifest from Article 19(2) that the right conferred by Article 19(1)(*a*) is subject to imposition of reasonable restrictions in the interest of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is, therefore, obvious that subject to reasonable restrictions placed under Article 19(2) a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(*a*)."

(underlining for emphasis by us)

220. The decision in **Shreya Singhal** (supra) also does not take a view different from the one expressed in **Indian Express Newspapers (Bombay) Private Ltd.** (supra) and **LIC vs. Manubhai D. Shah (Prof.)**

(supra), while dealing with an important and far-reaching question relatable primarily to the Fundamental Right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. In **Shreya Singhal** (supra), section 66A of the Information Technology Act, 2000 was subjected to challenge on the ground of constitutional invalidity. Section 66A was struck down in its entirety being violative of Article 19(1)(a) of the Constitution.

221. Despite the right under Article 19(1)(*a*) having been conferred by the people of the nation upon its citizens to ensure that by its proper and wise exercise the people grow and mature to become responsible and informed citizens, conscious of their rights and duties to others, misuse or mal-exercise of such right for inappropriate reasons has not gone unnoticed. What resonates in our ears now is whether the right guaranteed under Article 19(1)(a) is the most abused right in recent times. To us, it does appear so. It is a reminder of what has at times been the unsavoury past of the press/media in India crossing the proverbial 'Lakshman Rekha'.

222. The Andhra Pradesh High Court in **Labour Liberation Front vs. State of Andhra Pradesh**, reported in 2005 (1) ALT 740, had the occasion to lament as follows:

> "In the recent past, the freedom of the prosecuting agency, and that of the Courts, to deal with the cases before them freely and objectively, is substantially eroded, on account of the overactive or proactive stances taken in the presentations made by the print and electronic media. Once an incident involving prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts to examine the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements, and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitment to the noble profession. The freedom of speech and expression which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively."
>
> (underlining for emphasis by us)

223. We are also reminded at this stage of the extra-judicial writing of Lord Denning, MR in '**The Road to Justice**':

> "… the Press plays a vital part in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board… [But] the watchdog may sometimes break loose and have to be punished for misbehaviour."

224. The pleaded cases in the writ petitions seek to depict the situation as distressing. The principal question which we have been urged to answer is relatable to corrective action needed for the rule of law ~ a foundational feature of our Constitution ~ to prevail, and whether guidelines to that effect ought to be given by us to guide the means for achieving the ultimate end, i.e., justice to and for all.

225. There can be no two opinions that in a society governed by the rule of law, no price is too high to maintain the purity of administration of justice; and, as a Constitutional court, we have the power, nay the duty, to protect not only the Fundamental Rights of the citizens as well as the press/media in the judicious exercise of our jurisdiction under Article 226 of the Constitution but also to secure that the stream of administration of justice flows unsullied and unpolluted, uninfluenced by extraneous considerations. Our thought process while answering the questions that have emerged would centre round the said premise.

226. 'Freedom of speech and expression' guaranteed by Article 19(1)(a) of the Constitution is said to be the life blood of our democracy. The Supreme Court in its several judgments has recognized the importance of such right both from the points of view of liberty of the individual and the democratic form of our Government. This right ensures free flow of opinions and ideas essential to sustain the collective life of the citizenry. It is equally well acknowledged that 'Freedom of the Press' is basically the freedom of the individuals to express themselves

through the press/media. However, the expansive and sweeping ambit of such freedom notwithstanding, the right to freedom of speech and expression like all other rights in the Constitution is also not absolute; it is subject to imposition of reasonable restrictions. The restrictions that can be imposed by law, as Article 19(2) ordains, ought to be reasonable in the sense that any law abridging such right, if it relates to any matter specified in clause (2), viz., *inter alia*, relating to contempt of court and defamation, must pass Constitutional muster.

227. The Supreme Court in **In Re: Harijai Singh & Anr**, reported in (1996) 6 SCC 466, sounded caution in the following words:

> "10. *But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by court of law.* The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. *To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations 'If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline'*. It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful, objective

> and comprehensive without any false and distorted expression."
>
> (italics in original)

228. Notwithstanding that freedom of speech is the bulwark of a democratic government and the role of the press/media to discover the truth and to ensure proper functioning of the democratic process is undoubtedly salutary, at the same time, the press/media must remember that its concern for discovery of truth and maintenance of purity in all streams of good governance by opening up channels of free discussion of issues should stop short of exceeding the permissible legal and Constitutional means. Since here we are majorly concerned with *"administration of justice"*, any report of the press/media, having the propensity of tilting the balance against fair and impartial *"administration of justice"*, could make a mockery of the justice delivery system rendering 'truth' a casualty. The duty of the press/media to have news items printed/telecast based on true and correct version relating to incidents worth reporting accurately and without any distortion/embellishment as well as without taking sides, cannot therefore be overemphasized.

229. Keeping the above guiding principles in mind and with these prefatory words, we proceed to address the questions *seriatim.*

QUESTIONS 1 & 2

230. These questions are taken up for consideration together since they are inter-related.

231. Prior to delving deep into it, a quick look at how the law of contempt has developed over the years may not be inapt.

232. In India, the Contempt of Courts Acts, 1926 and 1952 are enactments preceding the CoC Act. Neither the 1926 Act nor the 1952 Act defined what 'contempt' is.

233. One of the decisions in this country of a vintage era on the law of contempt could be the one in **Anantalal Singha vs. Alfred Henry Watson**, reported in ILR 1931 (58) Calcutta 884, Hon'ble Rankin, C.J., observed that the jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice, and the purpose of the court's action being practical it is reasonably clear on the authorities that the court will not exercise its jurisdiction upon a mere question of propriety.

234. Soon after the 1952 Act was enacted, in **Rizwan-ul-Hasan vs. State of U.P.**, reported in AIR 1953 SC 185, the Supreme Court while referring to **Anantalal Singha** (supra), observed on the different sorts of contempt known to law as follows :

> "8. *** There are three different sorts of contempt known to law in such matters. One kind of contempt is scandalizing the court itself. There may likewise be a contempt of the court in abusing parties who are concerned in causes in that court. <u>There may also be a contempt of court in prejudicing mankind against persons before the cause is heard.</u> ***"
>
> (underlining for emphasis by us)

235. Hon'ble K. Subba Rao, J. in his dissenting opinion in **Saibal Kumar Gupta** (supra) had the occasion to trace the law of contempt while observing as follows:

> "26. *** The Contempt of Courts Act, 1926, has not defined the phrase 'contempt of court'. The judgment of Lord Hardwicke, L.C., in *Re Read & Huggonson [(1742) 2 Atk 469]*, which has always been regarded as the *locus classicus* on the subject, declared 'Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes before the cause is finally heard'. The learned Lord Chancellor characterized contempt as of three kinds, namely, scandalizing the court, abusing parties in court, prejudicing

mankind against parties and the court before the cause is heard. Adverting to the third category, which is germane to the present case, the Lord Chancellor proceeded to state at p. 471 thus:

> 'There may also be a contempt of this court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.'

But to constitute contempt of court, in the words of Lord Russel, C.J., 'the applicant must show that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending'. (See *The Queen* v. *Payne, 1896 1 Q.B. 577*). In *The Queen* v. *Gray, 1900 2 Q.B. 36*, the phrase 'contempt of court' is defined' as, inter alia, 'something done calculated to obstruct or interfere with the due course of justice or the lawful process of the courts'. Lord Goddard, C.J., in *R.* v. *Odham's Press Ltd.*, *1956 3 All E R 494*, after considering the relevant authority on the subject, laid down the following test to ascertain whether there is contempt of court in a given case, at p. 497:

'The test is whether the matter complained of is calculated to interfere with the course of justice….'

Words much to the same effect were used by Parker, C.J., in a recent decision in *R.* v. *Duffy, 1960 2 All E R 891,* when he stated at p. 894 that,

'….the question in every case is whether…the article was intended or calculated to prejudice the fair hearing of the proceedings.'

In *Halsbury's Laws of England*, 3rd Edn. Vol. 8, it is stated at p. 8, 'It is sufficient if it is clear that the comment tends to prejudice the trial of the action'. Adverting to the third category of contempt described by Lord Hardwicke, L.C., the learned author says at p. 8 thus:

> 'The effect of such misrepresentations may be not only to deter persons from coming forward to give evidence on one side, but to induce witnesses to give evidence on the other side alone, to prejudice the minds of jurors, or to cause the parties to discontinue or compromise, or to deter other persons with good causes of action from coming to the court.'

27. The said view has been accepted and followed also in India: see *State* v. *Biswanath Mohapatra, ILR 1955 Cuttack 305* and *Ganesh Shankar Vidyarthi case, AIR 1929 All 81*.

29. <u>On the said authorities it is settled law that a person will</u>

> be guilty of contempt of court if the act done by him is intended or calculated or likely to interfere with the course of justice. ***"

(underlining for emphasis by us)

236. In **P.C. Sen, In re**, reported in AIR 1970 SC 1821, the Supreme Court was seized of an appeal carried from an order of the Calcutta High Court by none other than the Chief Minister of West Bengal, whereby he was held guilty of contempt and his conduct was disapproved. On the law of contempt, this is what the Court held:

> "8. The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court; *R.V. Gray [1900 2 Q.B. 36]*. Contempt by speech or writing may be by scandalising the Court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon Courts of justice to preserve their proceedings from being misrepresented, for prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speeches or writings misrepresenting the proceedings of the Court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources. The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice. As observed by the Judicial Committee in *Devi Prasad Sharma* v. *King-Emperor, LR 70 I.A. 216 at p 224*:
>
> > "…the test applied by the … Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law."
>
> If, therefore, the speech which was broadcast by the Chief

> Minister was calculated to interfere with the course of justice, it was liable to be declared a contempt of the Court even assuming that he had not intended thereby to interfere with the due course of justice. ***”

(underlining for emphasis by us)

237. The Court, in upholding the order under challenge, distinguished the majority view expressed by Hon’ble Imam, J. in **Saibal Kumar Gupta** (supra). The argument of counsel that intention is the decisive test was overruled by holding that the sentence referred to by His Lordship in the judgment of the majority did not imply that if there were no intention to interfere with the course of justice no punishment could be ordered.

238. In **A.K. Gopalan** (supra), two questions arose for decision of the Supreme Court: (1) whether on the day when the appellant, A.K. Gopalan, made the statements complained of or when it was published in ‘*Deshabhimani’* any proceedings in a court could be said to be imminent; and (2) whether this statement amounts to contempt of court. The majority held that the appellant A.K. Gopalan was not guilty of contempt since no proceedings were imminent and allowed his appeal. However, the appeal of the other appellant, P. Govinda Pillai, was dismissed on the ground that the offending statements came to be published after the arrest of an accused. It would be profitable to extract a passage from the said decision, reading thus:

> “7. It would be a undue restriction on the liberty of free speech to lay down that even before any arrest has been made there should be no comments on the facts of a particular case. In some cases no doubt, especially in cases of public scandal regarding companies, it is the duty of a free press to comment on such topics so as to bring them to the attention of the public. As observed by Salmon, L.J., in *R.* v. *Sayundranaragan and Walker, (1968) 3 All ER 439*:
>
> > ‘It is in the public interest that this should be done. Indeed, it is sometimes largely because of facts discovered and brought to light by the press that criminals are brought to justice. The private individual is adequately protected by the law of libel should

> defamatory statements published about him be untrue, or if any defamatory comment made about him is unfair.'
>
> Salmon, L.J., further pointed out that 'no one should imagine that he is safe from committal for contempt of court if, knowing or having good reason to believe that criminal proceedings are imminent, he chooses to publish matters calculated to prejudice a fair trial'."

The majority view of Hon'ble S.M. Sikri, J. as well as the minority view penned by Hon'ble G.K. Mitter, J. would unmistakably reveal that publication of material which could prejudice a cause being heard at a time when judicial proceedings were imminent was considered a factor to commit for contempt. This is plainly evident from a sentence appearing in the minority view to the effect that *"the consensus of authorities both in England and in India is that contempt of court may be committed by any one making a comment or publication of the exceptionable type if he knows or has reason to believe that proceedings in court though not actually begun are imminent"*. It would not be out of place to note that at the relevant time in the United Kingdom, for avoiding a substantial risk of prejudice to the administration of justice in proceedings that were pending or imminent, orders could be passed directing that publication be postponed.

239. However, the aforesaid decision in **A.K. Gopalan** (supra), being a decision prior to the legislature defining the words '*contempt of court*', which came to be defined for the first time in clause (a) of section 2 of the CoC Act, with further meaning provided by clauses (b) and (c), and *"judicial proceedings"* being explained in section 3 to mean proceedings that are pending and not which are imminent as well as the *non-obstante* clause in sub-section (2) of section 3, in our humble view, it may have lost relevance by reason of such subsequent enactment. It would be profitable at this stage to read what sections 2 and 3, to the extent relevant, provide:

> "**2. Definitions**.—In this Act, unless the context otherwise requires,—

(*a*) 'contempt of court' means civil contempt or criminal contempt;

(*b*) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(*c*) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

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

(*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

"**3. Innocent publication and distribution of matter not contempt**.— (1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is 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 :

Provided that this sub-section shall not apply in respect of the distribution of—

(*i*) ***;

(*ii*) ***.

Explanation.—For the purposes of this section, a judicial proceeding—

(*a*) is 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 Code of Criminal Procedure, 1898 (5 of 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 issues 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."

240. In our view, for understanding the expression *"administration of justice"* in section 2(c)(iii), the expression following the same, i.e., *"in any other manner"* calls for a proper construction first. The concept of contempt under clause (iii) of section 2(c), in its very nature, seems to be open-ended as distinguished from the concept of contempt embodied in sub-clauses (i) and (ii) which refer to specific acts [viz. acts scandalizing or lowering the authority of a court and acts prejudicing or interfering with due course of a judicial proceeding, respectively] that could amount to criminal contempt. Sub-clause (iii) by using the expression *"in any other manner"* intends to encompass cases not covered in express terms by its immediately preceding sub-clauses, i.e., (i) and (ii). It is, therefore, of a residuary character taking within its coverage acts of contempt not attracting clauses (i) and (ii). It is of immense significance that clause (iii) does not refer to either *"authority of any court"* or *"due course of any judicial proceeding"* but to *"administration of justice"*. When we consider *"administration of justice"* in sub-clause (iii) bearing in mind *"authority of any court"* and *"due course of any judicial proceeding"* in sub-clauses (i) and (ii) respectively,

there is indeed a degree of overlap but such expression unmistakably appears to be much wider in its sweep than *"authority of any court"* and/or *"due course of any judicial proceeding"*. Although there is no precise definition of *"administration of justice"*, it could be defined as the means to secure, according to law, what is just. It is obvious that *"administration of justice"*, in the context of criminal contempt as defined in the CoC Act, has a much wider overtone than either *"authority of any court"* or *"due course of any judicial proceeding"*. The legislature in its wisdom did not refer to *"due course of any judicial proceeding"* in sub-clause (iii) but designedly used *"administration of justice"*, which may include as its facet *"due course of any judicial proceeding"*, to distinguish sub-clause (ii) from sub-clause (iii) and to give a wider scope to the latter with the result that any publication or act interfering with or tending to interfere with/obstructing or tending to obstruct *"administration of justice"* in a manner other than what is referred to in sub-clauses (i) and (ii) could amount to contempt, i.e., criminal contempt, within the meaning of section 2(c)(iii).

241. Further, the expression *"administration of justice"* in section 2(c)(iii) of the CoC Act is sufficiently broad to include civil as well as criminal justice. The stage from which *"administration of justice"* commences may be prior to institution/initiation of judicial proceedings. Such administration admits of infinite variety and can take myriad forms. By its very nature, *"administration of justice"* is also to be regarded as a continuing process since the threat to it does not end with termination of proceedings. An order made to protect an identifiable interest may require continuance of protection even when the proceedings are no longer pending. If not so construed, *"justice"* may lose its meaning.

242. While one cannot ignore that but for the media's intervention the criminals in the Priyadarshini Mattoo case, the Jessica

Lal case, the Nitish Katara case and the Bijal Joshi case could have escaped unpunished, overzealous "investigative journalism" in cases that are sensitive and are capable of arousing interest among the masses has led to comments/observations on the nature and the contours thereof which may qualify as instances of interference with/obstruction to *"administration of justice"*, calling for judicial scrutiny. Having said so, we are also of the opinion that since the CoC Act does not provide a guideline on what constitutes interference with/obstructing *"administration of justice"*, it is not advisable to spell out any strait-jacket formula which can be applied universally to all cases without variation. Having regard to the peculiar fact situation of every case coming before it, the Court may in its discretion apply the common law doctrine of justice, equity and good conscience without, however, losing sight that the jurisdiction under section 2(c) is one of discretion calling for exercise of authority with due care and caution and sparingly, only in appropriate cases.

243. Does *"administration of justice"*, which necessarily includes the power to try civil and criminal proceedings by courts, also include actions/steps that the relevant statute requires to be taken for securing criminal justice even before the matter reaches the criminal court? This, in turn, would give rise to a further question, when does *"administration of justice"* on the criminal side begin?

244. The scheme of the Cr.P.C. for securing justice to a victim of a criminal offence contemplates, having regard to the nature of offence and the forum that is approached, an investigation or an inquiry, followed by a trial and eventually the verdict of the court. According to section 2(h), *"investigation"* includes all the proceedings thereunder for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Investigation, which is a normal preliminary to an accused being

put up for trial for a cognizable offence, comprises of different steps. We can do no better than reproduce a passage from the decision of the Supreme Court in **H.N. Rishbud vs. State of Delhi**, reported in AIR 1955 SC 196, reading as follows:

> "5. *** Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (*a*) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (*b*) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173. ***"

245. The starting point of the process for free flow of justice after a crime has been committed, is the information to that effect being given to the police which is usually reduced in writing and results in registration of an FIR. Although an FIR need not record in minute details the version of the informant as to the crime, the place of occurrence, the persons who witnessed the crime, etc., it would serve the course of justice better if the FIR were to contain such details for assisting in investigation of the crime since its primary aim is to detect crime, collect evidence and bring criminals to speedy justice. The underlying principle of *"administration of justice"* qua the criminal justice system is that the alleged criminal should be placed on trial as soon after the commission of crime as circumstances of the case would permit [see: **Macherla Hanumantha Rao vs. State of Andhra Pradesh**, reported in AIR 1957 SC 927].

246. Apart from the law of contempt engrafted in the CoC Act, restrictions that can validly be imposed by law as authorized by Article 19(2) of the Constitution would also include the provisions in Articles

129 and 215 thereof conferring power on the Supreme Court and the high courts to punish for contempt. Dealing with the provision in Article 19(2) of the Constitution vis-à-vis the powers of the Supreme Court and the high courts under Articles 129 and 215 thereof respectively, the Supreme Court in **Sahara India Real Estate Corpn. Ltd.** (supra) said that:

> "33. *** If one reads Article 19(2) which refers to law in relation to contempt of court with the first part of Article 129 and Article 215, it becomes clear that the power is conferred on the High Court and the Supreme Court to see that 'the administration of justice is not perverted, prejudiced, obstructed or interfered with'. To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court/High Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate courts. ***"

(underlining for emphasis by us)

247. Human life is not mere biological existence. When we conceive of the basic rights guaranteed to a person, we cannot shut our eyes to the jurisprudential concept of certain minimum natural rights which are inherent in the human existence. These are categories of basic human rights well recognized in all major political philosophies. They are also recognized in the Constitution, in the present context Articles 14, 20 and 21. In **Golak Nath vs. State of Punjab**, reported in AIR 1967 SC 1643, the Supreme Court held that the Fundamental Rights are the modern name, for what has been traditionally known as natural rights. Such rights have a distinct existence independent of the Constitution and a significant sanctity than the law made by the legislature. These are basic inalienable rights which are inherent in free and civilized human beings, derived from a concept called the natural law. A person cannot be dehumanized, disreputed, vilified and maligned qua his societal existence at the hands of the media in an attempt to

sensationalize any crime which is under investigation. We do not see how in a civilized society such rights so personal can in any manner be tinkered with and/or attacked by any media in the garb and label of its free speech and expression, so as to nullify a right to a free and fair trial.

248. Resting on the authorities referred to above and as a sequel to our aforesaid discussion, we hold that any act done or publication made which is presumed by the appropriate court (having power to punish for contempt) to cause prejudice to mankind and affect a fair investigation of crime as well as a fair trial of the accused, being essential steps for *"administration of justice"*, could attract sub-clause (iii) of section 2(c) of the CoC Act depending upon the circumstances and be dealt with in accordance with law.

249. In **Baradakanta Mishra v. The Registrar of Orissa High Court**, reported in AIR 1974 SC 710, the Court noted that it had not been referred to any comprehensive definition of the expression "administration of justice"; but thereafter, the Court proceeded to express that historically, and in the minds of the people, administration of justice is exclusively associated with the Courts of justice constitutionally established. This expression is without doubt bearing in mind the context that was present before the Court. Such context is completely at variance from the context with which we are concerned. However, having regard to the rapid strides in development of the law over the years qua the duty different branches of the executive owe to the people to secure justice within its respective sphere of activity and in the context in which the expression *"administration of justice"* has been used in section 2(c)(iii) of the CoC Act, as fully explained hereinbefore, we are loath to construe the expression "administration of justice" in a narrow and constrictive manner.

250. Next, we take up section 3 of the CoC Act for consideration since this provision is at the heart of question no.2.

251. A bare reading of section 3 would reveal circumstances when publication or distribution of matters, which are otherwise contemptuous, would not amount to criminal contempt of court subject to the conditions laid down therein being fulfilled. In other words, the said provision provides an exception to criminal contempt as defined in section 2(c)(ii). While we have noticed above that section 2(c)(iii) covers a wider area than section 2(c)(ii), we also notice the first two sub-sections of section 3 to directly refer to pending (civil or criminal) proceedings and the third sub-section to be relatable to a pending proceeding by reason of reference therein to *"any such matter as is mentioned in sub-section (1)"*; and also that the expression *"administration of justice in any other manner"*, as in section 2(c)(iii), is not used in section 3(1) where the narrower expression *"the course of justice in connection with any civil or criminal proceeding at the time of publication"* has been used. Having so noticed, we are of the firm view that section 3 engrafts an exception to section 2(c)(ii) and not to 2(c)(iii). We reiterate, section 3 is all about when does publication and distribution of matters, contemptuous in nature, during pendency of civil or criminal proceeding may not amount to contempt as in section 2(c)(ii), and can be raised as a defence in rare cases of criminal contempt covered by section 2(c)(iii). The above view we have taken finds support from the decision of the Supreme Court in **Rachapudi Subba Rao** (supra).

252. An observation of the Supreme Court in the decision in **Sahara India Real Estate Corpn. Ltd.** (supra), on consideration of **A.K. Gopalan** (supra), needs to be noticed immediately and considered by us because of the submissions made by Ms. Gokhale. The Court said :

> "33. *** In view of the judgment of this Court in *A.K. Gopalan* v. *Noordeen*, *(1969) 2 SCC 734*, such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or

> accused under Article 21 from the time when the criminal proceedings in a subordinate court are imminent or where the suspect is arrested. ***"

253. In our view, the Court merely noticed what had been laid down in **A.K. Gopalan** (supra) but did not endorse that it continues to be the law in present times. We say so, with the utmost respect at our command, that the aforesaid extract cannot be read as laying down of a law by the Supreme Court in relation to prohibition that could be ordered qua statements in the media made at a time when proceedings in a subordinate court are imminent or where the suspect is arrested. When **A.K. Gopalan** (supra) was decided, what would constitute 'contempt' was not defined. There being a clear definition of 'contempt' in the CoC Act, reading *"criminal proceedings"* in section 3 to commence with registration of an FIR, as suggested by Ms. Gokhale based on her reading of **A.K. Gopalan** (supra), would amount to rewriting of the statute which is impermissible.

254. Significantly, the petitioner represented by Ms. Gokhale has not challenged the constitutional validity of section 3 of the CoC Act in its writ petition, yet, it urges the Court to read down such provision in support of the proposition that criminal proceedings must be said to have commenced even when an FIR is filed and there is obstruction during the course of the investigation by the concerned police on account of irresponsible and misleading publication.

255. When the *vires* of the provision of an enactment is challenged, there is a presumption as to its validity. If at all the Court finds the provision to be *ultra vires* the Constitution or the enactment itself, the primary task of the Court ought to be to save the provision from being declared *ultra vires* if such provision can be *'read down'*. However, in the absence of a challenge to the *vires* of the provision in section 3 of the CoC Act, the parties have never been at issue on its validity. In such a case, the Court cannot on its own examine whether

the impugned provision is *ultra vires* and whether it is required to be saved by taking recourse to the doctrine of *'reading down'*. We may usefully refer to a passage from the decision of the Supreme Court in **State of Rajasthan vs. Sanyam Lodha**, reported in (2011) 13 SCC 262, wherein it has been held as follows:

> "12. It is true that any provision of an enactment can be read down so as to erase the obnoxious or unconstitutional element in it or to bring it in conformity with the object of such enactment. Similarly, a rule forming part of executive instructions can also be read down to save it from invalidity or to bring it in conformity with the avowed policy of the Government. When courts find a rule to be defective or violative of the constitutional or statutory provision, they tend to save the rule, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declare it as unconstitutional or invalid. But such an occasion did not arise in this case as there was no challenge to the validity of Rule 5 and the parties were not at issue on the validity of the said Rule. We are therefore of the view that in the absence of any challenge to the Relief Fund Rules and an opportunity to the State Government to defend the validity of Rule 5, the High Court ought not to have modified or read down the said Rule."

256. In any event, it is no longer *res integra* that the provisions relating to criminal contempt are *intra vires* Article 19(2) of the Constitution [see: **Arundhati Roy, In Re**, reported in (2002) 3 SCC 343].

257. Regard being had to our understanding of section 2(c) of the CoC Act, as extensively discussed supra, we do not see any reason or ground to hold that a literal reading of section 3 produces absurd results or that there is any warrant for reading the explanation provided by the expression *"judicial proceedings"* [which is provided only for the purposes of section 3 to pending criminal proceedings] to include the stage commencing from registration of an FIR. Also, the window kept open by sub-section (1) of section 3 for an alleged contemnor to take the defence that he had no reasonable ground to believe that a proceeding is pending and proving it to the satisfaction of the Court for escaping the rigours of contempt does not require judicial interdiction.

258. Question no.1 is, thus, answered in terms of our discussions as above. Question no.2 is, however, answered in the negative.

Question No. 3

259. The haphazard mushrooming of the cable television network as a result of availability of signals of foreign television networks via satellite communication, necessitated the Parliament to promulgate "the Cable Television Networks (Regulation) Ordinance" on September 29, 1994 which was later on replaced as an Act of the Parliament being the CTVN Act. The preamble of the CTVN Act records that it is "an Act to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto". The statement of objects and reasons of the CTVN Act is required to be noted, which reads thus:-

> **"STATEMENT OF OBJECTS AND REASONS**
>
> There has been 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 if 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 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."

260. The CTVN Act was brought into force on September 29, 1994. There are substantial amendments to such enactment in 2003 and 2011. To appreciate the issues involved, some definitions under the CTVN Act are required to be noted which are as under:-

> "**2. Definitions.** In this Act, unless the context otherwise requires,-
>
> (a) "**cable operator**" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;
>
> (b) "**cable service**" means the transmission by cables of programmes including retransmission by cables of any broadcast television signals ;
>
> (c) "**cable television network**" means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers ;

(d) "**company**" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956);

(e) "**person**" means-

(i) an individual who is a citizen of India;
(ii) an association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;
(iii) a company in which not less than fifty-one per cent of the paid-up share capital is held by the
citizens of India;

(f) "**prescribed**" means prescribed by rules made under this Act;

(g) " **programme**" means any television broadcast and includes-

(i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation,

and the expression "**programming service**" shall be construed accordingly;

(gi) .. ..

(h) "**registering authority**" means such authority as the Central Government may, by notification in the Official Gazette, specify to perform the functions of the registering authority under this Act ;

261. Chapter II provides for regulation of Cable Television Network. Section 3 thereunder provides for cable television network not to be operated except after registration. It provides that no person shall operate a cable television network unless he is registered as a cable operator under the CTVN Act. Section 4 provides for registration as cable operator with the registering authority. Section 5 provides for Programme Code which reads thus:-

> “**5. Programme Code**- No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.”

262. Chapter III provides for seizure and confiscation of certain equipment. Thereunder, Section 11 provides for power to seize equipment used for operating the cable television network which reads thus:-

> **“11. Power to seize equipment used for operating the cable television network-**
> If any authorized officer has reason to believe that the provision of section 3, section 4-A, section 5, section 6, section 8 and section 9 or section 10 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network.
>
> Provided that the seizure of equipment in case of contravention of section 5 and 6 shall be limited to the programming service provided on the channel generated at the level of the cable operator.”

263. Chapter IV provides for ‘Offences and Penalties’, under which Section 16 provides for punishment for contravention of provisions of the CTVN Act. Section 17 provides for offences by companies which reads thus:-

> “16. **Punishment for contravention of provisions of this Act**.—1[(1)] Whoever contravenes any of the provisions of this Act shall be punishable,—(a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both;(b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of

1974), the contravention of section 4A shall be a cognizable offence under this section.]

17. **Offences by companies**.—(1) Where anoffence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—
(a) “company” means any body corporate and includes a firm or other association of individuals; and
(b) “director”in relation to a firm means a partner in the firm.”

264. Chapter V of the CTVN Act contains miscellaneous provisions in which section 19 provides for power to prohibit transmission of certain programmes in public interest. Section 20 provides for power to prohibit operation of cable television network in public interest, which reads thus:

“**20. Power to prohibit operation of cable television network in public interest**- (1)

> Where the Central Government thinks it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf.
>
> (2) Where the Central Government thinks it necessary or expedient so to do in the interest of the -
>
> (i) sovereignty or integrity of India; or
>
> (ii) security of India; or
>
> (iii) friendly relations of India with foreign State; or
>
> (iv) public order, decency or morality,
>
> it may, by order, regulate or prohibit the transmission or re-transmission of any channel or programme.
>
> (3) Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme."

265. Section 22 provides for power of the Central Government to frame rules to carry out the provisions of the CTVN Act, which includes power to frame rules on the Programme Code and the Advertisement Code provided under sections 5 and 6, respectively.

266. In pursuance of the powers under section 22(1) of the CTVN Act, the Central Government has framed the CTVN Rules, which were brought into effect from September 29, 1994. Rule 3 of the CTVN Rules provides for application for registration as a cable television network in India. Rule 5 provides for registration of cable operation. Rule 5-A provides for terms and conditions for registration qua a person who has been granted certificate under rule 5 which *inter alia* includes that such person shall comply with all the provisions of the CTVN Act and the

rules thereunder, and shall comply with the regulations made, and the orders or directions or guidelines issued, by the Authority.

267. Rule 5 embodies the"Programme Code", which is couched in negative words to provide that no person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed Programme Code. The provision prescribing the Programme Code, namely rule 6 of the CTVN Rules, stipulates Programme Code to provide that no programme should be carried in the cable service which is contrary to the contents of clauses (a) to (q) of sub-rule(1) of rule 6 reading as under:-

> "**Rule 6**. **Programme Code**.—(1) No programme should be carried in the cable service which—
>
> (a) offends against good taste or decency;
>
> (b) contains criticism of friendly countries;
>
> (c) contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;
>
> **(d) contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths;**
>
> (e) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes.
>
> **(f) contains anything amounting to contempt of court.**
>
> (g) contains aspersions against the integrity of the President and Judiciary;
>
> (h) contains anything affecting the integrity of the Nation;
>
> **(i) criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;**

(j) encourages superstition or blind belief;

(k) denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;

(l) denigrates children;

(m) contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups;

(n) contravenes the provisions of the Cinematograph Act, 1952 (37 of 1952).

[(o) is not suitable for unrestricted public exhibition.]

(Provided that no film or film song or film promo or film trailer or music video or music albums or their promos, whether produced in India or abroad, shall be carried through cable service unless it has been certified by the Central Board of Film Certification (CBFC) as suitable for unrestricted public exhibition in India.

Explanation- For the purpose of this clause, the expression "unrestricted public exhibition" shall have the same meaning as assigned to it in the Cinematograph Act,1952 (37 of 1952)]

[(p) contains live coverage of any anti-terrorist operation by security forces, wherein media coverage shall be restricted to periodic briefing by an officer designated by the appropriate Government, till such operation concludes.

Explanation- For the purposes of this clause, it is clarified that "anti-terrorist operation" means such operation undertaken to bring terrorists to justice, which includes all engagements involving justifiable use of force between

> security forces and terrorists;]
>
> [(q) depicts cruelty or violence towards animals in any form or promotes unscientific belief that causes harm to animals."
>
> (underlining for emphasis by us)

268. Similar to the Programme Code, there is an Advertising Code prescribed under Rule 7. Rule 10 provides for obligations of broadcaster, multi-system operator and cable operator which reads thus:-

> "**10. Obligations of broadcaster, multi-system operator and cable operator-** Every broadcaster, multi-system operator and cable operator shall comply with the regulations, guidelines and orders as may be made or issued by the Authority.

269. From the statutory framework of the CTVN Act and the Rules, it is seen that the broadcasters and the persons involved with the cable television network in their operations and functions under the registration as granted to them under the CTVN Act, are required to act within the substantive provisions of such enactment and the Rules made thereunder. In other words, such persons are under a statutory obligation to adhere to the various statutory stipulations as prescribed, which includes strict adherence to the Programme Code as stipulated under section 5 of the CTVN Act and provided for in rule 6 in respect of the programmes which would be telecast on the respective TV channels. The Programme Code as defined in rule 6 imposes several restrictions, when the language of the rule begins with the words "*No programme should be carried on the cable service*" which *inter alia* in the present context offends against the good taste or decency [**sub-rule (a)**]; contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths [**sub-rule (d)**], contains anything amounting to contempt of Court [**sub-rule (f)**]; criticises, maligns or slanders any individual in person or certain groups, segments of social, public and

moral life of the country [**sub-rule (i)**]; denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals [**sub-rule (k)**]; contravenes the provisions of the Cinematograph Act,1952 [**sub-rule (n)**].

270. The violations of the Programme Code would attract consequences provided for under section 11 of the CTVN Act, which postulates the power to seize equipment used for operating the cable television network, and punishment for contravention of the provisions of the said Act, provided for under section 16. A prohibition on transmission is the consequence as section 19 would stipulate, in case any programme or channel is not functioning within the conformity of the Programme Code referred to in section 5 and/or Advertisement Code referred to in section 6. Section 20 is the power to prohibit operation of cable television network in public interest, when the Central Government considers that any programme of any channel is not in conformity with the prescribed Programme Code referred to in section 5 or the prescribed Advertisement Code referred to in section 6. Such is the statutory regime within the framework of which a television channel is supposed to operate.

271. Notably the UOI has notified the policy guidelines for Up-linking and Down-linking of TV channels in India dated December 5, 2011. These guidelines are applicable to the applicants seeking permission to set up an Uplinking Hub/Teleport or Uplink a TV Channel or Uplink facility by a News Agency, a company registered in India under the Indian Companies Act, 1956. These guidelines provide for permission for setting up Uplinking Hub/Teleport prescribing eligibility criteria, period of permission, fees as prescribed, special conditions/obligations. It provides that the company shall Uplink only those TV Channels which are specifically approved or permitted by the MI&B for up-linking from India. It provides for two categories of

permissions, firstly for permission for up-linking of non-news and current affairs TV channels (paragraph 2) and permission for up-linking of News & Current Affairs TV channel (paragraph 3). In regard to the general terms and conditions as prescribed in paragraph 5, the relevant paragraph nos.5.2 and 5.9 read thus:-

> "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.
>
> 5.9. The Government of India, Ministry of Information & Broadcasting shall have the right to suspend the permission of the company for a specified period in public interest or in the interest of national security to prevent its misuse. The company shall immediately comply with any directives issued in this regard."

272. Paragraph 8 of the guidelines provide for Offences and Penalties'. It would be relevant to note paragraph 8, which reads thus:-

> **"8. OFFENCES AND PENALTIES**
>
> 8.1. In the event of a channel/teleport/SNG/DSNG found to have been/ being used for transmitting/ uplinking any objectionable unauthorized content, messages, or communication inconsistent with public interest or national security or failing to comply with the directions as per para 5.9 above, the permission granted shall be revoked and the company shall be disqualified to hold any such permission for a period of five years, apart from liability for punishment under other applicable laws.
>
> 8.2. Subject to the provisions contained in para 8.1 of these guidelines, in the event of a permission holder violating any of the terms and conditions of permission, or any other provisions of the guidelines, the Ministry of Information and Broadcasting shall have the right to impose the following penalties:
>
> 8.2.1. In the event of first violation, suspension of the permission of the company and

> prohibition of broadcast/ transmission up to a period of 30 days.
>
> 8.2.2. In the event of second violation, suspension of the permission of the company and prohibition of broadcast up to a period of 90 days.
>
> 8.2.3. In the event of third violation, revocation of the permission of the company and prohibition of broadcast up to the remaining period of permission.
>
> 8.2.4. In the event of failure of the permission holder to comply with the penalties imposed within the prescribed time, revocation of permission and prohibition of broadcast for the remaining period of the permission and disqualification to hold any fresh permission in future for a period of five years.
>
> 8.3. In the event of suspension of permission as mention in Para 5.9 or 8.2 above, the permission holder shall continue to discharge its obligations under the Grant of Permission Agreement including the payment of fee.
>
> 8.4. In the event of revocation of permission, the fees shall be forfeited.
>
> 8.5. All the penalties mentioned above shall be imposed only after giving a written notice to the permission holder."

273. Also, an Inter-Ministerial Committee (IMC) has been constituted under the Chairmanship of the Additional Secretary (Information & Broadcasting) and also comprising of officers from Ministries of Home Affairs, Defence, External Affairs, Law, Women and Child Development, Health and Family Welfare, Consumer Affairs, Information and Broadcasting and a representative from the industry in Advertising Standards Council of India, to recommend to the Ministry in regard to the actions to be taken on the offending channels. A final decision in regard to the penalty and its quantum is to be taken by the MI&B in case the TV channels offend the provisions of the CTVN Act and the Rules.

274. Considering the provisions of the CTVN Act and the CTVN Rules, and the Programme Code as stipulated under rule 6 of the CTVN Rules, it certainly imposes conditions on the television channels which are in the form of restrictions to be mandatorily adhered to by the TV channels. As noted above, rule 6 starts with negative words. It is well settled that when the legislature uses negative words, such words make the statute imperative. They are required to be construed as mandatory, meaning thereby that the channels shall undertake actions in a manner as ordained by section 5 of the CTVN Act read with rule 6 of the CTVN Rules. In **Nasiruddin & Ors. vs. Sita Ram Agarwal**, reported in AIR 2003 SC 1543**,** the Court held that it is well settled that when negative words are used, the Court would presume that intention of the legislature was that the provisions are mandatory in character.

275. In the context of the issue before us, as rightly urged on behalf of the petitioners at the Bar sub-rules (a), (d), (f), (g), (I) and (k) would apply to the telecast which are in the nature of a media trial having adverse consequences on an ongoing criminal investigation. These sub-rules would have omnibus application and would apply to situations of a media trial at all the stages including when the process of criminal law is set into motion on registration of an FIR resulting into arrest and till the trial is complete and to further judicial proceedings before the Court.

276. Having held that the provisions of section 5 of the CTVN Act providing for the Programme Code read with rule 6 of the CTVN Rules being of mandatory application, it would be necessary to examine as to how these provisions can be implemented. The provisions which are directly relevant and contemplate action to be taken on contravention of the provisions of section 5 is section 11 of the CTVN Act, empowering the authorised officer to seize equipment being used by the cable operator for operating the cable television network. The proviso to this section postulates that the seizure of equipment in case of contravention of sections 5 and 6 shall be limited to the programming service provided

on the channel generated at the level of the cable operator. Section 12 of the CTVN Act provides for confiscation of the equipment seized under sub-section (1) of section 11. Further, section 13 provides that the seizure or confiscation of equipment could not interfere with other punishment to which the person affected thereby is liable under the provisions of the CTVN Act. Section 15 provides for an appeal against the order of confiscation of equipment being passed.

277. Section 16 provides for punishment for contravention of provisions of the CTVN Act and is a substantive provision. Thus a punishment is attracted when a person contravenes the provisions of the CTVN Act. The punishment for the first offence is imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees. Sub-section (2) states that notwithstanding anything contained in the Cr.P.C., the contravention of section 4A (transmission of programmes through digital addressable systems) is a cognizable offence under this section. Section 17 provides for offences by companies. Section 18 provides that no Court shall take cognizance of any offence punishable under the CTVN Act except otherwise on a complaint made in writing by any authorised officer. Section 19, falling under Chapter V, is another substantive power to prohibit transmission of certain programmes in public interest, when the programme is not in conformity with the provisions prescribed in the Programme Code referred to in section 5 and Advertisement Code referred to in section 6. Any programme or channel failing to conform to the Programme Code and which is likely to disturb public tranquility, is sufficient to attract section 19 and for the Authorised Officer to prohibit transmission of certain programme in public interest. Section 20 is another power to prohibit operation of cable television network in public interest. This power is conferred on the Central Government to exercise in public interest to prohibit operation of any cable television network in

such areas for the reasons as set out in sub-section (2), namely when the Central Government thinks it necessary or expedient so to do in the interest of the sovereignty or integrity of India; or security of India; or friendly relations of India with foreign State; or public order, decency or morality, being relevant factors in the context in hand. Sub-section (3) categorically provides that where the Central Government considers that any programme of any channel is not in conformity with the prescribed Programme Code referred to in section 5 or the prescribed Advertisement Code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme.

278. It can, therefore, be seen that the CTVN Act is the repository of power to take measures for violation of the Programme Code which, *inter alia*, in clear and unambiguous terms prohibits carrying of any programme on the cable network amounting to contempt of court.

279. For the reasons so discussed, we answer the question by recording our firm opinion that the matters which are pending investigation on a criminal complaint clearly fall within the restriction as contained in the Programme Code as stipulated under section 5 of the CTVN Act and Rule 6 of the CTVN Rules.

Question No.4

280. It is seen that the regime of self regulation has been brought about by the medial channels by forming the NBA and the NBF. Admittedly, these are private bodies formed by the news channels themselves. It is submitted that 26 broadcasters representing 77 media channels are members of the NBA and about sixty channels are members of the NBF. It is also not in dispute that there are large number of channels, stated to be about 1500, which operate in the country. All channels are not the members of the NBA/the NBF and hence, are not bound by any rules and regulations or Code of Conduct prescribed by these private bodies.

281. As noted above, the members of the NBA would seem to be bound by the NBSA, which is headed by a retired Judge of the Supreme Court being the Chairperson. The NBSA considers a complaint against the members and associate members of any violation of Code of Ethics & Broadcasting Standards as formulated by it and binding on its members. The member channel, if is found to have violated the Code of Ethics, is imposed with a penalty of a nature to publish apology being scrolled during the course of its telecast, as also there is power to impose maximum fine of Rs.1 lakh. As per the NBA, these are sufficient penalties which would keep its members within the four corners of the Code of Ethics and Regulations and practising standards. As far as the NBF is concerned, a body – NBFPNBSO is said to be constituted and the appointment of its Chairman is in process. So far there are no instances to show that the complaint mechanism has been activated by the NBF and any actions taken. Similar to the NBA, the NBFPNBSO proposes to impose penalties in the nature of apology to be scrolled by an erring TV channel and also a substantive fine of Rs.5 lakh and 10 lakh in case of a second and a third violation, respectively.

282. The case of these self-regulatory bodies is to the effect that they provide sufficient check on their members so that they adhere to the norms. This, according to them, balances the larger interests as also protect the right of free speech and expression and preserve independence of the media. By referring to the decision in **Destruction of Public and Private Properties** (supra), it is urged that the Supreme Court has approved the recommendations of the Nariman Committee which recommended an approach of self-regulation. It is their case that in the process, the Court also approved the model of media self-regulation and rejected State intervention. To examine this contention, paragraphs 32 and 33 of the said decision of the Supreme Court are required to be noted which read thus:-

> “32. The Nariman Committee has recommended the following suggestions:

(i) India has a strong, competitive print and electronic media.

(ii) Given the exigencies of competition, there is a degree of sensationalism, which is itself not harmful so long as it preserves the essential role of the media viz: to report news as it occurs - and eschew comment or criticism. There are differing views as to whether the media (particularly the electronic media) has exercised its right and privilege responsibly. But generalisations should be avoided. The important thing is that the electronic (and print) media has expressed (unanimously) its wish to act responsibly. The media has largely responsible and more importantly, it wishes to act responsibly.

(iii) Regulation of the media is not an end in itself; and allocative regulation is necessary because the 'air waves' are public property and cannot technically be free for all but have to be distributed in a fair manner. However, allocative regulation is different from regulation *per se*. All regulation has to be within the framework of the constitutional provision.

However, a fair interpretation of the constitutional dispensation is to recognize that the principle of proportionality is built into the concept of reasonableness whereby any restrictions on the media follow the least invasive approach. While emphasizing the need for media responsibility, such an approach would strike the correct balance between free speech and the independence of the media.

(iv) Although the print media has been placed under the supervision of the Press Council, there is need for choosing effective measures of supervision - supervision not control.

(v) As far as amendments mooted or proposed to the Press Council Act, 1978 this Committee would support such amendments as they do not violate Article 19(1) (a) - which is a preferred freedom.

(vi) Apart from the Press Council Act, 1978, there is a need for newspapers and journals to set up their own independent mechanism.

> (vii) The pre-censorship model used for cinema under the Cinematography Act, 1952 or the supervisory model for advertisements is not at all appropriate, and should not be extended to live print or broadcasting media.
>
> (viii) This Committee wholly endorses the need for the formation of
>
> (a) principles of responsible broadcasting
>
> (b) institutional arrangements of self regulation
>
> But the Committee emphasised the need not to drift from self regulation to some statutory structure which may prove to be oppressive and full of litigative potential.
>
> (ix) The Committee approved of the NBA model as a process that can be built upon both at the broadcasting service provider level as well as the industry level and recommend that the same be incorporated as guidelines issued by this Court under Act 142 of the Constitution of India - as was done in Vishakha's case.
>
> 33. The suggestions are extremely important and they constitute sufficient guidelines which need to be adopted. But leave it to the appropriate authorities to take effective steps for their implementation. At this juncture we are not inclined to give any positive directions. The writ petitions are disposed of."

283. The Supreme Court in the above case had taken a serious note of various instances of large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like. *Suo-motu* proceedings were initiated by the Supreme Court on June 5, 2007 as set out in paragraph (1) of the decision. Consequent thereto, two committees came to be constituted, one of the Committees being the 'Nariman Committee' which made the above recommendations.

284. The relevant observations in this regard are found in paragraphs 1 to 4 of the report which read thus:

> "1. Taking a serious note of various instances where there was large scale destruction of public and private properties in the name of agitations,

> bandhs, hartals and the like, suo motu proceedings were initiated by a Bench of this Court on 5.6.2007. Dr. Rajiv Dhawan, Senior counsel of this Court agreed to act as Amicus Curiae.
>
> 2. After perusing various reports filed, two Committees were appointed; one headed by a retired Judge of this Court Justice K.T. Thomas. The other members of this Committee were Mr. K. Parasaran, Senior Member of the legal profession, Dr. R.K. Raghvan, Ex-Director of CBI, and Mr. G.E. Vahanavati, the Solicitor General of India and an officer not below the rank of Additional Secretary of Ministry of Home Affairs and the Secretary of Department of Law and Justice, Government of India.
>
> 3. The Other Committee was headed by Mr. F.S. Nariman, a Senior Member of the Legal Profession. The other members of the Committee were the Editor-in-Chief of the Indian Express, the Times of India and Dainik Jagaran, Mr. Pranay Roy of NDTV and an officer not below the rank of Additional Secretary of Ministry of Home Affairs, Information and Broadcasting and Secretary, Department of Law and Justice, Government of India, Mr. G.E. Vahanavati, Solicitor General and learned Amicus Curiae.
>
> 4. Two reports have been submitted by the Committees. The matter was heard at length. The recommendations of the Committees headed by Justice K.T. Thomas and Mr. F.S. Nariman have been considered. 3. Certain suggested guidelines have also been submitted by learned Amicus Curiae."

285. A perusal of the recommendations of the Nariman Committee, as reflected in paragraph 32 of the said decision, would go to show that the Committee was of the opinion that given the exigencies of competition, there is a degree of sensationalism, which in itself was not harmful so long as it preserved the essential role of the media namely to report news as it occurs - and eschew comment or criticism. It was observed that there are differing views as to whether the media and more particularly the electronic media exercises its right and privilege

responsibly and that the electronic media should act responsibly. In paragraph (viii), the Committee endorsed the need for formation of principles of responsible broadcasting, and institutional arrangements of self regulation. It is in this context the Committee approved the NBA model as a process that can be built upon both as the broadcasting service provider level as well as at the industry level and recommend that the same be incorporated as guidelines issued by this Court under Article 142 of the Constitution of India. The Supreme Court observed that these suggestions were extremely important and they constitute sufficient guidelines which need to be adopted, however, leaving it to the appropriate authorities to take effective steps for their implementation. The Supreme Court did not give any positive directions in that regard. In view of these clear observations, we do not agree with the NBA or the NBF that a self regulatory mechanism can be held to be conclusive. We also hold that such self-regulatory mechanism would not take the character of a statutory mechanism. It needs to be stated that despite clear directions of the Supreme Court, we are not shown any directives issued by the Central Government accepting the self-regulatory mechanism to be a conclusive mechanism. The self-regulatory mechanism does not have any statutory recognition, in the absence of which, it is not possible for us to hold that the self-regulatory mechanism would have any sanctity in law. These are the bodies formed by private channels. There is no control whatsoever on the functioning of these bodies by the Central Government or any other statutory agencies. The regime of penalties prescribed also, in our opinion, is not a deterrent of such measure which in a given case could be said to be in the proportion of the damage, an objectional broadcast may cause, by media excesses or irresponsible reporting of the nature complained of by the petitioners. In any event, considering the observations of the Supreme Court in paragraph 33, the NBA and the NBSA cannot argue that the Court conferred any legal sanctity on their self-regulatory mechanism.

286. In this context there is yet another significant facet is required to be noted, namely that such self-regulatory mechanism is applicable only to the members of the NBA or the NBF and not to those TV channels who have not subscribed to the membership of these self regulatory bodies. Further the TV channels, which may have reasons to repudiate the membership of such self regulatory bodies for some unpalatable reasons, can easily evade and escape the regulatory measures being imposed on it. There is no mechanism to remedy such situation. Such option being available to a member is as good as a farce and/or a mockery of the self-regulatory mechanism. It was strenuously contended that one TV channel went out of the NBA and formed another self-regulatory mechanism. In our opinion, such self-regulatory mechanism would hardly meet the constitutional expectations of the citizens of a fair and responsible broadcasting, which would not be of a nature of an unwarranted sensitization, excessive publicity, leakage of evidence, and vilifying coverage, affecting public confidence in the judicial system and in the administration of criminal justice. The Government being the owner of air-waves, which the electronic media uses, it would not amount to any breach of the freedom the media enjoys under Article 19(1)(a) of the Constitution if such erring channels are hauled up and/or paralyzed by the relevant authority for violation of the Programme Code.

287. We, accordingly, answer question no.(iv) observing that although the objects of the NBA and the NBF could be laudable, the course and the regime of self- regulation as adopted by its bodies cannot have any sanctity within the statutory framework. It is, accordingly, answered in the negative.

QUESTION NO.5

288. The discussion leading to the answer to this question must begin with what a ‘fair trial’ is and what is a ‘trial by media’.

289. The criminal justice system in India has, at its heart, the right of an accused to a fair trial. A 'fair trial' takes within its embrace various rights that are well acknowledged, viz. the fundamental of the criminal justice system that an accused is presumed to be innocent unless proved guilty, and the rights of an accused: to maintain silence, to have an open trial, to have the facility of legal representation, to speedy trial, to hear witnesses and to cross-examine them. Apart from benefiting the accused in his right of defence, what is of paramount importance is that these rights are in-built in the system to enhance the confidence of the public insofar as efficiency and integrity of the justice delivery system is concerned.

290. While the right of a fair trial has to be zealously guarded, equally important is the right of the press/media to keep the public informed of matters of public interest. These could include reporting of court proceedings involving people belonging to the top echelons of society, legislators, judges, bureaucrats, celebrities, etc.

291. What would be the position if these two rights are in conflict? One would find an interesting observation in **Solicitor General v. Wellington Newspapers Ltd.**, reported in (1995) 1 NZLR 45, to the following effect:

> "In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all other things being equal, the latter should prevail … In pre-trial publicity situations, the loss of freedom involved is not absolute. It is merely a delay. The loss is an immediacy; that is precious to any journalist, but is as nothing compared to the need for fair trial…"

292. There are precedents in the matter of trial by media and the effect it may have on pending trials. The same are instructive and would provide suitable guidance to us to decide the question issue arising for decision.

293. **R.K. Anand** (supra), notices the definition of 'trial by media' (without reference to its author) in the context of whether a sting operation amounts to a trial by media. It says:

> "293. What is trial by media? The expression 'trial by media' is defined to mean:
>
> > 'The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.'

294. In **Rajendra Jawanmal Gandhi** (supra), the Hon'ble Supreme Court held :

> "37. We agree with the High Court that a great harm had been caused to the girl by unnecessary publicity and taking out of morcha by the public. Even the case had to be transferred from Kolhapur to Satara under the orders of this Court. There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to miscarriage of justice...."
>
> (underlining for emphasis by us)

295. In **Sidhartha Vashisht @ Manu Sharma** (supra), the Supreme Court while stressing that coverage should not be prejudicial to those who are on trial said:

> "296. Cardozo, one of the great Judges of the American Supreme Court in his *Nature of the Judicial Process* observed that the judges are subconsciously influenced by several forces. This Court has expressed a similar view in *P.C. Sen, In Re [AIR 1970 SC 1821]* and *Reliance Petrochemicals Ltd.* v. *Indian Express Newspapers, Bombay (P) Ltd. [(1988) 4 SCC 592].*
>
> 297. There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the court.

> 298. Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.
>
> ***
>
> 301. Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. [*Anukul Chandra Pradhan* v. *Union of India [(1996) 6 SCC 354]*]. It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice.
>
> 302. In the present case, various articles in the print media had appeared even during the pendency of the matter before the High Court which again gave rise to unnecessary controversies and apparently, had an effect of interfering with the administration of criminal justice. We would certainly caution all modes of media to extend their cooperation to ensure fair investigation, trial, defence of the accused and non-interference with the administration of justice in matters sub judice.
>
> 303. Summary of our conclusions:
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> ...
>
> (11) Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible."

(underlining for emphasis by us)

296. **Tehseen S. Poonawalla vs. Union of India**, reported in (2018) 9 SCC 501, makes poignant observations on the aspect of

maintenance of law and order by the State and the rights available to a citizen, which we consider relevant for the present purpose and reproduce hereunder :

> "1. *** The majesty of law cannot be sullied simply because an individual or a group generate the attitude that they have been empowered by the principles set out in law to take its enforcement into their own hands and gradually become law unto themselves and punish the violator on their own assumption and in the manner in which they deem fit. They forget that the administration of law is conferred on the law-enforcing agencies and no one is allowed to take law into his own hands on the fancy of his 'shallow spirit of judgment'. Just as one is entitled to fight for his rights in law, the other is entitled to be treated as innocent till he is found guilty after a fair trial. No act of a citizen is to be adjudged by any kind of community under the guise of protectors of law. It is the seminal requirement of law that an accused is booked under law and is dealt with in accordance with the procedure without any obstruction so that substantive justice is done. No individual in his own capacity or as a part of a group, which within no time assumes the character of a mob, can take law into his/their hands and deal with a person treating him as guilty. That is not only contrary to the paradigm of established legal principles in our legal system but also inconceivable in a civilised society that respects the fundamental tenets of the rule of law. And, needless to say, such ideas and conceptions not only create a dent in the majesty of law but are also absolutely obnoxious.
>
> ***
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> 15. *** The States have the onerous duty to see that no individual or any core group take law into their own hands. Every citizen has the right to intimate the police about the infraction of law. As stated earlier, an accused booked for an offence is entitled to fair and speedy trial under the constitutional and statutory scheme and, thereafter, he may be convicted or acquitted as per the adjudication by the judiciary on the basis of the evidence brought on record and the application of legal principles. There cannot be an investigation, trial and punishment of any nature on the streets. The process of adjudication takes place within the hallowed precincts of the courts of justice and not on the streets. No one has the right to become the guardian of law claiming that he has to protect the law by any means. ***"

(underlining for emphasis by us)

297. Facts of two cases are seldom alike. However, one decision of the Supreme Court which could be of some assistance to us in view of the facts thereof bearing close resemblance to the stage of proceedings (read: police investigation into a crime was/is in progress) is the one in **M.P. Lohia** (supra). The Supreme Court was dealing with an application for anticipatory bail of an applicant husband, accused of abetting the suicide of his wife. The applicant's claim was that his wife committed suicide due to depression. At the stage of investigation, the case received wide publicity. An article was published in a magazine, based on the version of the deceased, as regards complicity of the applicant and his family members. The Court deprecated such irresponsible publication during pending investigation and ruled as follows:

> "10. Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28-10-2003 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13-2-2004 and special leave petition was pending before this Court. Even then an article has appeared in a magazine called 'Saga' titled 'Doomed by Dowry' written by one Kakoli Poddar based on her interview of the family of the deceased, giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that these type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is sub judice."

(underlining for emphasis by us)

298. The Supreme Court in **Rajendran Chingaravelu** (supra), observed :

> "21. But the appellant's grievance in regard to media being informed about the incident even before completion of investigation, is justified. There is a growing tendency

> among investigating officers (either police or other departments) to inform the media, even before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. Even where a suspect surrenders or a person required for questioning voluntarily appears, it is not uncommon for the investigating officers to represent to the media that the person was arrested with much effort after considerable investigation or a chase. Similarly, when someone voluntarily declares the money he is carrying, media is informed that huge cash which was not declared was discovered by their vigilant investigations and thorough checking. Premature disclosures or 'leakage' to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law. Be that as it may."
>
> (underlining for emphasis by us)

299. Whenever the Courts in India are called upon to undertake the sensitive and delicate task of reconciling conflicting public interests, i.e., preserving freedom of speech, respecting privacy and protecting fair trial, they must be extremely cautious in striking a balance to ensure that while effective exercise of the right of freedom of speech is not throttled by using the weapon of contempt, any unwanted attempt at intrusion into one's private life and undue tarnishing of the reputation built up by him after years of efforts is either kept in abeyance or invalidated, and the people's faith in the judicial system is duly sustained. A subtle understanding of and a mutual respect for each other's needs would be required before the conflict becomes too acute.

300. Drawing inspiration from the definition of 'trial by media' in **R.K. Anand** (supra) as well as the authorities referred to above, it can safely be concluded that to amount to a trial by media, the impact of the press/media coverage on the reputation of the person targeted as an accused must be such that it is sufficient to create a widespread perception of his guilt, prior to pronouncement of verdict by the court, thus making him the subject of intense public scrutiny for the rest of his life.

301. The adverse impact of trial by media during continuance of trials before courts have been noted by the Supreme Court and various other courts. Here, not to speak of trial having commenced, the CBI is still seized of investigation pursuant to the order dated passed by the Supreme Court on August 19, 2020 and, therefore, a police report under section 173(2), Cr.P.C. is awaited.

302. At this stage, we may once again briefly advert attention to the aspect of *"investigation"* by the police and the adverse impacts on police investigation by media reportage.

303. The *"investigation"* which is set into motion by lodging of a first information report in relation to commission of a cognizable offence is the 'initial' investigation that the police on its own must undertake under section 156(1) of the Cr.P.C., without the orders of the Magistrate, upon receiving information from any source that a cognizable offence has been committed. The 'initial' investigation ought to also invariably follow, if the jurisdictional magistrate under section 156(3) of the Cr.P.C passes an order directing registration of an FIR and investigation into the alleged crime in the same manner as in section 156(1) thereof. The provisions of the Cr.P.C. encompasses that at the stage of investigation, it should be the elementary duty of a police investigation to suspect everything and everyone, and thereafter by a process of elimination and inclusion, reach a conclusion; the conclusion being the last step upon completion of investigation and not the first step at the commencement of the investigation. Apart from such 'initial' investigation, investigation can be ordered at different stages and can take varied forms. Further investigation, and 'fresh' or 'de novo' or 'reinvestigation' are not foreign to the Cr.P.C. At this stage, we need not refer to the same in great detail since the police report under section 173(2), Cr.P.C. is awaited but have to always bear in mind that an accused put up for trial is entitled to a fair trial and a fair trial is a means to secure justice to all, be it the accused or the victim.

304. The observations of the Supreme Court in **Sidhartha Vashisht @ Manu Sharma** (supra) are noteworthy. It says:

> "199. It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society."
>
> (underlining for emphasis by us)

305. In **Romila Thapar** (supra), the Supreme Court in no uncertain terms laid down the law that while Courts do not determine the course of investigation, they act as watchdogs to ensure that fair and impartial investigation takes place since a fair and independent investigation is crucial to preservation of the rule of law and, in the ultimate analysis, to liberty itself.

306. The following passage from the decision in **Pooja Pal v. Union of India**, reported in (2016) 3 SCC 135, is important from the view-point of the present discussion:

> "86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such

> can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice."
>
> (underlining for emphasis by us)

307. A fair trial must kick off only after an investigation is itself fair and just, has been reiterated by the Supreme Court in its decision in **Vinubhai Haribhai Malaviya v. The State of Gujarat**, reported in (2019) 17 SCC 1.

308. In **Suresh Chandra Jana v. State of West Bengal**, reported in (2017) 16 SCC 466, a short passage on the criminal justice system in our country is found in the supplementing opinion of the presiding Judge of the Bench. It reads:

> "27. A word on criminal justice system before we deal with other aspects of this case. Criminal justice system is not only about infrastructure or surveillance, rather it is how we protect our countrymen, it is how we recuperate after loss, it is how we show faith in our Constitution and how we uphold the values of justice, fairness and equality. There is no dispute that our criminal justice system is a complex one, administered at various levels of Government and fashioned by a range of actors. When such complicated system is in place, there is a requirement for higher discipline at every level. ***"

309. The legal position clearly emerging on a bare reading of the scheme of the Cr.P.C. relatable to investigation under Chapter XII thereof as well perusal of the dicta of the Supreme Court noted above is that a fair trial ought to be preceded by an investigation that is fair to the accused as well as the victim. To ensure that an investigation is fair is not the duty of the courts alone, it is as much an obligation of the investigator and his superiors to have an investigation into a crime conducted in such manner that it serves the purpose for which it is intended. Although investigation is an arena reserved for the police and the executive and the courts would be loath to interfere with

investigation, it does not detract from the character of activity undertaken by an investigator that a free, fair, impartial, effective and meaningful investigation of a cognizable offence is a necessary concomitant of *"administration of justice"*, undoubtedly covering a wider area than "adjudication of cases and dispensation of justice", which truly belongs to the judiciary, and any speech/publication in exercise of a citizen's freedom of speech while conforming to restrictions imposed by law in general under clause (2) of Article 19 must also yield to larger considerations of maintaining the purity of administration of justice. The Punjab High Court in **Rao Harnarain v. Gumori Ram**, reported in AIR 1958 Pun 273, rightly pointed out:

> "Liberty of the press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases."

310. In course of hearing, we had illustrated as to how unregulated media reporting could adversely affect investigations that are in progress and requested learned counsel appearing for the respondents to respond. Quite naturally, we were greeted with meek responses. All the learned counsel opposing the writ petitions could not have disputed and did not in fact dispute the consequences that could ensue upon constant media coverage in respect of an on-going investigation.

311. What was illustrated, in concise form, is as follows:

(i) Impact, qua the accused, is that, he could be put on guard. If an accused is not being trailed by the police, it does not mean that the investigator is turning a blind eye towards him. The essence of a police investigation is skillful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. Because of unnecessary meddling by the media, the accused can destroy

evidence and avoid arrest by absconding, making the task of the investigator difficult in searching for the truth.

(ii) Impact, qua an innocent person, if he were projected as an accused along with the principal accused and hounded by the investigator based on media reporting, is that he stands the risk of his reputation, built up on years of sincere efforts and good work, being damaged beyond imagination and may, in rare cases, lead to suicide or attempts in relation thereto. It does not take much time for the viewers of the media report to forget the past good deeds of such person and to accept as gospel truth what has been reported by the media, but insofar as the targeted individual is concerned, the loss, injury and prejudice could be irreparable. This would be against a just social order.

(iii) Impact, qua a vital witness, is that he could be won over, threatened or even physically harmed to ensure that he does not tender evidence. Nothing can be more damaging in the pursuit of truth if a vital witness does not turn up for tendering evidence or even if he turns up, is declared hostile by the prosecution for reasons too obvious. The prosecution theory would fall into pieces, unless of course there is other credible evidence to nail the accused.

(iv) Impact, qua the investigator, could be equally pernicious and cause miscarriage of justice. On account of human failing, the investigator could be influenced by the media reports; although he may be following a particular track, which in fact is the right track, he could abandon the right track and follow a different track leading him to nowhere. On the contrary, if the investigator instead of changing tracks as suggested by the media follows the track chosen by him, he could be maligned by the media and accused of improper investigation creating an

adverse opinion in the minds of the viewers which, in any circumstance, is undesirable and unwarranted.

(v) Impact, qua the investigation, is that publicity in respect of certain aspects of a case by media reporting that the investigator is indulging in secrecy can hamper the course of due investigation. Although trials in court are open proceedings to which each member of the public can have access unless proceedings are held in-camera, there is no law requiring the investigator to conduct investigation openly and to lay before the public, at different stages of investigation, evidence that he has collected in course thereof.

Thus noticed, without much debate, an area can be carved out for corrective action.

312. Given the circumstance that the press/media has the ability to mould the opinion of the society by publicity of certain facets of an investigative process, which could give rise to strong public emotions and prejudice the case of one party or the other, it ought to refrain from taking stances in its presentations which are biased and show a predilection for a particular point of view having enormous potential of deflecting the course of justice.

313. Learned counsel for Republic TV contended with vehemence that "investigative journalism" has brought to light matters of grave concern and interest to the society at large. As a sequel to such activity undertaken by its reporters, Republic TV gathered incriminating materials that could connect the accused with the offence of murder and has honestly endeavoured to place facts for the information of its viewers, which Mumbai Police had been suppressing.

314. To our mind, the contention proceeds on a clear misunderstanding of the provisions of the Cr.P.C. If indeed the channel is in possession of information that could assist the investigator, it ought not to be part of a news coverage but it would be the duty of such

channel to provide the information that it has to the police under sections 37 to 39 of the Cr.P.C. to facilitate a proper investigation.

315. That apart, the campaign against Mumbai Police of having suppressed facts appears to be ill-founded in view of the order of the Supreme Court dated August 19, 2020. It recorded a *prima facie* satisfaction of the Court, on perusal of the records, that the same do not suggest any wrong doing by Mumbai Police although obstruction to the Bihar Police team could have been avoided so as not to give rise to any suspicion on the bonafide of the enquiry.

316. Giving due recognition to the press/media as the fourth pillar of democracy and that it plays a vital role in not only disseminating information to the public but at times in urging the justice delivery system to set right a wrong, there have been several decisions of the Supreme Court expressing hope and trust that the media would cover and report events and incidents accurately and by exercising a degree of restraint so as not to impinge on others' rights and even if it does cross the line, the self-regulatory mechanism would spring in to keep the media under check. The sole intention was to ensure that nothing would be done which could be destructive of orderly administration of justice, challenge the supremacy of the rule of law and shake the confidence of the people in the judicial process. Drawing from experience, there is good enough reason to conclude that the hope and trust are belied and the self-regulatory mechanism has failed to deliver in adequate measure in keeping erring media houses under check. It is now time that some corrective action is taken, lest judicial independence remains only on paper and right-thinking people start losing faith in the justice delivery system and doubt the capacity of the Courts to correct what needs to be corrected.

317. The position in law qua the right of the Press in the light of the guarantee of freedom of speech and expression enumerated in Article 19(1)(a) of the Constitution conditioned with the rider that no Fundamental Right is absolute and is subject to reasonable restrictions

being imposed by law is so well settled by the Supreme Court, on numerous occasions, that nothing more is required to be expressed except that Article 21, despite having the fewest count of words among all the Fundamental Rights, is the most fundamental of all Fundamental Rights that the Constitution of India guarantees to all persons, and the rights guaranteed by Article 19 to the citizens have to settle for a backseat in case of an apparent conflict between the two. The procedure for depriving a person of his right to life has to be eminently just, fair and reasonable but deprivation sought to be effected by 'media trial' or 'parallel investigation' by the media is not a procedure that has any legal sanctity. In such a situation, the Court has to step in to protect those the rights of whom are found to be in jeopardy by reason of apathy and/or indifference of the State to check programmes of media houses which tend to offend Article 21 rights.

318. In **Union of India vs. Raghubir Singh**, reported in AIR 1989 SC 1933, a Constitution Bench of the Supreme Court had the occasion to observe that today, it is no longer in doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from decisions of the superior courts. It is not expected that a high court, despite observing violation of rights, would remain a mute spectator by adopting a passive or negative role. The high courts' power to reach injustice, whenever and wherever found is well-entrenched and directions can well be issued by the high courts, in exercise of its Article 226 jurisdiction, to enforce Fundamental Rights in a manner that it does not conflict with any statute.

319. Question no. 5 is, thus, answered by observing that regulation of reporting by the media amounting to a 'media trial' is necessary but limited to securing the rights of others under Article 21 as well as to preserve and maintain the sanctity of the criminal justice system of the country, to the extent delineated by us while we answer Question D (infra).

320. Having answered the legal questions, we now proceed to answer the incidental questions arising out of the pleaded cases *seriatim.*

Question A

321. It would be profitable, for answering the first part of the question, to reproduce hereunder the Press Release of the PCI dated September 13, 2019 in its entirety. It reads as follows:

"PRESSS RELEASE

PR/10/19-20-PCI Dated : 13.9.2019

Guidelines Adopted by PCI on mental illness/ Reporting on suicide cases

In pursuance of Section 24(1) of Mental Health Care Act, 2017 relating to publication/reporting of the news related to Mental Illness, the Council has adopted norm, which is as follows:

'The media shall not publish photograph or any other information in respect of person undergoing treatment at mental health establishment without the consent of the person with mental illness.'

Reporting of suicide cases and presentation of reports

2. The Council has adopted the guidelines in pursuance of World Health Organization report on Preventing suicide: a resource for media professionals – 2017. Newspapers and news agencies while reporting the cases of suicide must not:

(i) place stories about suicide prominently and unduly repeat such stories,
(ii) use language which sensationalize or normalize suicide or presents it as a constructive solution to problems;
(iii) explicitly describe the method used;
(iv) provide details about the site/location;
(v) use sensational headlines;
(vi) use photographs, videos footage or social media links.

In pursuance of Section 30(a) of the Mental Health Care Act, 2017 the print media shall give wide publicity of the said Act in the print media time to time".

322. The PCI, which has issued the aforesaid Press Release, is a creature of the PCI Act. It is a statutory authority which functions as a watch guard of the Press, for the Press and by the Press. It has adjudicatory power in the sense that it adjudicates the complaints against and by the Press for violation of ethics and for violation of 'Freedom of the Press', respectively. The power to punish, in exercise of powers conferred by the PCI Act, includes imposition of punishment such as, warning, admonition and censuring the newspapers, news agencies, the editors or journalists or to disapprove the conduct of the persons associated with the Press. The guidelines contained in the Press Release dated September 13, 2019 is prompted by the object of the PCI to maintain the standard of reporting by the newspapers and news agencies in India. One of the functions that the PCI is obliged to perform is to build up a Code of Conduct for the newspapers, news agencies and journalists in accordance with high professional standards as well as to ensure on the part of the newspapers, news agencies and journalists, the maintenance of high standard of public taste and foster a new sense of the rights and responsibilities of citizenship. Bearing in mind such functions that the PCI is obligated to discharge in terms of the PCI Act, section 13 of the PCI Act appears to be the repository of power to frame guidelines. The guidelines issued by the PCI, though binding on the print media, do not bind the electronic media.

323. NBA, which is respondent no.1 in the writ petition of Mr. Sarode (WP No.40 of 2020), has also issued an advisory dated August 13, 2020. The said advisory is quoted below in its entirety:

"August 13, 2020

Editors of NBA

Re: Advisory Regarding Coverage of the Suicide of Actor * by member broadcaster.**

There has been extensive coverage by our member news channels of the suicide of actor ***.

In this regard, NBA has received complaints from viewers, which are under consideration by NBSA.

Regarding reporting of matters relating to suicide, attention of Editors is drawn to the following guidelines:

'Specific Guidelines Covering Reportage' dated 10.2.2020 deals with the manner in which the media should report on cases of suicide.

3. Law & Order, Crime & Violence

3.1 Content should not glamorize or sensationalize crime or condone criminal actions, including suicide.

Further, it may also be noted that intrusive broadcasts in relation to the death of a person, even if a celebrity, are a violation of the guidelines relating to privacy, apart from being in breach of the dignity of an individual.

5. Privacy

5.1 Broadcasters should be exercise discretion and sensitivity when reporting on distressing situations, on grief and bereavement.

5.3 Content that would cause unwarranted distress to surviving family members, including by showing archival footage, should be avoided.

5.4 No information relating to the location of a person's home or family should be disclosed without permission from the concerned person.

5.6 Interviews of the injured, victims or grieving persons should be conducted only with prior consent of the persons or where applicable their guardian.

Similarly, the 'Guidelines for Telecast of News Affecting Public Order' dated 18.12.2008 deals with the manner in which a deceased person's body should be shown by the media:

6. The dead should be treated with dignity and their visuals should not be shown. Special care should be taken in the broadcast of any distressing visuals and graphics showing grief and emotional scenes of victims and relatives which could cause distress to children and families.

Editors are accordingly advised to bring the aforementioned Guidelines to the specific attention of all editorial personnel, anchors, journalists, produces and any other person who are involved with news reportage.

Editors are cautions that any violation of the above principles / Guidelines will be viewed seriously by NBSA and appropriate action may be initiated, including suo motu action.

Editors are also advised to preserve the footage and scripts of all news/programmes broadcast in relation to the suicide of actor *** for consideration of NBSA, should it become necessary.

Kindly circulate to all concerned for compliance.

Annie Joseph
For & on behalf of the
News Broadcasting Stands Authority

CC : Members & Legal Heads of NBA"

(bold in original)

324. It is, therefore, clear from the above that the need to guide and give advice to the media to report on cases of suicide has been given much importance, although a breach of such advice/guidelines may not instill a sense of fear of being penalized having regard to the soft stances that are taken either by the statutory authorities or by the self-regulatory mechanism of the broadcasters' associations.

325. However, keeping in view the holistic purpose that is sought to be achieved by implementation of the guidelines contained in the Press Release dated September 13, 2019, we see no reason as to why apart from the print media, the electronic media may not be guided thereby while reporting on death cases by suicide. We hold that in the absence of guidelines of a statutory authority formulating similar such standards and putting in place in relation to reporting of deaths by suicide for the electronic media, the norms of journalistic conduct framed by the PCI for the print media ought to be extended to cover the electronic media till such time appropriate guidelines are framed for the electronic media by the appropriate authority. Though the electronic

media is not bound by the PCI Act, we are prompted to hold that the electronic media should also be guided by the contents of the guidelines of the PCI on reporting of death cases by suicide for two reasons: first, the said guidelines have a statutory flavour and similar such binding guidelines on reporting cases of death by suicide are non-existent for the electronic media; and secondly, the absence of such guidelines could, and as we have been shown in the present case, lead to the dignity of the dead being breached with impunity. The death of the actor was followed by such crude, indecent and distasteful news reporting by a few of the TV channels that we do not consider it worthy of being referred to here and be a part of this judgment. Nonetheless, instead of the Court legislating and laying down guidelines on reporting of death cases by suicide, it would be wise and prudent on our part to give direction for adherence to the guidelines of the PCI in this behalf by the electronic media while it reports cases of death by suicide, which would secure the ends of justice.

326. Since none can possibly dispute that the dead should also be treated with dignity, particularly those who die by suicide for varying reasons which are personal to the deceased, we wish to observe and hold that the guidelines issued by the PCI are comprehensive and reasonable enough commending itself to be followed in letter and spirit by the print media as well as the electronic media appropriate guidelines are framed, observed above. We hope and trust that the PCI guidelines on reporting of death cases by suicide would be adhered to with the attention and care the relevant situation deserves and any breach of such guidelines in future might, in appropriate cases, expose the erring media house to be dealt with appropriately in accordance with law. It is ordered accordingly.

327. In addition to the above, we also hope and trust that the news channels which are members of the NBA shall follow the advisory dated August 13, 2020 and breach, if any, in future, may also be appropriately dealt with by the NBSA.

328. Having regard to the above, we see no reason to give any additional guideline for compliance. Question no. A, thus, stands answered.

Question B:

329. The exhibits to the writ petitions, mainly clippings and screen shots, bear ample testimony to two TV channels' reportage upon the death of the actor and the materials that they claimed to have gathered, supposedly through "investigative journalism", before and after the CBI took up investigation in terms of the order of the Supreme Court. Republic TV while propagating the theory that the actor was "killed" and expressing apprehension as to whether the probe by Mumbai Police could be trusted in view of serious lapses that it had committed, also sought for public opinion as to whether the actress should be arrested. In course of one such scathing attack against Mumbai Police, the channel by referring to an autopsy report of the ex-manager of the actor (who too died in mysterious circumstances) highlighted that her body was found unclothed. Apart from anything else, a clear lack of courtesy to a woman who has left this world is demonstrated thereby. On its part, Times Now displayed close-up pictures of the cadaver of the actor, one alleged to have been given by the actor's family, and raised suspicion in respect of a ligature mark by remarking that another image was morphed. While expressing views that Mumbai Police had not done its job properly necessitating the media to pursue the case of securing justice to the actor, the channel went to the extent of commenting that the activists' plea to restrain the media was a move to suppress coverage on the death of the actor. Serious concerns were raised by both the TV channels as to why an FIR was not registered or as to why no arrest was effected. Speakers invited by such channels ranging from ministers, members of the Parliament, lawyers, political analysts, forensic experts, social activists, spokespersons of political parties, etc., expressed views appearing on screen as to how Mumbai Police had bungled the inquiry/investigation

into the unnatural death of the actor by failing to follow standard operating procedure, ignoring key evidence, hiding relevant forensic details, letting off conspirators and shielding the culprits. In fine, these TV channels continued their endeavor of informing the masses that Mumbai Police was suppressing the truth with a view to cover-up the entire incident. In the process, in an attempt to out-smart each other (for reasons which we need not discuss here), these two TV channels started a vicious campaign of masquerading as the crusaders of truth and justice and the saviours of the situation thereby exposing, what in their perception, Mumbai Police had suppressed, caring less for the rights of other stakeholders and throwing the commands of the Cr.P.C. and all sense of propriety to the winds. It amuses us not a little that Republic TV doffed its own hat, in appreciation of what its team had achieved, without realizing that it could be irking and invite adverse comments. While inquiry/investigation by Mumbai Police was strenuously asserted by these TV channels to be shoddy and questionable, the Supreme Court in its order dated August 19, 2020 recorded *prima facie* satisfaction of Mumbai Police not having indulged in any wrong doing. Despite such order, reports/ discussions/ debates/interviews on the death of the actor flowed thick and fast from these TV channels in brazen disregard of the rule of law, the edifice on which the country's Constitution rests. These TV channels took upon themselves the role of the investigator, the prosecutor as well as the Judge and delivered the verdict as if, during the pandemic, except they all organs of the State were in slumber. While we need not repeat here what Mumbai Police was accused of by these TV channels, judicial notice may be taken that the actress, although entitled to her rights to life and equal protection of the laws, protected by Articles 21 and 14 of the Constitution, and the right guaranteed by Article 20(3) thereof to maintain silence, was painted as the villain of the piece, had the rug below the presumption of innocence removed, and received the media's verdict that she is guilty of orchestrating the actor's murder, much

before filing of a police report under section 173(2), Cr.P.C.; and that in the situation as depicted, omission or neglect to arrest the actress amounted to a glaring act of impropriety by Mumbai Police. We have no hesitation to record that this sort of reporting by the media is immensely prejudicial to the interests of the accused and could dent the process of a future fair trial and derail due administration of criminal justice, once the matter reaches the appropriate court having jurisdiction. We also accept Mr.Chinoy's contention that such reporting could be seen as violation of the Programme Code. Even if the contents of the reports/discussions/debates are considered to be mere insinuations and aspersions against Mumbai Police and the actress, they lack *bona fides*, are aimed at interfering with and/or obstructing administration of justice and have the propensity to shake the public confidence in the capability of the police machinery and the efficacy of the judiciary. In our considered opinion, telecast of reports/ discussions /debates/interviews by these TV channels on the death of the actor and events subsequent thereto, brought on record by the petitioners is, *prima facie,* contemptuous having ingredients of criminal contempt of the nature specified in section 2(c)(iii) of the CoC Act and could attract penalty under section 12 thereof.

330. However, having regard to the subject matter of these proceedings and the questions that we have been tasked to decide, we do not consider it appropriate to initiate action for criminal contempt against these TV channels. Of course, while refraining from so doing, we hope and trust that they shall act more responsibly in future and not create a situation for the Court to take recourse to the provisions of Article 215 of the Constitution and the CoC Act to invoke its jurisdiction to punish for contempt.

331. Insofar as the other part of Question B is concerned, we could have left it unanswered having regard to the limited relief claimed by Mr.Chinoy on behalf of the petitioners (Mahesh Narayan Singh and the others). Nonetheless, we need to express our views on such part

question too lest confusion prevails. We place on record that in the light of the order of the Supreme Court dated August 19, 2020, Mumbai Police cannot be accused of any wrong doing by the electronic media and, *prima facie*, the criticism made seems to be not fair. The petitioners (Mahesh Narayan Singh and the others) could be justified in their concern that persistent criticism could bring down the morale of the police force and prove counter-productive and, therefore, utmost care should be taken to present reports that are tested and found to be true and correct. Any biased information or incorrect reporting may damage not only the good and clean reputation of a police officer, built over the years, but also the institution to which he belongs. We need to remind that every journalist/reporter has an overriding duty to the society of educating the masses with fair, accurate, trustworthy and responsible reports relating to reportable events/incidents and above all to the standards of his/her profession. Thus, the temptation to sensationalize should be resisted. However, this is neither the stage to give Mumbai Police a certificate that it has conducted the necessary inquiry following the actor's death in accordance with law nor to validate the adverse reporting by the electronic media. Any final opinion in this regard must await the verdict of the criminal courts at the several stages, right up to the remedy last available to an aggrieved party.

332. The above discussion, we are inclined to believe, adequately answers Question B.

Question C

333. From a cumulative reading of the statutory provisions engrafted in the CTVN Act and the CTVN Rules, it is clearly seen that a robust statutory framework has been laid down thereunder read with the Up-linking and Down-linking guidelines. However, considering the facts on record, it is quite clear to us that the implementation of these provisions is far from satisfactory. We say so primarily for two fundamental reasons. First, we have not been shown any material that

either the authorized officer or any other appropriate machinery, has verified telecast made by several news channels in relation to the unnatural death of the actor which allegedly amounts to a media trial. The nature of surveillance required to scrutinize the contents being broadcast to ascertain as to whether they are in violation of the Programme Code, appears to have remained dormant and/or in deep slumber. No decisions were taken in regard to the complaints which were received. The second reason being the strange perception of the UOI as depicted in its reply affidavit in regard to the actions which would be taken by the Central Government in regard to the violation of the Programme Code, when it is stated that such complaints of violation were received and were referred to a private body, namely the NBA. The following paragraphs in the counter affidavit of Shri. Prem Chand, Under Secretary in the MI&B, Government of India, are required to be noted in the context that the very authority under the CTVN Act did not take any action or, as contended by the petitioners, abdicated its powers to take such actions. Paragraphs 5 to 9 of the affidavit read thus:-

> “5. That with regard to electronic media, it is stated that as per existing regulatory framework, programmes telecast on private satellite TV channels are regulated in terms of the Cable Television Networks (Regulation) Act,1995 and Cable Television Network Rules, 1994 framed thereunder. All programmes telecast on such GTV channels are required to adhere to the Programme Codes prescribed under the Rules.
>
> 6. That as part of self-regulatory, News Broadcasters Association (NBA), a representative body of news and current affairs channels has formulated Code of Ethics and Broadcasting Standards covering a wide range of principles to self-regulate news broadcasting and News Broadcasting Standards Regulations. Code of Ethics and Broadcasting Standards has made provisions that channels should strive not to broadcast anything defamatory or libelous and must strive to ensure that allegations are not portrayed as fact and changes are not conveyed as an act of guilt.

> 7. That NBA has set up News Broadcasting Standards Authority (NBSA) to consider complaints against or in respect of broadcasters in so far as these relate to the content of any news and current affairs broadcast. Recently, NBSA has issued advisory dated 13.08.2020 (Annexure -II) wherein attention of News Channels is drawn to specific guidelines covering reportage dated 10.02.2020 which deals with the manner in which media should report on case of suicide.
>
> 8. That some complaints including petitioner's complaint dated 20.06.2020 have been received in the Ministry against the telecast of news report relating to unfortunate demise of Actor Sushant Singh Rajput by various TV news channels. Some of these TV channels are members of the self-regulatory body i.e. News Broadcasters Association (NBA), these complaints were forwarded to NBA for further necessary action in the matter on 10.08.2020. NBA has informed that the matter is being enquired into.
>
> 9. That the Ministry of Information and Broadcasting also has an institutional mechanism to deal with violation of Programme Codes towards this end, an inter-Ministerial Committee (IMC) has been constituted under the Chairmanship of Additional Secretary (I&B) and comprising officers drawn from Ministries of Home Affairs, Defence, External Affairs, Law, Women & Child Development, Health & Family Welfare, Consumer Affairs, Information and Broadcasting and a representative from the Industry in Advertising Standards Council of India (ASCI) which may review decision/recommendation of NBA. The IMC functions in a recommendatory capacity. The final decision regarding penalty and its quantum is taken by the Ministry."

334. Hence, there is much substance in the contentions as urged on behalf of the petitioners. We do not approve such abdication of substantive power conferred by the CTVN Act and the CTVN Rules by such authorities in favour of a voluntary organization (private body), which is formed by the channels themselves, namely, the NBA and

which has constituted the 'NBSA'. In view of our conclusion that matters which are pending investigation on a criminal complaint clearly fall within the restriction as contained in the Programme Code, contemplated under section 5 of the CTVN Act and rule 6 of the CTVN Rules, it would be a mandatory obligation of such authorities to immediately act upon the complaints received against the TV channels who are alleged to be violating the Programme Code or any other provisions of the CTVN Act and the CTVN Rules and take necessary action as provided for thereunder. Such regime is also recognized by the Up-linking and Down-linking guidelines. A clear statutory regime so prescribed cannot be permitted to be rendered nugatory and/or totally ineffective by an approach to refer the complaint to the self- regulatory authority. Most significantly, the CTVN Act and the CTVN Rules do not recognize such mechanism as adopted by the UOI and placed on record by Shri. Prem Chand, Under Secretary, MI&B. It would be in the teeth of the provisions of the CTVN Act and the CTVN Rules and would amount to total non-implementation of the powers as otherwise conferred by such statutory provisions. The substantive statutory provisions, thus, cannot be rendered otiose by evolving a mechanism alien to the CTVN Act and the CTVN Rules. We, accordingly, direct that every complaint which would be made on the contents of any programme on any television channel, either to the authorized officer or the Central Government in regard to violation of the Programme Code, shall be dealt with in a manner as provided under the CTVN Act and immediate action be taken thereon, without involvement of any private bodies like NBSA or NBF. This would be *de hors* any complaint made to these bodies or any other such bodies, which would be dealt by these bodies as per their self-regulatory mechanism.

Question D

335. On the aspect of passing postponement orders, the decision in **Sahara India Real Estate Corpn. Ltd.** (supra) has been relied on by almost all the parties. In such decision, the Court laid down the law

relating to passing of postponement orders bearing in mind several facets of law, as follows:

> "42. *** Given that the *postponement orders* curtail the freedom of expression of third parties, such orders have to be passed only in cases in which there is *real and substantial risk* of prejudice to fairness of the trial or to the proper administration of justice which in the words of Justice Cardozo is 'the end and purpose of all laws'. However, such orders of postponement should be ordered for a limited duration and without disturbing the content of the publication. They should be passed only when necessary to prevent real and substantial risk to the fairness of the trial (court proceedings), if reasonable alternative methods or measures such as change of venue or postponement of trial will not prevent the said risk and when the salutary effects of such orders *outweigh* the deleterious effects to the free expression of those affected by the prior restraint. The order of postponement will only be appropriate in cases where the balancing test otherwise favours non-publication for a limited period. It is not possible for this Court to enumerate categories of publications amounting to contempt. It would require the courts in each case to see the content and the context of the offending publication. There cannot be any straitjacket formula enumerating such categories. In our view, keeping the above parameters, if the High Court/Supreme Court (being courts of record) pass postponement orders under their inherent jurisdictions, such orders would fall within 'reasonable restrictions' under Article 19(2) and which would be in conformity with societal interests, as held in *Cricket Assn. of Bengal, (1995) 2 SCC 161*. ... Thus, *balancing* of such rights or equal public interest by *order of postponement of publication or publicity* in cases in which there is *real and substantial risk* of prejudice to the proper administration of justice or to the fairness of trial and within the above enumerated parameters of necessity and proportionality would satisfy the test of reasonableness in Articles 14 and 19(2). One cannot say that what is reasonable in the context of Article 14 or Article 21 is not reasonable when it comes to Article 19(1)(*a*). Ultimately, such orders of postponement are only to *balance* conflicting public interests or rights in Part III of the Constitution. They also satisfy the requirements of justification under Article 14 and Article 21.
>
> 43. Further, we must also keep in mind the words of Article 19(2) 'in relation to contempt of court'. At the outset, it may be stated that like other freedoms, clause (1)(*a*) of Article 19

refers to the common law right of freedom of expression and does not apply to any right created by the statute (see p. 275 of *Constitution of India* by D.D. Basu, 14th Edn.). The above words '*in relation to*' in Article 19(2) are words of widest amplitude. When the said words are read in relation to contempt of court, it follows that the law of contempt is treated as reasonable restriction as it seeks to prevent administration of justice from getting perverted or prejudiced or interfered with. Secondly, these words show that the expression 'contempt of court' in Article 19(2) indicates that the object behind putting these words in Article 19(2) is to regulate and control administration of justice. Thirdly, if one reads Article 19(2) with the second part of Article 129 or Article 215, it is clear that the contempt action does not exhaust the powers of the court of record. *The reason being that contempt is an offence sui generis*. Common law defines what is the scope of contempt or limits of contempt. Article 142(2) operates only in a limited field. It permits a law to be made restricted to investigations and punishment and does not touch the inherent powers of the court of record. Fourthly, in case of criminal contempt, the offending act must constitute interference with administration of justice. Contempt jurisdiction of courts of record forms part of their inherent jurisdiction under Article 129/Article 215. Superior courts of record have inter alia inherent superintendent jurisdiction to punish contempt committed in connection with proceedings before inferior courts. The test is that the publication (*actual and not planned* publication) must create a *real and substantial risk* of prejudice to the proper administration of justice or to the fairness of trial. It is important to bear in mind that sometimes even *fair and accurate* reporting of the trial (say murder trial) could nonetheless give rise to the 'real and substantial risk of serious prejudice' to the connected trials. In such cases, though rare, there is no other practical means short of postponement orders that is capable of avoiding the real and substantial risk of prejudice to the connected trials. Thus, postponement orders safeguard fairness of the connected trials. *The principle underlying postponement orders is that it prevents possible contempt*. Of course, before passing postponement orders, the courts should look at the content of the offending publication (as alleged) and its effect. Such postponement orders operate on *actual publication*. Such orders direct postponement of the publication for a limited period. Thus, if one reads Article 19(2), Article 129/Article 215 and Article 142(2), it is clear that courts of record 'have all the powers *including* power to punish' which means that courts of record have the power to postpone publicity in

appropriate cases as a preventive measure without disturbing its content. Such measures protect the media from getting prosecuted or punished for committing contempt and at the same time such neutralising devices or techniques evolved by the courts effectuate a balance between competing interests.

46. One aspect needs to be highlighted. The shadow of the law of contempt hangs over our jurisprudence. The media, in several cases in India, is the only representative of the public to bring to the notice of the court issues of public importance including governance deficit, corruption, drawbacks in the system. Keeping in mind the important role of the media, courts have evolved several neutralising techniques including postponement orders subject to the twin tests of necessity and proportionality to be applied in cases where there is *real and substantial risk* of prejudice to the proper administration of justice or to the fairness of trial. Such orders would also put the media to notice *about possible contempt*. However, it would be open to media to challenge such orders in appropriate proceedings. Contempt is an offence sui generis. Purpose of contempt law is not only to punish. Its object is to preserve the sanctity of administration of justice and the integrity of the pending proceeding. *Thus, the postponement order is not a punitive measure, but a preventive measure as explained hereinabove*. Therefore, in our view, such orders of postponement, in the absence of any other alternative measures such as change of venue or postponement of trial, satisfy the requirement of justification under Article 19(2) and they also help the courts to balance conflicting societal interests of right to know vis-à-vis another societal interest in fair administration of justice.

47. One more aspect needs to be mentioned. Excessive prejudicial publicity leading to usurpation of functions of the court not only interferes with administration of justice which is sought to be protected under Article 19(2), it also prejudices or interferes with a particular legal proceedings. In such case, courts are duty-bound under inherent jurisdiction, subject to above parameters, to protect the presumption of innocence which is now recognised by this Court as a human right under Article 21, subject to the applicant proving *displacement of such a presumption in appropriate proceedings*.

48. Lastly, postponement orders must be integrally connected to the outcome of the proceedings including guilt or innocence of the accused, which would depend on the facts of each case.

49. For the aforestated reasons, we hold that subject to the

> above parameters, postponement orders fall under Article 19(2) and they satisfy the test of reasonableness."
>
> (italics in original, underlined by us for emphasis)

336. The Court, while examining the objections to maintainability, further proceeded to hold:

> "52. Article 141 uses the phrase '*law declared by the Supreme Court*'. It means law made while interpreting the statutes or the Constitution. Such judicial law-making is part of the judicial process. Further under Article 141, law-making through interpretation and expansion of the meanings of open-textured expressions such as "*law in relation to contempt of court*" in Article 19(2), '*equal protection of law*', '*freedom of speech and expression*' and '*administration of justice*' is a legitimate judicial function. According to Ronald Dworkin, 'arguments of principle are arguments intended to establish an individual right. Principles are propositions that describe rights.' (See *Taking Rights Seriously* by Ronald Dworkin, 5th Reprint 2010, p. 90.) In this case, this Court is only *declaring* under Article 141, the constitutional limitations on free speech under Article 19(1)(*a*), in the context of Article 21. The exercise undertaken by this Court is an exercise of *exposition of constitutional limitations* under Article 141 read with Article 129/Article 215 in the light of the contentions and a large number of authorities referred to by the counsel on Article 19(1)(*a*), Article 19(2), Article 21, Article 129 and Article 215 as also the 'law of contempt' insofar as interference with administration of justice under the common law as well as under Section 2(*c*) of the 1971 Act is concerned. What constitutes an offending publication would depend on the decision of the court on case-to-case basis. Hence, guidelines on reporting cannot be framed across the Board. The shadow of 'law of contempt' hangs over our jurisprudence. This Court is duty-bound to clear that shadow under Article 141. The phrase '*in relation to contempt of court*' under Article 19(2) does not in the least describe the true nature of the offence which consists in interfering with administration of justice; in impending and perverting the course of justice. That is all which is done by this judgment."
>
> (italics in original, underlined by us for emphasis)

337. The two sentences in the above extract which we have underlined has been the sheet anchor of the respondents. It would seem that framing of guidelines on reporting across the board by this Court for the media to follow is not a permissible course of action, but on a case-to-case basis the Court may decide whether the alleged offending publication amounts to contempt or not.

338. The UOI has relied on the decision in **Satpal Saini** (supra), as well as the decisions referred to therein for the proposition that it is not open to a High Court to issue direction to the legislature to enact a law, the power to enact a legislation being a plenary constitutional power vested in the Parliament and the State Legislatures under Articles 245 and 246 of the Constitution, respectively.

339. Reliance has further been placed by the respondents on **Destruction of Public & Private Properties** (supra) to highlight that the Supreme Court while accepting self-regulation by the media did not choose to lay down any guideline for reporting. Also, the decision in **Common Cause** (supra), has been relied on where the Supreme Court [while deciding W.P.(C) No.1024 of 2013] was considering an issue with reference to introduction of a complaint redressal mechanism. Such mechanism was sought in respect of complaints made against television and radio programmes. The respondents contended that apart from the self-regulatory mechanism, there was indeed a mechanism created by the UOI for dealing with complaints. According to the UOI, an Inter-Ministerial Committee had been set up comprising officers of different departments to deal with complaints and the details thereof were available on the website of the MI&B. While disposing of W.P.(C) No. 1024 of 2013, the Court observed and directed as follows:

> "10. Having given our thoughtful consideration, to the submissions advanced at the hands of the learned counsel for the rival parties, we are satisfied in concluding, that there is indeed an existing mechanism, as has been referred to by the learned counsel representing the Union of India. However, the above mechanism, is not known to the general public. We are therefore of the view, that the same needs

> adequate publication. We, therefore, hereby direct the Union of India, to publish the mechanism, which has been brought to our notice, and is partly extracted hereinabove. This would enable complainants, to air their grievances, before the appropriate forum and to obtain a determination thereof, at the hands of the competent authority concerned, in the Ministry of Information and Broadcasting.
>
> 11. Even though we have concluded in the manner recorded hereinabove, we are of the view, that the Central Government, having framed Rules in the nature of Cable Television Networks Rules, 1994, would be well advised, to frame similar Rules, in exercise of the power vested with it under Section 22 of the Cable Television Networks (Regulation) Act, 1995, to formalise the complaint redressal mechanism, including the period of limitation within which a complaint can be filed, and the statutory authority concerned which shall adjudicate upon the same, including the appellate and other redressal mechanisms, leading to a final conclusive determination. <u>We, therefore, hereby recommend, that the Central Government, within the framework of Section 22 of the Cable Television Networks (Regulation) Act, 1995, deliberate on the issue, and take a conscious decision thereon, and to finalise a similar statutory framework for radio programmes, as well. Till the above issue is considered and finalised, the existing mechanism of complaint redressal, shall remain in place.</u>”

(underlining for emphasis by us)

340. The affidavits filed from time to time by the UOI before the Supreme Court, which is seized of W.P. (C) No.956 of 2020 [Firoz Iqbal Khan v. Union of India & ors.] would reveal the steps taken by the UOI to implement the directions in paragraph 11 of the decision in **Common Cause** (supra).

341. Having regard to Article 141 of the Constitution, the decisions of the Supreme Court are the law of the land and binding on all Courts. They have to be respected and followed. It is trite that such observation in any decision of the Supreme Court, amounting to clear enunciation or declaration of law, which would be binding on us even though such declaration may not have been strictly necessary for the disposal of the case or the declaration of law is not followed by actual

application thereof in the case in question. However, the Supreme Court has cautioned that blind reliance on any decision is not proper. The Court is under an obligation to discuss how the factual situation fits in with the factual situation of the decision on which reliance is placed. Observations in a judgment, the Supreme Court has also cautioned, are neither to be read as Euclid's theorems nor as provisions of a statute, and that too taken out of context.

342. Bearing these principles in mind, we venture to examine how far the decisions relied on by the respondents assist their case.

343. **Destruction of Public & Private Properties** (supra), we say so with respect, does not enunciate or declare any law of relevance in the present context, binding on us under Article 141 of the Constitution. Paragraph 33 of the decision is clear that the matter was left to the authorities for implementation of the suggestions and no positive direction was given. There being a statutory regime under the CTVN Act and the CTVN Rules read with the Up-linking and Down-linking guidelines, the suggestions of the Nariman Committee would have to yield to the same. Even otherwise, the facts and circumstances as well as the concerns expressed here are completely different.

344. Reliance on **Satpal Saini** (supra) is misplaced. The law [read: the CTVN Act, the CTVN Rules and the 2011 guidelines) being in existence to deal with contents of programmes, which do not conform to the Programme Code, there is hardly any necessity for us to direct the Parliament to further legislate on the subject; however, in an appropriate case such as the present where guidelines on reporting on sensitive cases while an FIR is being investigated, we can certainly direct the authorities to activate themselves and act in view of the discussions while answering question no.5 (supra).

345. Though the nature of proceedings as well as its stage in **Sahara India Real Estate Corpn. Ltd.** (supra) in no way bear resemblance to the cases at hand, yet, the law enunciated and/or

declared by the Court therein on the aspect of the Court's power to pass postponement orders is relevant in the present context. It is of great significance that the Supreme Court in **Sahara India Real Estate Corpn. Ltd.** (supra), although not concerned with a criminal trial, had the occasion to observe that at times even fair and accurate reporting of a trial could give rise to a 'real and substantial risk of serious prejudice' to connected trials and in such cases, which would be rare, there is no other practical means short of postponement orders that is capable of avoiding the real and substantial risk of prejudice to the connected trials. We are inclined to the view that the importance, necessity and desirability of passing postponement orders to avoid real and substantial risk of serious prejudice in cases where the media out of over zealousness fails to make a fair and accurate reporting of a trial and to maintain the sanctity of administration of justice and fairness in trial cannot, therefore, be over emphasized. More so, when the society as a whole, as it ought to be, is vitally interested in the prevention of improper convictions as also unmerited acquittals. Having regard to the findings that we have returned, it may not have been absolutely inappropriate for us to make postponement orders. However, we propose not to pass such order taking judicial notice that the hysteria caused by the offending reports/discussions/debates/interviews pertaining to the untimely unnatural demise of the actor appears to have calmed down albeit the prejudice it has caused at the relevant time, as noted above. During the time the judgment on these petitions stood reserved, no further complaint of violation of rights of others by the media has been brought to our notice. Nonetheless, certain measures need to be suggested which we propose to indicate before concluding our discussion on the question.

346. **Common Cause** (supra) had more to do with complaint redressal mechanism for which directions have been issued. UOI has been taking steps in compliance with the directions of the Court, which is monitoring the situation. Since the writ petition of **Faisal Ahmed**

Khan (supra) is pending before the Supreme Court, we say no more in this regard.

347. While not proposing to issue directions for postponement of news reporting for the reasons noted above, yet, bearing in mind the adverse impact that a trial by media could have on pending investigations (which was not the subject matter of consideration before the Supreme Court in the aforesaid decisions), that an accused is entitled to Constitutional protections and invasion of his rights is to be zealously guarded, that there is an emerging need to foster a degree of responsibility as well as promote accountability and the reason in the paragraph that follows, we do not consider it to be either impermissible or imprudent in the present context to maintain a fine balance between competing rights as well as having regard to the ever-changing societal needs to suggest measures for exercise of restraint by the media in respect of certain specified matters, with a view to secure proper administration of justice, while it proceeds to exercise its right to report.

348. As it is, dignity of an individual, even after he is dead, cannot be left to the mercy of the journalists/reporters. The same, being part of Article 21, has to be protected. Besides, the other rights that various individuals have under Article 21 also call for protection. The measures we would thus propose to remedy the ills that have so long remained unchecked for the lack of strict enforcement of the regulatory control mechanism, in whatever manner it is available on paper, as well as lack of proper understanding of the law of contempt of court and the procedures governing the criminal justice system, are intended to safeguard the dignity of an individual and his liberty ~ the basic philosophy of our Constitution. We would do so, conscious of our own limitations of not crossing the boundaries, while urging the media houses not to step out of their boundaries too and thereby enter the grey area beyond the proverbial 'Lakshman Rekha'.

349. Having given our anxious consideration to all aspects of the matter, we are inclined to the opinion that the press/media ought to avoid/regulate certain reports/discussions/debates/interviews in respect of and/or touching upon any on-going inquiry/investigation into a criminal offence and that only those items are presented for reading/viewing and otherwise perceiving through the senses which are merely informative but in public interest instead of what, according to the media, the public is interested in. No report/discussion/debate/ interview should be presented by the press/media which could harm the interests of the accused being investigated or a witness in the case or any such person who may be relevant for any investigation, with a view to satiate the thirst of stealing a march over competitors in the field of reporting. Accordingly, we direct the press/media to exercise restraint and refrain from printing/displaying any news item and/or initiating any discussion/debate/interview of the nature, as indicated hereunder:

a. In relation to death by suicide, depicting the deceased as one having a weak character or intruding in any manner on the privacy of the deceased;
b. That causes prejudice to an ongoing inquiry/investigation by:
    (i) Referring to the character of the accused/victim and creating an atmosphere of prejudice for both;
    (ii) Holding interviews with the victim, the witnesses and/or any of their family members and displaying it on screen;
    (iii) Analyzing versions of witnesses, whose evidence could be vital at the stage of trial;
    (iv) Publishing a confession allegedly made to a police officer by an accused and trying to make the public believe that the same is a piece of evidence which is admissible before a Court and there is no reason for the Court not to act upon it, without letting the public know the nitty-gritty of the Evidence Act, 1872;

(v) Printing photographs of an accused and thereby facilitating his identification;

(vi) Criticizing the investigative agency based on half-baked information without proper research;

(vii) Pronouncing on the merits of the case, including pre-judging the guilt or innocence qua an accused or an individual not yet wanted in a case, as the case may be;

(viii) Recreating/reconstructing a crime scene and depicting how the accused committed the crime;

(ix) Predicting the proposed/future course of action including steps that ought to be taken in a particular direction to complete the investigation; and

(x) Leaking sensitive and confidential information from materials collected by the investigating agency;

c. Acting in any manner so as to violate the provisions of the Programme Code as prescribed under section 5 of the CTVN Act read with rule 6 of the CTVN Rules and thereby inviting contempt of court; and

d. Indulging in character assassination of any individual and thereby mar his reputation.

350. These are not intended to be exhaustive but indicative, and any report carried by the print media or a programme telecast by a TV channel, live or recorded, ought to be such so as to conform to the Programme Code, the norms of journalistic standards and the Code of Ethics and Broadcasting Regulations; in default thereof, apart from action that could be taken under the prevailing regulatory mechanism, the erring media house could make itself liable to face an action in contempt, i.e., criminal contempt within the meaning of section 2(c) of the CoC Act which, as and when initiated, would obviously have to be decided by the competent court on its own merits and in accordance with law.

351. It has been urged on behalf of the media houses that on diverse occasions, the guests are invited to speak and address the audience on a particular topic during programmes which are telecast live and, in such cases, it is difficult for the media houses to censor the statements of such guests. What the media houses say could be true, but that would not grant any speaker the license to either abuse or defame any particular individual, who could be the target of the speech, to tarnish his reputation in the eyes of the viewers or to indulge in interference with and/or obstruction to administration of justice by such public speaking. In case of the former, the targeted individual could sue the media as well as the speaker for defamation, which must ordinarily sound in damages but in case of the latter, both the media house and the speaker may be proceeded against for criminal contempt. It would not be enough for the media house to put up a disclaimer at the end of the programme that it does not associate itself with the views of the speaker and thereby evade liability. To obviate such situation, the media houses would be well advised to inform, guide and advise the guest speakers to refrain from making public utterances which are likely to interfere with and/or obstruct administration of justice and thereby attract contempt. The role of the anchor, in such cases, is also important. It is for him/her to apply his/her mind and avoid the programme from drifting beyond the permissible limits. Muting the speaker if he flies off or shows tendency of flying off at a tangent could be one of several ways to avoid embarrassment as well as contempt.

352. At the same time, while emphasizing on the need for a free, fair, effective and meaningful investigation of an FIR disclosing commission of cognizable offence by an accused ~ be it a celebrity or an ordinary person ~ to be conducted by the investigative agency, we also consider it appropriate to remind the investigative agencies that they are entitled to maintain secrecy in course of investigation and are under no obligation to divulge materials thus collected. If indeed there is leakage or disclosure of materials, which has the potential of stifling a proper

investigation, it could pave the way for such information being laid before the competent court having powers to punish for cri6minal contempt under section 2(c) of the CoC Act and in an appropriate case, for being dealt with in accordance with law.

353. That apart, one of the suggestions of Mr.Datar seems to us to be worthful and hence, we observe that Mumbai Police as well as the other investigating agencies may consider the desirability of appointing an officer who could be the link between the investigator and the media houses for holding periodic briefings in sensitive cases or incidents that are likely to affect the public at large and to provide credible information to the extent such officer considers fit and proper to disclose and answer queries as received from the journalists/reporters but he must, at all times, take care to ensure that secret and confidential information/material collected during investigation, the disclosure whereof could affect administration of justice, is not divulged. Such officer, if at all appointed, would nonetheless be instructed to bear in mind the decision of the Supreme Court in **Rajendran Chingaravelu** (supra). There, the Court warned of the growing tendency among investigating officers (either police or other departments) to inform the media, even before completion of investigation, that they have caught a criminal or an offender and that such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. The investigating agency should refrain from such acts that would prejudice not only the investigation but also the trial before the Court. We say no more on this topic.

354. Finally, what remains for our consideration is Mr.Kamath's suggestion that if any adverse order is passed by the UOI against an erring news broadcaster for violation of the Programme Code and such order has the effect of abridging the right guaranteed under Article 19(1)(a), this Court may direct that the same as against the broadcaster will remain in abeyance for a period of 15 days or so as to enable the

news broadcaster to approach the appropriate Court for relief. We do not consider such suggestion worthy of acceptance. It is not open to the High Courts to further legislate when a legislation is in place. The duty of the High Court would be to interpret the law, if the occasion therefor arises. It is only in exceptional cases where there is no legislation covering a particular topic/subject but right of a subject is infringed or threatened to be infringed that the court may consider attempting to issue guidelines/directions to be followed till such time legislation in that behalf is made. While we have ourselves suggested measures that need to be followed so as to enforce the right to life of individuals accused of criminal offences under investigation as well as laid down guidelines for media reporting on criminal investigation at the pre-chargesheet stage, the latter is with the obvious intent of marking the 'lakhsman rekha' within which the media must operate to avoid contempt of court. However, in view of the provisions of the CTVN Act and the CTVN Rules, it is considered unnecessary to make any direction of the nature suggested by Mr.Kamath.

355. Question D is, thus, answered accordingly.

<u>CONCLUSIONS:</u>

PIL-CJ-LD-VC-40 of 2020

356. The answer to question A (supra) has dealt with the concern expressed by the petitioner in this writ petition. Accordingly, we dispose of the same on such terms as indicated therein.

PIL (L) 3145 of 2020

357. Having regard to what we have expressed based on our understanding of sections 2 and 3 of the CoC Act while answering questions 1 and 2 (supra), we hold that the apprehension expressed in its pursuit of justice by the petitioner ~ In Pursuit of Justice ~ in PIL (L) 3145 of 2020 is misplaced. However, we acknowledge the assistance

that the issue raised in this writ petition has rendered to us for addressing the concern expressed in the other writ petitions; hence, we direct that this writ petition shall stand disposed of.

PIL (St.) 2339 of 2020

358. In view of our answers to questions 1 and 2 (supra), we see no ground to entertain the prayers made by the petitioner in this writ petition insofar as it relates to defining and narrowing the scope of the term 'reasonable belief' in section 3(1) of the CoC Act or to delete the same, being contrary to the object of the enactment, i.e., smooth running of the administration of justice, as prayed. This petitioner too has not challenged the Constitutional validity of section 3 of the CoC Act; not that anything would have turned in her favour, if such a challenge were laid for the reasons that we have assigned as aforesaid. The prayers in PIL (St.) 2339 of 2020 are declined. This writ petition, accordingly, stands dismissed.

PIL NO. 1774 OF 2020 & PIL (ST.) NO.92252 OF 2020

359. In view of our discussions while answering questions 3 to 5 and B to D, these writ petitions too stand disposed of. Interim Application (St.) No. 95156 of 2020 would not survive and stands disposed of.

360. There shall be no order as to costs.

361 The findings/observations in this judgment are for the purpose of adjudication of these writ petitions and are no reflection of any expression on pending investigations with the respective investigating agencies. As and when the matter enters the arena of the judiciary, the jurisdictional criminal court shall proceed to decide the points before it by drawing its own inferences and conclusions based on the materials before it, uninfluenced by any finding/observation herein.

362. Before we part, we need to acknowledge the scholarship and industry of and the able assistance rendered by learned counsel who have addressed us across the Bar. We place on record our sincere appreciation for their efforts. We also ought to place on record the valuable guidance that we have received from the decisions rendered by the Delhi High Court, the Kerala High Court and the other High Courts which were placed before us. Absence of specific reference to each of such decisions in course of answering the questions arising for decision must not be construed as omission on our part to consider the same. We say so with respect that the enlightening discussion in all such decisions on media trials that impact the judicial process and the necessity to interfere only in exceptional cases, where rights of the accused are infringed, has deeply enriched us and lighted the correct path to be followed.

(Girish Kulkarni, J.) **(Dipankar Datta, CJ.)**

Jayant V. Salunke
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