ADV. MANGESH B. DONGRE

Office: 2 & 3, Floor, Kothari House, 5/7 Oak Lane, A R Allana Marg, Near Burma Burma Restaurant, Fort, Mumbai - 400 023.

Tel. Off: 022 6237 1750/51 **Email :** mangeshdongre4@gmail.com

Date: 12.05.2022

To,

1. RAHUL SHIVSHANKAR

Editor-in-chief at Times Now,

Times House, 7, Bahadurshah Zafar Marg,

New Delhi - 110002.

2. PRAGATTI OBEROI

Journalist at Times Now,

Times House, 7, Bahadurshah Zafar Marg,

New Delhi - 110002.

3. JAIDEEP BOSE

Editor-in-chief at Times of India,

Times House, 7, Bahadurshah Zafar Marg,

New Delhi - 110002.

4. DURGESH NANDAN JHA

Journalist at Times of India,

Times House, 7, Bahadurshah Zafar Marg,

New Delhi - 110002.

Ref:- **(i)** News dated **16th April, 2022** published in The Times of India, titled as "27% of Covid patients in Delhi hospitals are kids."

(ii) News dated **16th April, 2022** Published in Times Now, titled as "Schools new hotspot for COVID? Delhi COVID cases witness sharp surge, 27% hospitalised are kids".

Sub:- To stop spreading false news and misleading citizens by creating a false fear with ulterior motive to give wrongful profits benefit to vaccine companies.

Respected Sir,

Under the authorization and instructions by my client **Shri. Ambar Koiri**, **National Steering Committee member of Awaken India Movement**, I, the undersigned, serve this notice upon you as under;

1. This notice is regarding the news mentioned below;

(i) Titled as ***"27% of Covid patients in Delhi hospitals are kids"*** published on 16th April, 2022 by journalist Durgesh Nandan Jha in The Times of India.

(ii) Titled as ***"Schools new hotspot for COVID? Delhi COVID cases witness sharp surge, 27% hospitalised are kids"*** published on 16th April, 2022 by journalist Pragatti Oberoi in Times Now.

2. The excerpts from the news article published in The Times of India are as under;

"Although hospitalisations due to Covid-19 are at a record low of 0.52% of all active cases in Delhi, kids comprise a high 27% of all people under institutional care, government data shows. Delhi has currently 51 patients in hospitals, real-time data on the Delhi Corona app reveals. Of these, at least 14 (27%) are children — 12 in Kalawati Saran Children's hospital (KSCH) and one each in and Madhukar Rainbow Children's hospital (MRCH). However, most of children being admitted with Covid have other underlying illnesses, Dr Srikanta Basu, senior professor in paediatrics at Kalawati Saran Children's hospital said.

Dr , paediatric pulmonologist at Sir hospital said initial trends show Covid is affecting children more this time compared to the previous outbreaks. However, he added, it is difficult to reach any conclusion without detailed data. "There is no vaccine available for children under 12 years. Even in the 12 to 18-year age group, for which vaccine is available, uptake is slow. In such a circumstance, it is advisable that parents make sure that children are protected and they follow Covid appropriate behaviour wherever necessary."

3. Regarding the abovesaid news the Sr. Journalist Mr. Ashutosh Pathak in his interview at Qvive made it clear on the basis of his conversation with Dr. Sanjay Ray, AIIMS (New Delhi) and also with one of the reporter and the concerned hospital that your news article is false and misleading.

4. As per said information the news you have published is false and if said information is correct and if your news is false then it is an ex-facie attempt to mislead the people to create a fear among them and with ulterior motive to

promote the vaccines which itself are having death causing side effects which leads to your prosecution under various offences of IPC as per section 120(B) and section 10 Evidence Act.

5. That your article's suggestions to people that the vaccine provides protection is also false as proved from the data available and opinions given by the honest domain experts like Dr. Sanjay Ray, AIIMS (New Delhi), Dr. Amitav Banerjee Head, Department of Community Medicine, Dr. DY Patil Medical College Pune, Dr. Arvind Kushwaha, Dr. Jayprakash Muliyal etc.

> ***"Dr. Sanjay Ray, AIIMS (New Delhi):-***
>
> *Government's decision on Covid vaccination for children 'unscientific': Senior epidemiologist of AIIMS Dr Sanjay K Rai PTI :*
>
> *A senior epidemiologist at AIIMS who is the principal investigator of Covaxin trials for adults and children at the institute on Sunday termed the Centre's decision to vaccinate children against Covid "unscientific" and said it will not yield any additional benefit.*
>
> *I am a great fan of PM Modi for his selfless service to nation and taking right decisions at right time. But I am completely disappointed with his unscientific decision on children vaccination," Rai said in a tweet tagging the Prime Minister's Office.*
>
> *Vinod K. Paul, Indian Council of Medical Research chief Balram Bhargava and Union health secretary Rajesh Bhushan On December 24, vaccination drive chief Vinod K. Paul, Indian Council of Medical Research chief Balram Bhargava and Union health secretary Rajesh Bhushan had said in a presser that their decisions are guided by science*

and that there isn't any scientific basis yet to necessitate paediatric vaccination.

Dr. Amitav Banerjee Head, Department of Community Medicine, Dr. DY Patil Medical College Pune:-

Dr Amitav Banerjee, Clinical epidemiologist, In Dr D Y Patil Medical College, Pune, points out physiological as well as epidemiological evidence which suggests that kids don't need vaccines.

"They have very well-developed thymus glands which produce very good T-Cell and memory cell immunity. They also lack ACE-2 receptors on which the spike protein of the virus latches in the lungs," Dr Banerjee said.

He added, "Also, they have got a very high melatonin level that is very protective against the virus. So physiologically they are very well-protected by the nature.

Dr. Jayprakash Muliyal:-

Experts like Dr Rai and Dr Jayaprakash Muliyil, who is chairman of the Scientific Advisory Committee of the National Institute of Epidemiology, are of the view that the risk of Adverse Event Following Immunization (AEFI) is very low but it is not zero at all.

"In such scenarios, we should look at a comparative picture of risk from Covid-19 as well as AEFI. If the latter outweighs the former, then vaccination is a costly and risky exercise with no benefits," Dr Rai said.

Dr Muliyil also feels that the death among kids, especially below 12, is almost zero and "there is no reason to

vaccinate kids as they are not vulnerable to Covid-19," he said.

Dr Banerjee seconds the view that the vaccine's side effect is not negligible. "There has been adverse effect from the vaccine particularly Myocarditis after the launch of vaccinations for children in some countries," he said.

6. Needless to mention that the vaccines are having death causing side effects in children. Few examples are as under;

(i) <u>Khairagarh, Rajnandgaon District, Chhattisgarh</u>:- 17-year-old healthy 11th standard student Luv Kumar Sahu got the 1st dose of covid vaccine on 3-Jan-22 (the day when India began vaccinating the 15-18 years age group) at Pandadah school. He complained of headache, dizziness, vomitting. His health deteriorated further, his condition became critical at civil hospital and he died on 4-Jan-22 on his way to another hospital.

Link:- https://cgkranti.com/?p=13219

(ii) <u>Ujjain, Madhya Pradesh</u>:- Anuradha Makwana (16 years), from Bishan Khedi village of Tarana tehsil of Ujjain district, was a student of class 9 of Government Higher Secondary School. After covid vaccination on 5-Jan-22, her health suddenly deteriorated on 6-Jan, She was taken to Tarana Hospital where the doctors referred her to Ujjain for Intensive Treatment, but she died en route to Ujjain. Tarana's Block Medical Officer Dr Rakesh Jatav denies any allegations linking her death to the vaccine.

Link:- https://www.abplive.com/states/madhya-pradesh/ujjain-news-after-taking-corona-vaccine-in-ujjain-student-deteriorated-dead-ann-2033455

(iii) Karhi area, Khargone, Pempura Village, Madhya Pradesh:- 16-year-old Asha Koge, a 10th class student was vaccinated at Valsgaon government school on 3-Jan-2022. The same evening, She got abdominal pain, vomitting, diarrhea, fever and took treatment at Karahi primary health center/hospital. Her condition worsened on 5-Jan and she died on the way to Barwah Hospital.

Link:- https://timesofindia.indiatimes.com/city/indore/kin-of-2-girls-in-madhya-pradesh-say-they-died-after-covid-vaccination-probe-on/articleshow/88766680.cms

(iv) Madurai, Tamil Nadu:- The Hindu and Tamil Daily Dinathanthi reported that a 15-year-old 10th standard student Santosh suddenly collapsed and died while shifting benches & desks in his school on 13-Jan-22 however reported that corona vaccination was given 10 days before.

Link:https://www.dailythanthi.com/Districts/Chennai/2022/01/13233355/10th-grade-student-at-schoolFainting-and-death.vpf

(v) Shirpur, Dhule, Maharashtra:- 15-year-old girl died 24 hours after vaccination in Shirpur village in Dhule district in Jan-2022. "Her post-morterm report is awaited. But her death following Covid immunisation appears coincidental as she was a known case of congenital heart disease," Dhule district health official Dr Santosh Navale said.

Link:- https://timesofindia.indiatimes.com/city/pune/covid-19-vaccine-side-effects-just-0-004-in-teens-2-deaths-unrelated/articleshow/88983908.cms

For more information visit the link given below:-

Link:-https://docs.google.com/document/d/1fg-EehxlYpMTrM0TET2IVQ7T76Ykpmk8/edit?usp=sharing&ouid=117736167922363236460&rtpof=true&sd=true

7. Around 20 countries banned Covishield vaccine due to its death causing side effects.

Link:- https://www.aljazeera.com/news/2021/3/15/which-countries-have-halted-use-of-astrazenecas-covid-vaccine

8. Needless to mention here that you are well aware that, the issue is already subjudice before Hon'ble High Court and Supreme Court. Hence, you are bound to publish the fair reporting by taking views from both the sides. In **Meghraj Taword Vs. Kapoor Chandra Kulish, 1987 (1) Raj L.R. 204,** it has been ruled that;

> *"A news item regarding any decision or proceeding of the Court when published it should be kept in mind that contentions of both the parties should be fairly described to give balanced view points of each of the parties as placed before the Court by them in their petitions and the replies; arguments advanced by learned counsel appearing for both the parties should also be properly described so that reader is in a position to understand the viewpoints placed before the Court by both the counsels; and the facts and material on which the Court basis its decision in the matter should also be described in the news item so that the readers are in a position to understand why the Court took a particular view while deciding the matter."*

9. That Hon'ble Bombay High Court in the case of **Nilesh Navalakha & Ors. Vs. Union of India 2021 SCC OnLine Bom 56,** has ruled as under;

"220. *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.*

221. *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).*

238. *Soon after the 1952 Act was enacted, in Rizwan-ul-Hasan v. 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)

239. *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 ER 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 ER 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 Cut 305 and Ganesh Shankar Vidyarthi case, AIR 1929 All 81.

29. <u>On the said authorities it is settled law that a person will be guilty of contempt of court if the act</u>

*done by him is intended or calculated or likely to interfere with the course of justice. ***"*

(underlining for emphasis by us)

240. *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, (1942-43) 70 IA 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)

242. *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'."

243. *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.

248. *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?*

250. *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 v. State of Andhra Pradesh, reported in AIR 1957 SC 927].

252. *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 v. 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.

253. *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.*

257. *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. ***"*

262. *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.*

293. *The discussion leading to the answer to this question must begin with what a 'fair trial' is and what is a 'trial by media'.*

294. *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.

295. *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.*

296. *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…"*

297. *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.

298. *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.'*

299. *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)

300. *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:

...

(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)

301. *Tehseen S. Poonawalla v. 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)

302. *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. <u>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</u> 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)

303. *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)

304. *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.*

305. *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.*

307. *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.

309. *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)

310. *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.*

311. *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)

312. *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.*

314. *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 Punj 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."*

351...<u>When the society as a whole, as it ought to be, is vitally interested in the prevention of improper convictions as also unmerited acquittals.</u>

353. *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.

354. *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'."*

10. Needless to mention here that publishing any one-sided news to create prejudice against the issue which is subjudice before the High court is an offence under **Section 2 (C) & 12 of the contempt of Courts Act, 1971.**

11. Hence, it is clear that you deliberately acted in utter disregard and defiance of Hon'ble Supreme Court and High Court guidelines.

12. Hence, your article is false and misleading. It is ex-facie seems to be a product of sponsored act by the vaccine mafias.

13. However in order to give a fair opportunity to you notice, we are issuing this notice to you asking you to provide us as to what the exact information do you have and on what basis said news was published and whether any clarification or apology was published by you in the same manner, in the same font and in the same highlights in which the news published.

14. Please take a note that my client is also thinking to launch prosecution under section 54 of Disaster Management Act, 2005 for spreading false alarms with ulterior purposes.

15. Further take a note that sending false and misleading reply will be an offence under section 192, 193, 201, 120(B) etc., of IPC.

16. Take a note that, if we failed to receive any reply within 7 days from you, then we will treat your silence as your admission and proceed further as per law.

17. Under these circumstances please take a serious note of it.

Sincerely,

Adv. Mangesh Dongre

Copy To:-

1. Hon’ble Prime Minister of India
2. Hon’ble Health and Family Welfare Minister
3. Hon’ble Home Secretary
4. Hon’ble Health Secretary
5. Hon’ble Director of C.B.I.