

Media Disinformation in the age of OTT Platforms

Over-the-Top (OTT) platforms have surely turned out to be a boon for a richer and more decentralized distribution of artistic content online. It has broken the monopoly of mainstream distribution channels and platforms and allowed many regional and peripheral sources of content to come up to the surface and gain viewership among the masses. However, the grass is not so green when one looks closely at the recent cases and possibility of abusive content being aired and media disinformation taking place through an OTT platform. There are two main challenges when it comes to the problem of media disinformation via OTT platforms:¹

1. Lack of a stringent regulatory framework

The OTT phenomenon is relatively new and there are hardly many strict regulations when it comes to moderating the content that is put on the OTT platforms. Without a legitimate grievance redressal mechanism backed by law, it leaves the door wide open for any kind of content and information to float across these platforms without any checks and balances. The result, as the case study shows, is the possibility of an organized hate campaign being aired on these platforms against an indigenous community and their leader, giving space to millenia long racist propaganda to thrive on these platforms, same poison in a new covering.

Artistic freedom does not entail the absence of any regulation or allowing propaganda to spawn on such platforms. Regulations, without harming the right to freedom of expression, is a natural course of action that needs to be taken to curb the problem of media disinformation. Country such as India have already created guidelines for the OTT digital space, paving the way for stricter legislations in the future.

2. Restricted ownership by big corporations

The irony is that, even though initially supporting decentralization of content, there is every possibility of the presence of a restricted narrative being floated on these platforms, because of them being owned and controlled by big multinational tech giants, who carry their own biases and clout to protect themselves from regulatory pressure or any objection based on the content shown. Recent cases of big social media companies censoring the voice of people belonging to a narrative that the companies don't adhere to or consider against their policies, proves the risk that these OTT platforms pose with regard to media disinformation, especially without a strong regulatory framework or justifiable State intervention.

¹ "Online Web Platforms Need To Be Regulated By Statutory Body In The Interest Of Public Morality And Decency " : NGO Submits Before Supreme Court
<https://www.livelaw.in/top-stories/ott-platforms-supreme-court-netflix-amazon-prime-regulated-by-statutory-body-171562>

Case Study - Discovery+ Abusive Documentary on SPH

Summary

Background

In the month of May 2022, Discovery+ (the OTT platform of Discovery network) advertised a program under the category, True Crime as follows:

Program name: My Daughter Joined a Cult – Thursday, June 9

Description: This mind-bending series charts the rise, fall and alleged crimes of a controversial cult leader, Nithyananda, through the eyes of abused survivors, former devotees and most importantly, a father trying to save his daughter from the cult's clutches.

On 30 May, 2022, a trailer of this show was released on Vimeo. The show used content of Nithyananda University, and therefore copyright takedown notice was sent to Vimeo and Vimeo promptly removed it. Looking at the trailer it was clear that the show is defamatory. The show was showing the SPH Jagatguru Mahasannidhanam His Divine Holiness Bhagavan Sri Nithyananda Paramashivam in bad light based on allegations that are (1) false, and (2) sub judice.

On 31 May, 2022, a legal notice was sent to Discovery+ on how the trailer of the show proposed to be released was violating the DMCA guidelines and against the show to be released.

Following is the draft of that email:

To: hello@discovery.com ; May 31, 2022, 10:07 AM

Subject: DMCA Take down

Dear Sir,

I represent the intellectual copyright representative for Nithyananda Hindu University (9720 Central Avenue Montclair, CA 91763 US), which offers diploma and degree courses on indigenous Hindu religious sciences and is registered with the California Secretary of State.

Recently Discoveryplus India added an announcement of a program named "My Daughter Joined a Cult" on the page -

<https://press.discoveryplus.com/uncategorized/discovery-announces-june-programming-slate-2/>

Later the entry of the video was removed from the website so please refer to the google cached link :

<https://webcache.googleusercontent.com/search?q=cache:wNDxBQBHtOcJ:https://press.discoveryplus.com/uncategorized/discovery-announces-june-programming-slate-2/+&cd=1&hl=en&ct=clnk&gl=in>

The producers of the series uploaded a trailer of this video on their vimeo channel. The trailer contained several audio clips and footage from Nithyananda University course content. For this, we sent a DMCA take down notice to vimeo and the objectionable trailer was removed

from their platform.

Similarly if the above mentioned documentary series is released on Discoveryplus platform and contains similar video footage and audio clips of Nithyananda Hindu University course content, video will be liable to attract a DMCA take down notice from Nithyananda Hindu University.

I am also attaching the details of the trailer of said documentary and how it attracted DMCA take down notice and was removed:

---start of notice---

Content (audio) from a video created and owned by my organization - uploaded here : <https://www.youtube.com/watch?v=idGtVAO87x8> appears in the video being reported. The video being reported, copies the original audio at the timestamp - 00:11:37.000 to 00:11:41.041.500 which appears in the video being reported at 00:00:03.003.152 to 00:00:07.651 ; Further the content (audio) from a video created and owned by my organization - uploaded here : <https://youtu.be/X4iYzgGKmNw> ; appears in the video being reported. The video being reported, copies the original audio at the timestamp - 00:28:52.000 to 00:28:57.057.000 which appears in the video being reported at 00:00:18.018.272 to 00:00:23.312 Further the content (video) owned by my organization - uploaded here : <https://www.youtube.com/watch?v=idGtVAO87x8> ; appears in the video being reported. The video being reported copies the original video at the timestamp - 00:31:24.000 to 00:31:26.026.000 which appears in the video being reported at 00:00:03.003.152 to 00:00:04.901 on the right half of the video being reported, similarly the content for the left-hand side is also copied from a different time-stamp of the same video. The video being reported is a violation of my organizations rights as per DMCA under section 106A(a)(1)(B), 106A(a)(2) , 106A(a)(3), etc. The content being reported does not qualify under fair use. The nature of the content being reported is NOT for the purpose of parody, criticism, or remark. The nature of the content being reported is commercial. The report content is a distortion of the original work is entirely intentional and for the purpose of promotion of a third party documentary at the cost of causing commercial damage to Nithyananda Hindu University and also is prejudicial towards the author of the original content and Nithyananda University. The original audio and video is a part of the course content of Nithyananda University on indigenous religious scriptures and indigenous sciences. Therefore the use of my organization's work in the video being reported does not fall under fair use as per section 107.

---end of notice---

I hereby declare I have a good faith belief that the use of the works in the manner complained of is not authorized by the copyright owner, its agent, or law. UNDER PENALTY OF PERJURY, the information in this notification is accurate and I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Thank you
Shashank Tulsyan
(Sri Nithya Sharabheshwarananda Maharaj)
Nithyananda University
9720 Central Avenue Montclair
CA 91763
US

On the same day, Discovery+ team replied to this email, saying that they would check further into the issue and there is no definitive schedule that has been provided when or will the show be aired.

Hi,

Thank you for reaching out to us.

We have provided the details provided to the content team to check further into the issue. There is no definitive schedule that has been provided when or will the show be aired.

If there is any details on the show then the same will be uploaded on the website.

Regards,
Deepali
discovery+ Support

However, on 1 June 2022: the channel released another trailer announcing the airing of the show on 3rd June itself.

URLs: <https://www.youtube.com/watch?v=etL83WkLY1E> and
<https://www.youtube.com/watch?v=QjcmzMJI8K4>

Following this, a 2nd legal notice was sent to Discovery+ on 1 June, 2022. Below is the draft of the legal notice sent through email.

Dear Sir/Madam,

Discovery+ youtube channel has uploaded a similar trailer as previously reported in this email thread.

Title of the trailer: My Daughter Joined a Cult- Official Trailer English | 2 June | discovery+ originals | discovery+ App

URLs: <https://www.youtube.com/watch?v=etL83WkLY1E> and
<https://www.youtube.com/watch?v=QjcmzMJI8K4>

These two trailers use several clips and visuals of Nithyananda Hindu University, none of which fall under fair use under DMCA.

Content (photograph) created and owned by my organization, with the title - 'Putrakameshti Aushadha', created on 25-Oct-2017, uploaded here -

https://nithyananda.org/sites/default/files/photo-gallery/2017-10-Oct-25-nithyananda-diary_be_ngaluru-adheenam_putrakameshti-aushadha-process_IMG_8679.jpg is appearing in the trailer created by discovery+ on their official youtube channel, in the URLs
<https://www.youtube.com/watch?v=etL83WkLY1E> and

<https://www.youtube.com/watch?v=QjcmzMJI8K4> at the timestamp - 00:00:46 to 00:47. Similarly, there are multiple clips and visuals owned by Nithyananda University used by discovery+ unlawfully. The video uploaded by discovery+ and being reported is a violation of my organization's rights as per DMCA under sections 106A(a)(1)(B), 106A(a)(2), and 106A(a)(3). The content being reported does not qualify under fair use. The show positions and presents itself in the real crime category and therefore doesn't fall under any of the possible fair-use categories the "parody", "criticism", or "remark". Discovery+'s copying seriously damages the marketability of Nithyananda Hindu University's content. Such copyright is not considered fair use, as also confirmed by precedence set by multiple US court judgments - such as - (i) Harper & Row v. Nation Enters., 471 U.S. 539 (1985), (ii) Roy Export Co. Estab. of Vaduz v. Columbia Broadcasting Sys., Inc., 672 F.2d 1095, 1100 (2d Cir. 1982), (iii) Los Angeles News Service v. KCAL-TV Channel 9, 108 F.3d 1119 (9th Cir. 1997). The report content is a distortion of the original work is entirely intentional and for the purpose of promotion of a third party documentary at the cost of causing commercial damage to Nithyananda Hindu University and also is prejudicial towards the author of the original content and Nithyananda University.

The original footage being used by discovery+ are a part of the course content of Nithyananda University on indigenous religious scriptures and indigenous sciences, and the use of my organization's work in the video being reported does not fall under fair use as per section 107. And therefore I hereby enclose this copyright DMCA takedown notice and I hereby declare I have a good faith belief that the use of the works in the manner complained of is not authorized by the copyright owner, its agent, or law. UNDER PENALTY OF PERJURY, the information in this notification is accurate and I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Additionally the content is

Additionally considering the category of the documentary being classified under - 'real crime', the entire documentary is a false and vexatious defamatory media trial.

Judges are humans and are affected by media trial - observes England and Wales Court of Appeals

In England too, the House of Lords in the celebrated case of *Attorney General vs. British Broadcasting Corporation (BBC)*, [1981] AC 303, has agreed that media trials affect the judges despite the claim of judicial superiority over human frailty and it was observed that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. The Courts and Tribunals have been specially set up to deal with the cases and they have expertise to decide the matters according to the procedure established by the law. Media's trial is just like awarding sentence before

giving the verdict at the first instance. The court held that it is important to understand that any other authority cannot usurp the functions of the courts in a civilized society.

Pseudo trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes - observes European Court of Human Rights

European Court of Human Rights, Sunday Times v. UK (No. 1) (1979-80) 2 EHRR 245, para. 64

“Again it cannot be excluded that the public becoming accustomed to the regular spectacle of pseudo trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes.”

Jurists should be in no doubt that the media's concerns are entertainment, money-making and, ultimately, the assertion of the media's power - observes a U.S. Court of Appeals

A number of decisions of the U.S Supreme Court confirm the potential dangerous impact the media could have upon trials. In the case of *Billie Sol Estes v Texas* 381 US 532 (1965), the U.S. Supreme Court set aside the conviction of a Texas financier for denial of his constitutional rights of due process of law as during the pre-trial hearing extensive and obtrusive television coverage took place. The Court laid down a rule that televising of notorious criminal trials is indeed prohibited by the “Due process of Law” clause of Amendment Fourteen.

In another case of *Dr.Samuel H. Sheppard v Maxwell* 346 F.2d 707 (1965), the Court held that prejudicial publicity had denied him a fair trial. Referring to the televised trials of Michael Jackson and O.J.Simpson, Justice Michael Kirby stated:

“The judiciary which becomes caught up in such entertainment, by the public televising of its process, will struggle (sometimes successfully, sometimes not) to maintain the dignity and justice that is the accused’s due. But these are not the media’s concerns. **Jurists should be in no doubt that the media’s concerns are entertainment, money-making and, ultimately, the assertion of the media’s power.**”

In the **State of Maharashtra vs. Rajendra Jawanmal Gandhi**, 1997 (8) SCC 386, the Supreme Court observed:

“There is a 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 very antithesis of rule of law.** It can well lead to miscarriage of justice. **A judge has to guard himself against any such pressure and is to be guided strictly by rules of law.** If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.”

No editor has a right to assume the role of investigator or try to prejudice the Court against any person - Oudh High Court

In *Dm v. MA Hamid Ali Gardish*, AIR 1940 Oudh 137, (Para 137C2)

Article in newspaper likely to prejudice course of justice relating to pending case amounts to contempt of Court. The special privilege of the press is a time-worn fallacy, and the sooner the misconception that the press is not accountable to the law is removed the better it will be. **No editor has a right to assume the role of investigator or try to prejudice the Court against any person.** Writing and publishing an article in a newspaper likely to prejudice the course of justice relating to a pending case amounts to contempt of Court.

Trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented - observes Supreme Court

In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr*, AIR 1961 SC 633. It was held by the Supreme Court that:

*“No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because **trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented.** The basis for this view is that **such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution.**”*

When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action - observes High Court of AP

The law as to interference with the due course of justice has been well stated by the chief Justice Gopal Rao Ekkbote of Andhra Pradesh High Court in the case of **Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr**, AIR1975 AP 30, where in it was observed by the learned judge that:

*“ **When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings ”***

In the light of the above-mentioned facts, discovery+ is requested to immediately reply, and take action to cease and desist the above-mentioned unlawful activities.

Thank you
Shashank Tulsyan
(Sri Nithya Sharabheshwarananda Maharaj)
Nithyananda University
9720 Central Avenue Montclair
CA 91763
US

Also, on 2 June, 2022, when Discovery+ released the 1st episode of the show, a 3rd legal notice was sent to them, whose content is as follows:

Legal Notice sent to Discovery+

2 June 2022,

Dear Sir/Madam,

I am the legal representative for Nithyananda Hindu University (9720 Central Avenue Montclair, CA 91763 US), which offers diploma and degree courses on indigenous Hindu religious sciences and is registered with the California Secretary of State.

I also legally represent the Nithyananda Peetham (Bidadi, Bengaluru, Karnataka 562109, India) a traditional Hindu Shaivite monastery.

Recently Discoveryplus India added an announcement of a program named *"My Daughter Joined a Cult"* on the page -

<https://press.discoveryplus.com/uncategorized/discovery-announces-june-programming-slate-2/>

Later the entry of the video was removed from the website so please refer to the google cached link:

<https://webcache.googleusercontent.com/search?q=cache:wNDxBQBHtOcJ:https://press.discoveryplus.com/uncategorized/discovery-announces-june-programming-slate-2/+&cd=1&hl=en&ct=clnk&gl=in>

The producers of the series Dear Sir/Madam,

I legally represent the Nithyananda Peetham (Bidadi, Bengaluru, Karnataka 562109, India) a traditional Hindu Shaivite monastery.

Nithyananda Hindu University (9720 Central Avenue Montclair, CA 91763 US) offers diploma and degree courses on indigenous Hindu religious sciences and is registered with the California Secretary of State.

2 June 2022,

Recently Discoveryplus India added an announcement of a program named *"My Daughter Joined a Cult"* uploaded a trailer of this video on their Vimeo channel. The trailer contained several audio clips and footage from Nithyananda University course content. For this, we sent a DMCA take-down notice to Vimeo and the objectionable trailer was removed from their platform.

A notice was also sent by email to Discovery+ via email (to hello@discovery.com ; at May 31, 2022, 10:07 AM), that if the above-mentioned documentary series is released on the Discoveryplus platform, the video will be liable to attract a DMCA takedown notice from Nithyananda Hindu University as it contains video footage and audio clips of Nithyananda Hindu University course content and using the same unfairly and unlawfully.

And attached were the details of the trailer of the said documentary and how it attracted DMCA takedown notice and was to be removed. The same is re-iterated below:

Content (audio) from a video created and owned by my organization - uploaded here: <https://www.youtube.com/watch?v=idGtVAO87x8> appears in the video being reported. The video being reported copies the original audio at the timestamp - 00:11:37.000 to 00:11:41.041.500 which appears in the video being reported at 00:00:03.003.152 to 00:00:07.651 ; Further the content (audio) from a video created and owned by my organization - uploaded here : <https://youtu.be/X4iYzgGKmNw> ; appears in the video being reported. The video being reported copies the original audio at the timestamp - 00:28:52.000 to 00:28:57.057.000 which appears in the video being reported at 00:00:18.018.272 to 00:00:23.312 Further the content (video) owned by my organization - uploaded here : <https://www.youtube.com/watch?v=idGtVAO87x8> ; appears in the video being reported. The video being reported copies the original video at the timestamp - 00:31:24.000 to 00:31:26.026.000 which appears in the video being reported at 00:00:03.003.152 to 00:00:04.901 on the right half of the video being reported, similarly the content for the left-hand side is also copied from a different time-stamp of the same video. The video being reported is a violation of my organizations rights as per DMCA under section 106A(a)(1)(B),106A(a)(2),106A(a)(3),etc. The content being reported does not qualify under fair use. The nature of the content being reported is NOT for the purpose of parody, criticism, or remark. The nature of the content being reported is commercial. The report content is a distortion of the original work is entirely intentional and for the purpose of promotion of a third party documentary at the cost of causing commercial damage to Nithyananda Hindu University and also is prejudicial towards the author of the original content and Nithyananda University. The original audio and video is a part of the course content of Nithyananda University on indigenous religious scriptures and indigenous sciences. Therefore the use of my organization's work in the video being reported does not fall under fair use as per section 107. The above also is in violation of the Indian laws as per CHAPTER XI, Infringement of Copyright, Section 51(b) (i) and (ii) of Indian Copyright Law 1957.

The official reply to the email was made by a customer support person named Deepali, that: "There is no definitive schedule that has been provided when or will the show be aired." The reply was not a mere error, or irresponsible act, but criminal as it was sent to cause annoyance, inconvenience, deceive and mislead Nithyananda Hindu University (refer IT Act 66A(c)).

However, deceitfully yesterday on 1 June 2022, Discovery+ uploaded a similar trailer as previously reported. The email communication establishes that these acts are not done unknowingly without knowledge of the impact and implications but are done intentionally. Thus this act qualifies for defamation, as the content is (1) published, (2) done intentionally, (3) with intent of malice or to harm the reputation of Nithyananda Peetham, (4) despite knowing the falsity of the representation as made by Discovery+.

Thus, there is in fact a prima facie case of criminal defamation as per IPC 499 and IPC 500, where the channel clearly knows the some of the matter being mentioned in the said videos of Discovery+ is sub judice matter and is pending trial in courts.

Yesterday, on 1 June 2022, Discovery+ released several more trailers in multiple languages with similar content which is malicious, defamatory, violates the copyright of Nithyananda Peetham and Nithyananda Hindu University. Yesterday initially Discovery+ uploaded the following two videos: **URLs:** <https://www.youtube.com/watch?v=etL83WkLY1E> and <https://www.youtube.com/watch?v=QjcmzMJI8K4>

These two trailers use several clips and visuals of Nithyananda Hindu University, none of which fall under fair use under DMCA : The Content (photograph) created and owned by my organization, with the title - 'Putrakameshti Aushadha', created on 25-Oct-2017, uploaded here - https://nithyananda.org/sites/default/files/photo-gallery/2017-10-Oct-25-nithyananda-diary_beng_aluru-adheenam_putrakameshti-aushadha-process_IMG_8679.jpg is appearing in the trailer created by Discovery+ on their official youtube channel, in the URLs <https://www.youtube.com/watch?v=etL83WkLY1E> and <https://www.youtube.com/watch?v=QjcmzMJI8K4> at the timestamp - 00:00:46 to 00:47. Similarly, there are multiple clips and visuals owned by Nithyananda University used by Discovery+ unlawfully. The video uploaded by Discovery+ and being reported is a violation of my organization's rights as per DMCA under sections 106A(a)(1)(B), 106A(a)(2), and 106A(a)(3). The content being reported does not qualify under fair use. The show positions and presents itself in the real crime category and therefore doesn't fall under any of the possible fair-use categories the "parody", "criticism", or "remark". Discovery+'s copying seriously damages the marketability of Nithyananda Hindu University's content. Such copyright is not considered fair use, as also confirmed by precedence set by multiple US court judgments - such as - (i) Harper & Row v. Nation Enters., 471 U.S. 539 (1985), (ii) Roy Export Co. Estab. of Vaduz v. Columbia Broadcasting Sys., Inc., 672 F.2d 1095, 1100 (2d Cir. 1982), (iii) Los Angeles News Service v. KCAL-TV Channel 9, 108 F.3d 1119 (9th Cir. 1997). The reported content is a distortion of the original work is entirely intentional and for the purpose of promotion of a third-party documentary at the cost of causing commercial damage to Nithyananda Hindu University and also is prejudicial towards the author of the original content and Nithyananda University. The original footage being used by Discovery+ is a part of the course content of Nithyananda University on indigenous religious scriptures and indigenous sciences, and the use of my organization's work in the video being reported does not fall under fair use as per section 107. The above also is in violation of the Indian laws as per CHAPTER XI, Infringement of Copyright, Section 51(b) (i) and (ii) of Indian Copyright Law 1957.

Additionally, the content is in violation of the following section of law as per the Indian Law.

Section of Law	Brief description
IT Act 66A	Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the

	addressee or recipient about the origin of such messages
IT Act 66E	Violation of privacy Sec.66E
IPC 469	Forgery for purpose of harming reputation Sec.469 IPC
IPC 499 and IPC 500	Defamation
IPC 292A	Obscenity Sec. 292 IPC Printing etc. of grossly indecent or scurrilous matter or matter intended for blackmail Sec.292A IPC
IT Act 67A	Publishing or transmitting of material containing sexually explicit act, etc. in electronic form Sec.67A
Section 295(A)	Hurting of Religious Sentiment
Section 509	'Word, gesture or act intended to insult the modesty of a woman'
354A	Making sexually colored remarks

As per international standards, the United Nations has clearly laid down in Rabbart Action plan which in the debate of freedom of expression vs incitement to hatred clearly defines for the needed restrictions on freedom of expression: <https://www.ohchr.org/en/freedom-of-expression> Which makes it amply clear that even as per international standard, in the guise of freedom of speech and expression hate speech, incitement to hatred and violence is not allowed.

Article 19, of the Constitution Of India 1949, protects rights regarding freedom of speech but at the same time does not prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offense.

Hindumisic militants have used such hate speech as what Discovery+ is involved in resorted to and justify violence after reading or watching such material. Perpetrators of such crimes have directly commented on the online versions of such hate speech openly accepting that they have "hit nithyananda people", and also suggesting others should do the same by saying, "I request everyone to hit them nicely. Even don't show courtesy for women in Nithyananda ashram. They are the most dangerous." (Refer Profile with the name Parthasarathy J (The Rock) commented (comment id: UgzPVRI09bZwNd_laUF4AaABAg), "I have hit one nithyanandha people when they try to encourage near pallavaram. I request everyone to hit them nicely. Even don't show courtesy for women in Nithyananda ashram. They are the most dangerous" in the video <https://youtu.be/eRIYu2xguG8>). This clearly shows how such hate speech and misinformation is directly causing harm to the life and dignity as a person towards the disciples and devotees of temples of the Nithyananda Sangha (spiritual fraternity). And therefore attracts Section 95 of the Code of Criminal Procedure as such unlawful acts are punishable under Section 124A or

Section 153A or Section 153B or Section 292 or Section 293 or Section 295A of the Indian Penal Code.

Thus the criminal intention of Discovery+ to harm the life of all the residents, including women and children of the different monasteries, home temples, and houses of devotees of the Nithyananda Sangha (spiritual fraternity) is apparent.

The misinformation campaign by Discovery+ is not merely limited to incitement of hatred but is inclining to incitement to genocide, an international crime. Thus Discovery+ is actively participating in an international racist misinformation campaign to incite genocide against the AdiShaiva Vellalar minority aboriginal indigenous agricultural tribes, leading to their persecution. Direct and public incitement to commit genocide is forbidden by the Genocide Convention (1948), Article 3(c) and an international crime. Internationally the incitement to genocide is classified as an “*inchoate crime*” where proof of result is not necessary for the crime to have been committed, only that it had the potential to spur genocidal violence.

The hate speech and misinformation that Discovery+ is involved in is not new. This has been occurring as a pattern and the same has been reported to the United Nations Office of the United Nations High Commissioner for Human Rights (OHCHR) through submissions to several of its rapporteur’s calls for input, of which several were accepted and published by the UN.

1 REPORT Report on disinformation

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ISSUED BY	Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
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PUBLISHED	13-Apr-21
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PRESENTED TO	The 47th session of the Human Rights Council
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KAILASA's REPORT PUBLISHED BY UN	https://www.ohchr.org/Documents/Issues/Expression/disinformation/2-Civil-society-organizations/Nithyanandeshwara-Hindu-Temple.pdf
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2 REPORT Report on femicide

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ISSUED BY Special Rapporteur on violence against women, its causes, and consequences

PUBLISHED 12-Jul-21

PRESENTED TO To the General Assembly at its 76th session

**KAILASA's
REPORT
PUBLISHED BY
UN** <https://www.ohchr.org/Documents/Issues/Women/SR/Femicide/2021-submissions/CSOs/india-kailash-union.pdf>

3 REPORT Report on Gender Justice and the Right to Freedom of Opinion and Expression

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ISSUED BY Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

PUBLISHED 30 July 2021

BACKGROUND This report is the first report in the 27 years history of the mandate to be devoted exclusively to the challenges that women face in exercising their freedom of opinion and expression.

**KAILASA's
REPORT
PUBLISHED BY
UN** <https://www.ohchr.org/Documents/Issues/Expression/GenderJustice/2.CSOs/Kailash-Union.pdf>

4 REPORT THE RIGHTS OF INDIGENOUS WOMEN AND GIRLS

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ISSUED BY	CEDAW
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PUBLISHED	24-Jun-21
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PRESENTED AT	CEDAW Convention, Day general discussion on “the rights of indigenous women and girls”
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KAILASA's REPORT PUBLISHED BY UN	https://www.ohchr.org/Documents/HRBodies/CEDAW/DGD24June2021/51.docx
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5 REPORT A comprehensive approach to promoting, protecting, and respecting women’s and girls’ full enjoyment of human rights in humanitarian situations

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ISSUED BY	Office of the High Commissioner for Human Rights
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PUBLISHED	10 January 2022
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PRESENTED TO	To the Human Rights Council at its 49 th session
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KAILASA's REPORT PUBLISHED BY UN	https://www.ohchr.org/Documents/Issues/Women/WRGS/CFI-Women-humanitarian-situations/CSOs/Kailasa-Nation.pdf
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The above makes it amply clear that web-series of Discovery+ is a racist, lawfare on minority indigenous religion people, inciting hate and violence against them, wherein the victims are

always indigenous women and children who are targets of vicious racism, religious shaming, gender shaming. This show stands in direct violation and contempt of the acts of racial discrimination against which protections and obligations by the State Parties are enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination, UN General Assembly resolution 2106 (XX), 21 December 1965.

Even in the promotional trailer of the said documentary, Discovery+ has for example a one young man saying that he neither “found the girls nor Nithyananda” (paraphrased), which is absolutely offensive, and such objectifying of indigenous Hindu women for their choices is unacceptable. Therefore the content violates provisions of law as described in -IPC 292A, ITA 67A, Section 509 (‘Word, gesture or act intended to insult the modesty of a woman’), 354A (making sexually colored remarks), etc.

The trailer by Discovery+ uploaded here <https://www.youtube.com/watch?v=etL83WkLY1E> around timestamps 00:00:23.882 to 00:00:25.000 contains morphed footage. There are multiple court orders restraining the telecast of the said footage.

ASMT actress, Ranjitha, the victim of celebrity deep-fake, petitioned in the Karnataka High Court and all available forums for several years. Although the courts ordered in her favor restraining the misinformation (W.P. 8619/2011, WP 7767/2010, 14/527/10-11-PCI, 2 Sept 2013 BCCC Order, [NBSA #32/2014](#), etc.) and telecast of fabricated deep-fake videos. Media self-regulatory quasi-legal body, such as the NBSA have also ordered its member channels to remove fabricated defamatory videos from their websites. (please refer

<http://www.nbanewdelhi.com/assets/uploads/pdf/Fourth Annual Report 2010-11.pdf> Item#4,

<http://www.nbanewdelhi.com/assets/uploads/pdf/Fifth Annual Report 2011-12.pdf> Page 35,

<http://www.nbanewdelhi.com/assets/uploads/pdf/Annual Report 2012-13.pdf> Page 32,

<http://www.nbanewdelhi.com/assets/uploads/pdf/Seventh Annual Report 2013-14.pdf> Page 84, News Broadcasting Standards Authority Order No. 32 (2014) dated 27 Aug 2014, found Zee TV and Aaj Tak in contempt of court, and were ordered to apologize and also delete all similar videos from their websites also (refer point - 6 of the same order).

http://www.nbanewdelhi.com/assets/uploads/pdf/2014_12_ORDER_NO_32_DT_27_8_14.pdf)

Additionally considering the category the documentary is classified under - 'real crime', the entire documentary is a false and vexatious defamatory media trial.

Judges are humans and are affected by media trials - observe the England and Wales Court of Appeals

In England, the House of Lords in the celebrated case of *Attorney General vs. British Broadcasting Corporation (BBC)*, [1981] AC 303, has agreed that media trials affect the judges despite the claim of judicial superiority over human frailty and it was observed that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. The Courts and Tribunals have been specially set up to deal with the cases and they have expertise to decide the matters according to the procedure established by the law. Media's trial is just like awarding sentence before giving the verdict at

the first instance. The court held that it is important to understand that any other authority cannot usurp the functions of the courts in a civilized society.

Pseudo trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes - observes European Court of Human Rights

European Court of Human Rights, *Sunday Times v. UK* (No. 1) (1979-80) 2 EHRR 245, para. 64

“Again it cannot be excluded that the public becoming accustomed to the regular spectacle of pseudo trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes.”

Jurists should be in no doubt that the media’s concerns are entertainment, money-making and, ultimately, the assertion of the media’s power - observes a U.S. Court of Appeals

A number of decisions of the U.S Supreme Court confirm the potential dangerous impact the media could have upon trials. In the *case of Billie Sol Estes v Texas* 381 US 532 (1965), the U.S. Supreme Court set aside the conviction of a Texas financier for denial of his constitutional rights of due process of law as during the pre-trial hearing extensive and obtrusive television coverage took place. The Court laid down a rule that televising of notorious criminal trials is indeed prohibited by the “Due process of Law” clause of Amendment Fourteen.

In another case of *Dr. Samuel H. Sheppard v Maxwell* 346 F.2d 707 (1965), the Court held that prejudicial publicity had denied him a fair trial. Referring to the televised trials of Michael Jackson and O.J.Simpson, Justice Michael Kirby stated:

“The judiciary which becomes caught up in such entertainment, by the public televising of its process, will struggle (sometimes successfully, sometimes not) to maintain the dignity and justice that is the accused’s due. But these are not the media’s concerns. **Jurists should be in no doubt that the media’s concerns are entertainment, money-making and, ultimately, the assertion of the media’s power.**”

In the **State of Maharashtra vs. Rajendra Jawanmal Gandhi**, 1997 (8) SCC 386, the Supreme Court observed:

“There is a 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 very antithesis of rule of law.** It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.”

No editor has a right to assume the role of investigator or try to prejudice the Court against any person - Oudh High Court

In *Dm v. MA Hamid Ali Gardish*, AIR 1940 Oudh 137, (Para 137C2)

Article in newspaper likely to prejudice course of justice relating to pending case amounts to contempt of Court. The special privilege of the press is a time-worn fallacy, and the sooner the misconception that the press is not accountable to the law is removed the better it will be. **No editor has a right to assume the role of investigator or try to prejudice the Court against any person.** Writing and publishing an article in a newspaper likely to prejudice the course of justice relating to a pending case amounts to contempt of Court.

Trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented - observes Supreme Court

In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr*, AIR 1961 SC 633. It was held by the Supreme Court that:

*“No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because **trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented.** The basis for this view is that **such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution.**”*

When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action - observes High Court of AP

The law as to interference with the due course of justice has been well stated by the chief Justice Gopal Rao Ekkbote of Andhra Pradesh High Court in the case of **Y.V. Hanumantha**

Rao v. K.R. Pattabhiram and Anr, AIR1975 AP 30, wherein it was observed by the learned judge that:

“ When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings ”

Case for Contempt of Court through Trial by Media

In the judgment declared on 18th January 2021 by Chief Justice Dipankar Datta and Justice G.S. Kulkarni of the Bombay High Court, the Bombay High Court, India elaborated the position of media trials in India, declaring the judicial point of view. The court viewed the effects and consequences of media trials in the administration of justice, a quintessential factor of modern democracies. The phenomenon of declaring the accused as a convict even before the Court had given its judgment, is called media trials. It is the widespread coverage of the guilt of the accused and imposing a certain perception about him, regardless of any of the verdict given by the court of law.

The judgment pronounced by Chief Justice Dipankar Datta and Justice G.S. Kulkarni has touched upon several key issues in relation to media trials mainly dealing with: directions to prominent television networks to restrict reportage that could hamper the investigation, re-interpretation of contempt law, and guidelines for the regulating the print or broadcast media without curtailing the freedom of the press.

An important facet of this judgment refers to the “administration of justice” and its extent of its application in modern democracies such as India. **It also discusses the issue of contempt of court and places that disclosing any information during the investigation would amount to Contempt of Court.** The Court held that TIMES NOW and REPUBLIC TV had reported cases maligning the investigation and obstructing the administration of justice. [↗](#)

Under the Contempt of Courts Act, 1971, publications under free trials are sheltered against contempt proceedings. **However, any publication which interferes with or obstructs or tends to obstruct any proceeding, be it civil or criminal, and the course of justice, which is actually a pending proceeding, constitutes contempt of court.** An illustration of this immunity can be seen through the case of Aarushi Talwar’s Murder, 2013, the media had declared who was guilty and who was not even before the actual trial had begun. The press had immunity for such a publication previously. However, no interference of the legislature was noted. However, a broader understanding of the same has been provided by the Court bringing the action of trial by media under the realm of **Contempt of Courts Act, 1971**.

in the matters of *R.K. Anand v. Delhi High Court*; (2009) 8 SCC 106 as well as *M.P. Lohia v. State of W.B.*; (2005) 2 SCC 686. The Supreme Court reiterated that the media and the judiciary

are institutions inhabiting separate spheres and their functions do not overlap. One cannot and must not use the other for discharge of its functions. **It was observed that the media should only engage in acts of journalism and not act as a special agency for the court.** The impermissibility of freedom of speech and expression amounting to interference with the administration of justice due to the prejudicial nature of certain media coverage was also highlighted.

The Supreme Court had another word of caution in the matter of *Satishbhusan Bariyar v. State of Maharashtra*; (2009) 6 SCC 498 wherein it was observed while referring to the matters of *Khatri(II) v. State of Bihar*; (1981) 1 SCC 627 and *Sanjay Dutt v. State (II)*; (1994) 5 SCC 410 that **if media trial is a possibility, sentencing by media cannot be ruled out.**

In the matter of *State of Maharashtra v. Rajendra Jawanmal Gandhi*; (1997) 8 SCC 386 the Supreme Court while considering the issue of sentencing observed that **a trial by press, electronic media or public agitation is the very antithesis of the rule of law. This may very well lead to miscarriage of justice** and therefore, a Judge should guard himself against any such pressure and should strictly be guided by the rules of law.

On the aspect of **presumption of innocence**, the Supreme Court has also referred to the judgment in the matter of *Anukul Chandra Pradhan v. Union of India*; (1996) 6 SCC 354 to emphasize on the fact that **the presumption is legal in nature. This should not be destroyed at the very threshold through the process of media trial especially when an investigation is pending in the matter. Such a subversion of the criminal justice system would be in derogation of the rule of law and would also impinge upon the protection granted to an accused under Article 21 of the Constitution. It was also observed that protection of such presumption is essential for maintenance of the dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country.**

In the light of the above-mentioned facts, Discovery+ is requested to immediately reply, and take action to cease and desist the above-mentioned unlawful activities.

I hereby declare I have a good faith belief that the use of the works in the manner complained of is not authorized by the copyright owner, its agent, or law. UNDER PENALTY OF PERJURY, the information in this notification is accurate and I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Thank you

Surekha Sekar
Enrollment number: 2339/2017

Nithyananda Peetham
Nithyananda Nagara,
Bidadi,

Bengaluru,
Karnataka 562109, India

What were the allegations made in the show

(Claim#1) The show claims that Nithyananda Sampradaya - AdiShaiva Vellalar community is a cult.

(Response) This allegation is racist, hateful, and false. A US Court order rules against a party trying to accuse Nithyananda Sangha of a cult. This is a direct attack on all the Adishaiva indigenous people, and disciples. Such racism and hate speech cannot be justified in the name of freedom of speech.

(Claim#2) The title of the show claims as if somebody's daughter has joined what they just described as a cult.

(Response) The organization is not a cult, but a traditional Hindu nunnery - Mutt. Two young girls above the age of 18, had taken Hindu monastic vows and become Brahmacharinis. The girls had caught red-handed their father in financial fraud. The father of the two girls pressurized them to participate in his illegal acts and quit the organization also. The girls refused upon which the father hired militants of Karni Sena (Gujarat) who are accused of molesting women, to kidnap the girls. The girls fled India for safety and are living independently. The father is still trying to kidnap them and abuse them. The father filed a Habeas Corpus petition asking the girls to produce themselves. The girls denied and replied in signed affidavit in front of court, police, Indian High Commission in Jamaica, and in presence of a United Nations representative. None of this convinced the court or the father, and the case is sub-judice. Finally in revenge the father made this show to target the Nithyananda Sampradaya.

(Claim#3) The show is joined by a sexual abuser (Sarah Landry) who raped a young boy named Luke in Canada, and made false allegations against the SPH, and later withdrew when her own video proved her claims as false. She appears to continue to make further false claim in this documentary.

(Response) Video where Sarah exposes her own false claims:

<https://www.facebook.com/watch/?v=496477740968912>

Video testimonial of victim of sexual abuse by Sarah:

<https://www.youtube.com/playlist?list=PLImoL0kypLjtjny48SLP7jNgGow4zsOu4>