



## CRITICAL ANALYSIS OF MEDIA TRIAL AND THE NEED FOR REFORMS IN THE LIGHT OF THE 200<sup>TH</sup> LAW COMMISSION REPORT

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### ABSTRACT

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*The role of media be it print media, electronic or any sort of media is crucial in every society, especially in democracies, where people possess the right to know. Media has proven to be extremely pivotal in making justice accessible to some victims in various instances by highlighting their cases and social issues, but sometimes media fails to recognise the boundaries set out for it and tends to intermingle with the process of administration of justice. An increasing tussle between fair trial of an individual and freedom of the Press is being observed in recent times. Media sometimes tends to take up the function of the judiciary and conducts the investigation or lays down theories or probabilities parallelly while the case is sub judice. Sometimes it does not even shy away from declaring or branding the accused as criminal based on abstract theories or past convictions etc. This puts the fundamental right to reputation, and free trial of the accused in danger or has an effect of denying them of these rights. There are various issues arising out of media trials such as the conflict of freedom of speech of media with the right to a fair trial of an individual, and the impact and influence of media trials on judges and juries, thus in light of the above mentioned concerns the restrictions and regulations on media that are presently regulating media trails, including Contempt of Court Act 1971 and what it provides to safeguard and ensure fair trials and the 200th law commission report along with few landmark cases have been extensively discussed and analysed.*

**Keywords:** *Media trial, contempt, fair trial, freedom of press, sub judice.*

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## Introduction

“Media is the most powerful entity on the earth. They can make an innocent guilty and guilty innocent and that’s the power they possess, as they have potential to exercise control over the minds of the masses.”

The media has a significant influence on shaping people's opinions in society, and it plays a crucial role in creating awareness, maintaining democracy, and holding the government accountable. It is regarded as the 4th pillar of democracy as it serves as a watchdog and ensures that the government is responsible to the citizens. The relevance and pertinence of media in a democratic and civil society are widely acknowledged and recognized, and India's constitution recognizes it under Article 19(1)(a), which confers freedom of speech and expression, including within its meaning the freedom which the press has. An independent, powerful, and free media is an important feature of any democracy, particularly in a diverse society such as India.

## Media Trial

In **R.K. Anand v. Delhi High Court**<sup>1</sup> for the first-time media trial was defined as the “Impact of extensive pretrial publicity and coverage on a person's reputation thereby creating a widespread perception of guilt regardless of the verdict given in the court of law”. This case was regarding the authenticity of a sting operation carried out by NDTV in a matter that was under trial by the judiciary.

## Influence on Judges

In **P.C. Sen in re**<sup>2</sup>, the Supreme Court recognized and stated that judges can be "subconsciously" influenced or swayed by media coverage. At the time, the High Court was hearing a writ petition in this matter, and with full awareness, West Bengal's chief minister made a broadcast. It can be confidently asserted that media broadcasts may unintentionally influence the jury or the judges as in this present case of the writ petition against the West Bengal Milk Product Control Order 1965 which was pending before the Calcutta High Court. The court found him guilty of contempt of court for his radio broadcast in which he justified the Control Order.

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<sup>1</sup> R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106.

<sup>2</sup> In Re: P.C. Sen, AIR 1970 SC 1821.

### Impact of Media Trial on Legal Representation

When renowned lawyer Ram Jethmalani took up the case of the prime accused in a murder case by the name Manu Sharma he was subjected to public ridicule; an editor of Cable News Network – Indian Broadcasting Network, even called it an attempt to defend the indefensible. Another incident is of case *Surendra v. State of Uttar Pradesh* wherein, Mr Mohinder and his servant were suspected in a case pertaining to serial killings, influenced by the extensive media coverage wherein it was informed that the 2 men had accepted their crime and confessed, the local Bar Association announced that no lawyer from Noida would defend Mohinder or his servant. Thus, media trials can be extremely detrimental for the accused in such cases and might even persuade some lawyers not to take up their cases and affect their right to legal presentation which is important in order to ensure the right to free and fair trial.

### Tussle between Freedom of Speech of Media and Fair Trial

Article 19(1)(a) grants freedom of speech and expression to every citizen of India, in the case of **Indian Express Newspapers v. UOI**<sup>3</sup> Justice A.P. Sen had expressed, “the right of freedom of the press is a pillar of individual liberty which has been unfailingly guarded by the courts”, but while it holds merit it also has to be seen that it is not unrestricted; under article 19(2), “reasonable limitations” are levied on it in the cases of “contempt of court”, “national security”, “state sovereignty”, and “integrity”, as well as defamation and incitement to commit crimes. These limitations are provided in order to establish balance and harmonize the “right to free speech and expression” and “the right to a fair trial” is provided to all via Article 21 of the Constitution. Every individual is ensured by this provision that there is no scope for any discriminatory or prejudicial treatment of any accused at any stage of the case which is sub-judice. The Supreme Court in **Zahira Sheikh v State of Gujarat**<sup>4</sup> provided for the meaning of “fair trial”. It stated that a trial in which there is no prejudice or bias against the accused or the witness or cause for which the accused is being tried would amount to a fair trial. However, the sensationalized stories of media and an increasing number of media trials that try to brand or criminalize someone while the trial is sub-judice cannot be protected under freedom of expression or speech as they are proving to be detrimental to the Right to Fair Trial guaranteed to citizens of the country under Article 21 and threat to the presumption recognized in the court of the accused being innocence until proven by the prosecution to be guilty. **In Mrs. Kalyani**

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<sup>3</sup> Indian Express Newspapers v. UOI, AIR 1986 SC 515.

<sup>4</sup> Zahira Sheikh v State of Gujarat (2006) 3 SCC 374.

**v Mrs. Sampooranam**<sup>5</sup>, the court had opined that a fair trial is inclusive of an “appropriate and correct chance or opportunity to prove the innocence through legal means”. Thus, safeguarding this right is crucial. And therefore, it is very important to read Article 19(1)(a) combined with the limits in Article 19(2). The Supreme Court stated that “the right to freedom of speech and expression” is not unqualified like it is in America, in the case of **Reliance Petrochemicals Ltd v. Proprietors of Indian Express**<sup>6</sup>. From all of these cases, it is evident that the freedom enjoyed by the press is not unqualified and is subject to reasonable limitations. In the case of **Harijai Singh and Anr In Re**<sup>7</sup> Which was regarding news that was printed in “The Sunday Tribunal” and “Punjab Kesari” related to the allotment of petrol pumps, the news had mentioned about 2 sons of a judge of SC as well as sons of CJI was also allegedly favored by Petroleum Minister which later upon verification was found to be false and untrue and thus contempt proceedings were initiated against editors of the above-mentioned magazines, it was, in this case, that court opined that freedom of the press is not above or doesn’t provide any extra freedom than what is secured or provided for by “freedom of speech and expressions” and therefore subject to the restrictions placed by the Constitution.

## **Regulations and Checks on Media**

### **Bodies regulating media -**

- Press Council of India (PCI)
- News Broadcasting Standards Authority
- Broadcasting Content Complaints Council
- News Broadcasters Federation

### **Laws that regulate media -**

- The Press and Registration of Books Act, 1867
- The Information Technology Act, 2000
- Right to Information Act, 2000
- Press Council Act, 1978
- The Cinematograph Act, 1952
- Cable Television Networks (Regulations) Act, 1955

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<sup>5</sup> Mrs Kalyani Baskar v Mrs M.S. Sampoornam, (2007) 2 SCC 258.

<sup>6</sup> Reliance Petrochemicals Ltd v Proprietors of Indian Express, 1989 AIR 190.

<sup>7</sup> In Re: Harijai Singh and Anr, (1996) 6 SCC 466.

**Constitutional provisions that regulate Media**

- Article 129 of the Indian Constitution authorizes or allows the Supreme Court to penalize or punish any person found guilty of “contempt” of the Supreme Court that is itself.
- Article 142(2) of the Indian Constitution allows the Supreme Court of India to inquire into and penalize any person who's found guilty of contempt.
- Article 215 of the Indian Constitution allows every High Court to penalize the guilty for contempt of itself.

**The act governing Media Trial**

When a publication relating to the matters that are pending before the court intends to intervene with the discharge or adjudication of justice it would fall under the ambit of contempt of court under “Contempt of Court Act 1971”. Discussing about Act which acts as a reasonable restriction it classifies the contempt into 2 types that is Civil and criminal, presently we are concerned with the Criminal.

Section 2 of the act lays down the meaning of criminal contempt as “written or spoken publication or publications by words or by representations or signs or otherwise which intervenes or obstructs or intends to interfere/obstruct the administration of justice or which prejudices “the due course of judicial proceedings” or intends to scandalize or scandalizes to lower the authority of any court”.

The act also lays down what wouldn't amount to contempt of court, “which is innocent publication, fair reporting of a judicial proceeding, fair criticism, complaint against presiding officer, apology and truth”.

In the amendment that was brought about in 2006 in the Act truth, innocent publication, and fair criticism of the judiciary were declared to not be considered as contempt and to be treated as defenses for the same.

**200th Law Commission Report on Media Trial**

The suggestion is to modify the explanation below section 3 clause (b) and include arrest as the starting point of the proceedings. Before the 1971 Act there were Acts of 1926 and 1952 governing contempt but. In those acts, there was no distinction made between “civil” and “criminal” contempt. In 1963 initiatives were taken to formulate a new law of contempt and the “Sanyal Committee” was appointed in 1963. The Committee in its Bill intimated that for a prejudicial publication to be considered as contempt the proceedings of the court should be “imminent”, that is about to happen. In some cases, as in **Smt. Padmavati Devi v. R.K.**

**Karanjia**<sup>8</sup>, the court had opined that to consider the starting point of a trial the First Information Report and similar trance was taken by various other cases of that time where imminent was interpreted as time or arrest or filing of FIR, but Bill after being reviewed by the Bhargava Committee, later decided to drop the word imminent proceedings as it was very vague and could unreasonably curtail the freedom of press. Thus, imminent proceedings or time of arrest were refused to be treated as time of arrest. The Supreme Court had held in **A.K Gopalan v Noordeen**<sup>9</sup> that the content or meaning that has to be attributed to the 'imminent' was the time when the person was arrested. Thus, in accordance with the judgment of the court, the law commission report suggested that the word imminent is not vague and the Joint Committee in its report which was submitted in 1970 did not consider this judgment of the apex court which was delivered in 1969. The 200th Law Commission report contended that it would be prejudicial to the accused if publication prejudicial to the accused were allowed if they were before the filing of the charge sheet even if they were after arrest thus the commission suggested that explanation below section 3 clause (B) should be inclusive of arrest along with the filing of charge sheet or challan or warrant against accused of issue of summons. Other suggestions of the commission report included the suggestion that the word "active" be substituted with the word "pending". It also suggested that the High Courts should be directly approachable rather than being approached through references of subordinate courts. It suggested that courts must get the power to pass postponement orders to Publications. Although it is held by the courts that imposition of prior restraint is allowed only under strict conditions, temporary postponement can still be passed. The Commission also suggested various other things such as including the learning of relevant laws which are important and pertinent for press and media to be known and understood in the syllabus of journalism. Which can govern and guide them in order to restrain themselves from indulging in media trials.

## Conclusion

Media plays an extremely important and essential role in a democracy it is often referred to as the fourth pillar of democracy, great rights of choosing representatives and making decisions

<sup>8</sup> In Smt. Padmavati Devi v. R.K. Karanjia, AIR 1963 MP 61.

<sup>9</sup> A.K. Gopalan v. Noordeen, 1970 SCC (2) 734.

<sup>10</sup> H.M. Seervai, Constitutional Law of India 723 (Universal Law Publishing Co., Vol. 1, 4th edn. 1991).

<sup>11</sup> Law in Perspective: Media Reporting and Contempt of Court: The Law Revisited (Feb.13, 2011), < <http://legalperspectives.blogspot.com/2011/02/media-reporting-and-contempt-of-court.html>> last visited on June 27, 2023.

<sup>13</sup> Neha Das, A Critical Analysis of Trial by Media, CNLU LJ (9) [2020] 22, 23, 36-37 (2020).

<sup>14</sup> Pranati Kumari, Media Trial An Analysis, 2010 2 MLJ Cri 28, MLJ, 1, 1 – 11(2010).

for the future are vested with the people of India, and in order to ensure that the nation progresses it is important that its citizens make an informed choice about all aspects. Here is where the media steps in and helps to impart information and enlighten everyone about the happenings of the surroundings to enable them to make those informed choices. The freedom and impartiality of the media are crucial elements in determining the welfare of people. But sometimes the media tends to forget its responsibilities, limitations, and obligation to act for public welfare. Media is granted freedom regarding speech and expression but as known it is not unlimited and unqualified, it is subject to valid restrictions. When the media supersedes its authority and tries to intervene in the process of administration of justice it leads to media trials. Media trial is often critiqued by the judiciary as it infringes the right of fair trial possessed by the accused as well as various other aspects such as the right to legal representation, and the right to privacy which are guaranteed under the constitution. Therefore, to keep the media in check, enforcement of the Contempt of Court Act 1971 is very important. The media's role is indispensable and extremely important, but it is very important to ensure that the media doesn't meddle with other rights guaranteed to an individual by the Constitution. Media and press studies or journalism courses should include all the law provisions, status acts, etc which are relevant and necessary for journalists to know as suggested by the law commission report which would increase chances of harmonizing the right of fair trial, legal representation, etc with the right to freedom of press.