

**“The Constitutionality of Media Trials in India – A Critique”**

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**Abstract:**

The object of the research study is to make an in-depth analysis on the constitutionality of media trial in India. The research will be dealing with Article 19 of the Constitution of India which states the freedom of speech and expression which includes freedom of the press which hinders with the right of an adversarial legal system in place as well as obstructs the accused right of fair trial, right to representation, right to privacy etc. Further the objective of the paper is to bring forward the negative impact of the media and how media trials affect the working of the legal system and can lead to misrepresentation and injustice. Moreover, it is crucial that media should not deviate from unbiased reporting as media has been given immense power to influence the masses. The concluding aim of the paper is to find a solution which involves justice being served by the judiciary and unbiased reporting by the media.

**Key words:** Media trials, judiciary, freedom of speech and expression, free trial, justice

**INTRODUCTION**

*“Fair is foul and foul is fair”, Macbeth*

Journalism today can be compared to a fun house of mirrors at a carnival, it is deceptive. The media plays a vital role all around the world, it carries a huge responsibility of spreading awareness amongst the masses. The media has been given immense power under Article 19(1)(a) of the constitution, several world leaders including Pandit Jawaharlal Nehru have propagated for the freedom of the press as they believed that media is the cornerstone for democracy. The importance of Article 19(1)(a) was given emphasis by **Justice Bhagwati** in the case of **Maneka Gandhi v. Union of India**<sup>1</sup> *“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.”*

It is crucial to note that the freedom of speech is guaranteed by several international conventions as well like the International Covenant on Civil and Political Rights, Universal Declaration of Human Rights etc. the declarations not only provide the provision of freedom of speech and expression but also protect these rights. In India, the freedom of speech and expression has not been expressly given to the media, because it was believed that if each

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<sup>1</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597

citizen has the fundamental right of speech and expression it is implied that it is the citizens that form the press and the press has freedom of speech and expression as well.

The media plays a vital role as it is responsible for bringing about awareness to the people, for keeping democracy alive, for keeping the government on its toes and was considered to be a watchdog and made the organs of the government accountable to people, due to which media is considered to be the fourth pillar of democracy. However the harsh reality of today is that, the media houses are in the pockets of businessmen or political parties that control the information, the concept of unbiased reporting has been exchanged for higher ad revenues, which can only be availed if the channel has a high TRP (Television Rating Point), due to lack of relevant provisions available to control the media, there is zero control on what the media spreads. The media has become a superpower, which is blindly followed; they interfere to an extent wherein the judicial process has been hampered numerous times. Due to which the rise of media trials have emerged.

The term media trial defines the widespread influence of newspaper and television creates on the masses on the reputation of the accused by forming a perception of guilt or innocence before or after the judgment of the court. It is crucial for us to note that media trials have taken the role of the court, as well has severely challenged the authority of the courts. The media today has transformed into a 'Janta ki Adalat' that is public court, wherein the media pierces through the judiciary and works on the few facts it has and represents a biased opinion before the pronouncement in the people's court. Furthermore, it creates a restraint on the courts to set the case aside in a similar manner as per the opinion of the masses failing which gives rise to an uproar in the public and leads to disturbance of public peace.

### **MEDIA AS AN OBSTRUCTER OF JUSTICE**

The effects of a media trial are adverse and the consequences of which are to be dealt by the accused and victim, they are in the eyes of the public constantly and are being watched. There every move is scrutinized by the media and the media through constant sensational news forms a foundation in the minds of the public about the guilt or innocence of the accused.

Media trials are usually based on criminal cases; the basic principles of criminal cases involve impartial judgement, unbiased administration, justice to be served, independence of judiciary and most importantly to be granted fair trial. In a media trial all of which is thrown to dust. Furthermore, it is an established principle of justice that any accused is 'innocent until proven guilty beyond reasonable doubt' that is the court gives leverage to each accused, that until all facts of the case point directly to the guilt of the accuse, he is assumed to be innocent by the court of law, however in a media trial the accused is generally presumed by the media to be guilty and is so shown to the masses, even if later announced to be innocent, they are guilty in the eyes of the masses. In the famous *Arushi Talwar*<sup>2</sup> murder case, the media was involved to an extent where the evidence got tampered due to the hassle and the

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<sup>2</sup> Dr. Rajesh Talwar And Another V. Central Bureau Of Investigation, 2013 (82) ACC 303

investigating officers were unable to perform their duty, the parents were branded as being guilty of the double murder while the case was still under trial. The case is an example of how the media crossed the line and obstructed the fundamentals of justice 'innocent until proven guilty and 'guilty beyond reasonable doubt'. The media, openly accused the Talwar's as murderers and disparaged their reputation, this was while the case was under trial. In such cases, it becomes extremely difficult for the sitting judge to remain impartial and there is no way to prove that he/she hasn't been influenced by the sensational news, which jeopardises the trial.

Media trials put the judiciary in a position of a silent spectator wherein the media informs to the judiciary rather than the judiciary informing the media. The sensational media trials, the media, scapegoat under the umbrella of freedom of press, after obstructing justice, defaming one or many individuals, hindering the reputation of several, invading the right to privacy and causing harm to the process of a fair trial. The media investigates the criminal trial on behalf of the police forces, comes to its own conclusion and calls it the truth, before even the courts can come to a conclusion.

The media is responsible to give information and keep a check on the organs of the government and act as a supplier of information to the masses and not perform the functions of the organs by itself. The media has been given too much power, due to lack of regulations to keep a check on media.

### **CONSTITUTIONALITY OF MEDIA TRIAL:**

#### **FREEDOM OF PRESS:**

The freedom of press is a crucial aspect in keeping democracy alive, which is why the press is considered to be the fourth pillar of democracy. However the press is supposed to act as an informer between the organs of the government and the public, the main task of the press is to provide information to the masses. The International Covenant on Civil and Political Rights, 1966, Article 19 states the right to freedom of speech, "*everyone shall have the right to hold opinions without interference*" and the "*freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*"<sup>3</sup> However the freedom comes up with restriction on the press that are – 'special duties and responsibilities' and is subjected to 'the rights or reputation of others'

The Constitution of India, guarantees the right to freedom of speech and expression as a fundamental right under Article 19(1) (a). Unlike the United States, the freedom of press is not expressly mentioned, although the Supreme Court of India has recognized the fact that freedom of press comes under the ambit of freedom of speech and expression. Thus, the freedom of speech and expression has not been expressly given to the media, because it was

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<sup>3</sup> Article 19 of the International Covenant on Civil and Political Rights, 1966

believed that if each citizen has the fundamental right of speech and expression it is implied that it is the citizens that form the press and the press has freedom of speech and expression as well.

**In Re: Harijai Singh and Anr. v. In Re: Vijay Kumar**<sup>4</sup> the Supreme Court stated on the scope of freedom of the press as “an essential prerequisite of a democratic form of government” and regarded it as “the mother of all other liberties in a democratic society”.<sup>5</sup>

The right under Art 19(1) (a) includes “the right to information and the right to disseminate through all types of media, whether print, electronic or audiovisual means”.<sup>6</sup> It was further stated in **Hamdard Dawakhana v. Union of India**, “that the right includes the right to acquire and impart ideas and information about matters of common interest.”<sup>7</sup>

Trial by press has a dangerous stand, not only does the judge require to do his usual due diligence by hearing the matter, examining evidence and relying only on the evidence available without his bias coming into place, the judge has to also shade himself/herself from the eyes of media and not get swayed by the view of the public, in such circumstances it becomes extremely difficult for the judge/s to make an unbiased judgement. Further they have to make sure that the pressure of the public does not lead to miscarriage of justice. They are described as ‘anti-thesis to the rule of law’.

In **Anukul Chandra Pradhan v. Union of India**<sup>8</sup>, the Supreme Court observed that “No occasion should arise for an impression that the publicity attached to these matters (the hawala transactions) has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial”.<sup>9</sup>

## THE PUBLIC’S RIGHT TO KNOW

The Supreme Court in the case of **A.G. v. Times Newspaper**<sup>10</sup> the principle on which the freedom of press was based upon was the people’s right to know. The supreme court further opined “The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country’s political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion”.<sup>11</sup>

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<sup>4</sup> Re: Harijai Singh and Anr. v. In Re: Vijay Kumar, (1996) 6 SCC 466

<sup>5</sup> *Ibid* (4)

<sup>6</sup> Romesh Thapar v. State of Madras 1950 SCR 594

<sup>7</sup> Hamdard Dawakhana v. Union of India 1960 (2) SCR 671

<sup>8</sup> Anukul Chandra Pradhan v. Union of India, 1996 (6) SCC 354

<sup>9</sup> <http://www.civilservicetimes.co.in/editorial/-current-national-issues/416-trial-by-media-looking-beyond-the-pale-of-legality-.html>

<sup>10</sup> A.G. v. Times Newspaper, (1973) 3 All ER 54

<sup>11</sup> Re: Harijai Singh and Anr v. Re: Vijay Kumar, (1996) 6 SCC 466

It has several times been established that the freedom of press was granted for public's right to know the correct the news. It is true, that today, newspapers and televisions are a form of information and entertainment and hence referred to as infotainment. So it is understandable if a pinch of sensational news is added, however, it should be limited only till a certain extent.

Thus, the freedom of press was granted for the underlying reason that the masses should get the correct new so that they can act of it and as for the people's right to be informed about their government and happenings around the world.

### **PARTICIPATION BY PUBLIC**

Participation by public is highly important for the spirit of democracy to continue. The essence of democracy is that the people are the focal point. The organs of the government work towards the welfare of the people, as it is the people who elect the government. For a democracy to fully suffice, it is the right of the people to know about the where a bouts of its elected government in order to make informed decisions.

Further in a democracy one of the key elements to retain it is transparency, and furthermore, transparency in all forms, between organs, between the state and its people etc. because only if transparency exists can the people know that the elected representatives are working to ensure the welfare of the people. It is also crucial to understand that transparency cannot exist without the freedom of press. If freedom of press is taken away, there will be no way for the people to find out whether or not the representatives are working for the good of all or a few.

Coming to judiciary proceedings, freedom of press is integral in reporting judicial proceedings, because without which the proceedings would be conducted secretly. Jeremy Bentham stated, "*In the darkness of secrecy, sinister interest and evil in every shape are in full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.*"<sup>12</sup>

Thus in order for complete justice to be served, freedom of press is crucial. However, it is juvenile to say that trial by media in its form is considered to be participation of the public, i.e. it has been stated that the press only gives out information and then it is the people that decide whether the accused is innocent or guilty. Nevertheless, it is the duty of the press to not banquet on the mob mentality and only provide the public with the facts.

### **THE CONTEMPT OF COURT ACT, 1971**

Under the Contempt of Court Act, 1971, states that when a case has reached the court and is in pre-trial motion, no individual or publication is allowed to publish their own versions of

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<sup>12</sup> K.G. Balakrishnan, *The Constitution, The Media And The Courts*, The Fourth K.S. Rajamony Memorial Public Law Lecture, Kerala, [www.supremecourtfindia.nic.in/new\\_links/9%5B1%5D.8.08.rajamony.pdf](http://www.supremecourtfindia.nic.in/new_links/9%5B1%5D.8.08.rajamony.pdf)

the facts of the case, that is, the publication of any such fact which obstructs or interferes in the proceeding of the court which can harm the trial proceedings cannot be justified. It is crucial to note that Section 2(c) sub clause (iii) of the Contempt of Courts Act, 1971 states that – “No newspaper has a right to assume the role of an investigator and to suggest that the accused person against whom a proceeding is pending was or was not guilty of the offence. The reason why 'trial by media' is not allowed is manifold:

- a) It may influence the persons who may appear as witness in the court.
- b) It may compel the parties to discontinue the litigation.
- c) It may prejudice the public as whole, by evoking adverse reaction and thereby impair the public confidence in the administration of justice.
- d) It may inhibit other potential litigants from restarting to the law of court”<sup>13</sup>

It is vital to note that it is the duty of the court to protect the right is the accused and most importantly, the right to fair trial, every accused has to have a fair trial without any hindrance. However only when a criminal or civil suit is ‘**pending**’ only then can it qualify as contempt. Pending here means “*where it relates to the commission of an offence, when the charge sheet or challan is filed; or when the court issues summons or warrant, as the case may be, against the accused.*”<sup>14</sup>

Herein publication of the accused can be related to anything from previous convictions to the general character. Although it is crucial to note that in accordance to the current framework of the Contempt of Courts Act, 1971, such publications or pinpointing to the guilt of the accused is given immunity regardless of the threats it possess to the fair trial. Legislative intervention here is crucial to expand the scope of the word ‘pending’ and further widen the scope of the Act. Several lacunas are to be filled in other to put an end or restrict the press from conducting such aggressive media trials and swaying the public in its own favour for increasing its viewer base.

## **INEFFECTIVE PROVISIONS GOVERNING JOURNALISM**

Media houses today, have immense power, what it needs is a system of check that balances its power. The Press Council Act, 1978 was established with the aim to “*preserve the freedom of the Press and to maintain and improve the standards of newspapers and news agencies in India*”.<sup>15</sup>

The Council has various powers, the supreme power that the Council has is to censor. If the Council believes that an agency has committed a breach of any professional misconduct or if the council agrees with the complaint, then the Council has the power to either warn or

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<sup>13</sup> P.M. Bakslil. M'less Law an Introduclioiv. 1986

<sup>14</sup> Code of Criminal Procedure, 1898

<sup>15</sup> Press Council Act, 1978, Section 13(1).

cancel the newspaper on such account. The Council also has the power to direct the paper to “publish the contradiction of the complainant in its forthcoming issue”<sup>16</sup>

It is vital to note that the Council can censor or direct for an apology only once the news has been published, that is the harm has been done, once a news is published it is read by millions of people, a retraction in the next new cycle does not undo it, the people blindly follow the news. Further, the Council cannot give a harsh punishment. Thus, as there is no harsh punishment, the reports fail to adhere to the ethics of journalism.

In the case *Ajay Goswami v. Union of India*<sup>17</sup>, the failure of the Press Council to bring about effective change was seen as the Council has power to only ‘warn, censor or admonish’ newspapers and the council does not have any jurisdiction on electronic media platforms. Thus, its power is limited to newspaper and news agencies and not to electronic media. the Press Council lacks punitive powers and is unable to exercise any power or control over the materials published.

However it is further to be noted that the Press Council has suggested a code of conduct to be followed by journalists that focus on, honesty, fairness and accuracy and state that the press should not involve itself in baseless accusations. Moreover it clearly states that any publication based on a critique of the judiciary should be severely scrutinized before publishing such news. However, the Press Council can only act on its powers with respect to pending cases and not pre-trial reporting.

## **CONSEQUENCES OF MEDIA TRIALS**

### **FREEDOM OF SPEECH AND EXPRESSION V. FAIR TRIAL**

Freedom of speech and expression as already been established is an absolute right, even though Article 19 (2) of the Constitution restricts it, the restriction is minimal. Trial by media has created several problems, most importantly the problem of a clash between two absolute rights. The freedom of press is necessary for a smooth functioning of democracy, on the other hand, fair trial i.e. a trial which is uninfluenced by any exterior forces is the right of each accused, not just by the Constitution of India but also International Covenants, the right to fair trial is a basic human right. The right to fair trial is tenet of justice.

The right to fair trial has been given as a fundamental right under sections, 14, 20, 21 and 22 of the Constitution of India. The right is an absolute right and article 21 should be read along with article 14 of the Constitution. On the other hand, the right to freedom of speech and expression is also a fundamental right, the only restriction it has is the “interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign

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<sup>16</sup> Section 14(1) of the Press Council Act, 1978

<sup>17</sup> *Ajay Goswami v. Union of India*, (2007) 1 SCC 143

States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”<sup>18</sup>

We have come across several circumstances wherein the media has exceeded its rights by invading in the functions of judiciary in a media trial by publishing content which may prejudice the public’s opinion and the judicial proceedings, further, trial by media creates an enormous amount of pressure on the judiciary to act in accordance to the public opinion which somewhere does hinder the fair trial because the lines between ‘innocent until proven guilty’ and ‘guilty beyond reasonable doubt’ diminishes. Further, the courts are forced by the media and public for a quick sentence which obstructs the proceedings. Furthermore, the media tends to forget that the law is governed by senses and by looking at the evidence available at hand and not swayed by emotions. Furthermore there are several essentials to a fair trial which include, right to a speedy trial, right to representation, right to a public trial.

The Supreme Court stated that a “fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.”<sup>19</sup>

In the case of *Kartongen Kemi Och Forvaltning AB and Ors. vs. State through CBI*<sup>20</sup> the courts stated that prominence should be given to the accused’s right to a fair trial with respect to the role of media. It was further stated that the right of information is crucial in criminal investigations as it spreads awareness and promotes dialogue between the masses of nefarious crimes, however the right of fair trial is equally valuable if not more, because at the end of the day a trial decides a man’s right to life and liberty, and if that is taken away due to pressure from exterior forces, what kind of justice system would we have? It is vital to understand that at the end of the day, it is a just and fair society that should prevail.

The Supreme Court observed that, “*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 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.*”<sup>21</sup>

In *Rajendra Sail Vs. Madhya Pradesh High Court Bar Association and Others*<sup>22</sup> it was clearly stated that in democracy that follows the principles of rule of law, and in a country like India, where the judiciary is independent and the press has been given the right to freedom of speech and expression both are indispensable and it is the aim of both the pillars

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<sup>18</sup> Constitution of India, Article 19 (2)

<sup>19</sup> *Zahira Habibullah Sheikh v. State of Gujarat*, (2005) 2 SCC (Jour) 75

<sup>20</sup> *Kartongen Kemi Och Forvaltning AB and Ors. vs. State through CBI*, 2004 (72) DRJ 693

<sup>21</sup> *State of Maharashtra vs. Rajendra Jawanmal Gandh*, 1997 (8) SCC 386

<sup>22</sup> *Rajendra Sail Vs. Madhya Pradesh High Court Bar Association and Others*, (2005) 6 SCC 109

to find the truth, it will be in the best interest of the people only if both organs act in accordance to their functions.

### **MEDIA TRIAL V. RIGH TO REPRESENTATION**

The principles of natural justice state that every individual has a right to representation, this right to representation is given in petty theft cases as well as in extreme circumstances. In the case of Ajmal Kasab, a terrorist responsible in the Mumbai attacks, it was widely debated whether he had the right to be represented, as no lawyer wanted to take his case, however, because of the principles of natural justice, it is the right of every individual to be represented even when it is morally incorrect. It has been seen as a regular practise wherein a media trial, the public and media create pressure on the lawyers to not take up cases altogether wherein the accused is guilty of a moral wrong so much so that they fear their lives.

In accordance to the principles of natural justice, every individual has a right to be represented by a lawyer of his/her own choice and should be given a fair trial in front of an impartial adjudicating body. Taking the case of Manu Sharma<sup>23</sup>, Advocate Gopal Subramaniam, appeared for the state and the case of Manu was handled by some mediocre level lawyer. When Advocate Ram Jethmalani one of the most eminent lawyers in India decided to take up this murder case, he was subjected to public ridicule. A prominent news channel called the case indefensible which is one of the cases of media instigating the public. He was considered to be a murdered by the public before even he could find a proper representation.

Right to representation is a crucial aspect, as it is the duty of a lawyer and a right of an individual. Even though the duty of a lawyer might not a line with one's morality, it is the individual right to be heard and tried in front of a competent adjudicating authority. Defending an accused who is guilty of a crime does not necessarily mean letting him/her walk free but his right to be heard.

However, the media's assumptions of innocence or guilt, violates the right to legal representation. Furthermore, it is not just the accused and the victim that are in the eyes of the public but also it is the witnesses and anyone who is attached to the case, there privacy is invaded to an extent where they cannot get out of the house without security. It is also important to note that even the police is under great pressure from the media and public to file charges and act upon quickly on a criminal case, so much so that they are on ticking clock to find new evidence and due to hurried investigations and in order to be able to be answerable to the public they sometimes fail to follow due procedure. Moreover there is immense pressure on the adjudicating authority to stay away from media and media reports and who is guilty according to the 'media verdict' the onus of fair and unbiased trial is upon the judge and if the verdict of the court is different from the 'media verdict' the judge is called as biased.

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<sup>23</sup> Sidhartha Vishisht @Manu Sharma v. State (NCT of delhi)

**MEDIA TRIAL V. RIGHT TO REPUTATION**

As stated in *State of Bihar v. Lal Krishna Advani*<sup>24</sup>, right to reputation is a facet of the right to life. Each individual has a right to reputation. However in a media trial all the rights of the accused go out of the window. The media tarnishes the accused past, present and future by ousting each and every detail of the accused to the public, even minute details are shown to the public and construed upon. His/her past records are openly debated upon and once the media has considered an individual to be guilty, they portray the guilt in a sensational manner that the public believes him/her to be guilty and if that individual is found not guilty by the courts, the public still sees him/her as guilty and decision of the courts as biased.

Thus, in a media trial the right of every individual of a decent reputation in the eyes of the public is smeared in way which is unrecoverable, even if not guilty, the person can never get his/her life back. The prospects of a job diminishes to an extent where no company would want such allegations on an employee. Which in return effects the livelihood of the individual under Article 21 of the Constitution, which provides that each individual has the right to life and liberty.

**CRITICAL ANALYSIS**

Trial by media evolved in the 20<sup>th</sup> century, with the evolution and growth of print media as well as electronic media and the constant flow of new information in a competitive market gave rise to sensational style of journalism. It was used to increase audience base and viewership amongst the masses. Trial by media was a new way of spreading information of not just the reforms made by the legislature and how they were implemented by the executive but also how they were upheld by the judiciary. However as explained in the research paper, trial by media even though was a concept to spread information to the masses and to bring about the awareness of the nefarious realities of society forward, the line between informing and deciding has gotten unclear over time.

The media today pierces through the judiciary and does not only form an opinion but constantly feeds the opinion to the public so much so that the public blindly follows the media. The media today has become like the Pope, just like earlier times, the Church was never questioned and blindly followed by the masses, the same is being done with media. The media has been given so much power that news channels and other mediums have become untouchable. Due to overnight emergence and evolution of media and technology, the laws regulating control are lacking today. There are several lacunas that are needed to be filled by the legislature on regulating laws in bringing about control. Several ambiguities in the Contempt of Court Act and The Press Council of India are being taken advantage of and the media channels have escaped liability because of the same.

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<sup>24</sup> *State of Bihar v Lal Krishna Advani*, (2003) 8 S.C.C. 361

The 200<sup>th</sup> law Commission Report “**Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)**”, has recommended a law to debar the media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial.”<sup>25</sup> The report clearly states that several pre-trial publications have a prejudicial impact in the administration of justice which acts adversely to the institution of the judiciary.

In India, several fundamental rights are given to the citizens, it is not surprising that one might not be in accordance with another. However in the case of trial by media the two conflicting rights are right to freedom of speech and expression which is crucial for running of a smooth democracy and the other being right to a fair trial which go to the root of principles of natural justice. Both rights are equally valuable. However, it is extremely important that one should not overlap the other. The media needs to be checked, they cannot be given such power that in the name of news they can state any biased information or create facts for that matter that interfere with the administration of justice and hide under the ambit of freedom of speech and expression. The right was given to each individual to express their opinions and not to tarnish the reputation of the other or to themselves become the justice system.

The media cannot be given such power as to become the adjudicating authority, it is the function of the court to administer justice and the function of media to report it. The judiciary in India has been given an independent status so that there is no bias and it is the judiciary which should be given the power to administer justice and none other.

The media cannot sway the judges and the public to make a decision. It is the duty of the judiciary to be impartial and look at the facts of the case and the law in place and not be swayed by emotions. The media has plays on the emotions of the public while taking advantage of the lack to checks by the government on the media. It is crucial to act on amending the laws and control the media, otherwise it will become the strongest organ because of the massive support of the public.

## **CONCLUSION AND SUGGESTIONS**

The most suitable way to control or regulate the media is by enforcing stricter punishments and filling in the lacunas that persist in the laws that regulate the media. We cannot allow media to cause hindrance to the administration of justice. It is essential for the courts to act independently in civil as well as criminal cases. The media cannot be allowed to do as it pleases.

It is the duty of the legislative to help protect the judiciary and not let aggressive journalism disrupt the sanctity of the courts. The law cannot allow media to manipulate the masses against the government, moreover the media cannot decide a mans life, the media does not

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<sup>25</sup> <http://lawcommissionofindia.nic.in/reports/rep200.pdf>

have the power to decide if an accused is guilty or not, neither should be negatively influence the public to believe that the justice system is rigged and bias. Any such perusal should not be allowed to hide under the ambit of freedom of speech and expression, and should be severely punished for the same. The laws need to develop and the media needs to be held accountable. The media needs to understand that with great power comes responsibility. The journalist should follow the ethics of responsible journalism.

Furthermore, we cannot allow the right to freedom of speech and expression trump the right to fair trial, even though right to fair trial is not a fundamental right, it is crucial to understand that it is a basic human right and is embedded in the principles of natural justice. In my opinion, the right to fair trial of an accused is anyday more important that the right of freedom of speech and expression, because in one place a man is fighting for his life and personal liberty and on the other hand certain media channels are trying to gain more viewership at the expense of another's life. Such acts should be punished and should act as examples to deter other media channels for negatively influencing the masses.

In the US case of OJ Simpson<sup>26</sup>, despite wide publicity that pointed towards the guilt of the accused, the court acquitted him on the grounds of lack of proof and was given the benefit of the doubt. The courts made sure that they are not swayed by the media and the public. It can be seen that the judges were not swayed by the public, in India, the judges are unbiased and follow the law and not be swayed to their fullest potential.

However in the United States, the concept of sequestration exists which states "Judges will have members of a jury sequestered or kept together in order to protect juries from outside influences This includes any communication with persons not allowed to be in contact with the jurors as well as the content of news reports concerning the case."<sup>27</sup> Sequestration is phenomenal concept wherein bias cannot seep in as the jury and the judge cannot see any media reports, thus they act on their instincts and not the idea of the public.

Even though sequestration limits the jury and judge and is a great imposition of their right to privacy it is an effective method of a fair trial and to give justice. I believe that India should adopt the idea of sequestration especially in serious criminal cases that are in the eyes of the public in order to do complete justice.

It is also extremely necessary to exercise the power of Contempt of media and to prove that the media cannot get a way in the name of free press in order to ensure healthy democracy. Similarly, the press must be more responsible in spreading information and to make sure that it does not disrupt the sanctity of either organs. Otherwise, it will soon be seen that just like the Church, the people lose faith in the institution of media as well.

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<sup>26</sup> OJ Simpson, Case no. BA097211

<sup>27</sup><https://courts.uslegal.com/jury-system/issues-pertaining-to-the-jurys-performance-of-its-duties/jury-sequestration/>