

## **Human Rights, Fair Trial, Media and Criminal Contempt in India: Critical Analysis**

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### **ABSTRACT**

The issue of media trial has been in news recently in India. Few incidents have highlighted the concerns that how the media can play a crucial role in shaping the public opinion about the criminal justice system. Media plays a crucial role of striking a balance between the competing claims with respect to protection of human rights and interests relating to providing and obtaining the information to the masses. This paper deals with the role of media while a criminal case is under progress. In this paper an effort is made to analyze what are rights of media with respect to the reporting of a criminal case? What are the rights of persons involved in the criminal justice systems? How the rights of media and the rights of such persons cross paths? The paper also makes an endeavor to identify the role of judiciary in keeping a check on the media reporting of criminal cases and materials around.

**Key Words:** *Human rights, media trial, fair trial, contempt of court, criminal contempt*

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*“Human rights starts with breakfast”*

- *Leopold Sedar Senghor*

## I. INTRODUCTION

Human rights are basic rights. Human rights are fundamental rights. Human rights are the rights by virtue of birth as a human being. Human rights are natural rights. Human rights are inalienable rights. Human rights are inherent rights. Human rights make humans ‘human’. These are the slogans which we come across day to day in our lives.<sup>1</sup> Human rights are the rights which need to be recognized, protected and respected by everyone for ensuring the rule of law in the society. The threats to human rights, however, come from all the segments of the society such as individuals, groups, communities, institutions and organs of the State etc.

Human rights are endorsed by all, but over the time, it has been realized that we observe these rights more in violation, disregarding, and disrespecting them. Today every individual is threatened with the possibility of violation of human rights by other people, communities, institutions as well as the State. Human right violation may take various forms and shapes. Slavery, bonded-labour, subordination of women, extra-judicial killings, disrespecting dignity and personal freedom are some of the examples where human rights violations are patently visible. The denial of human rights is not only a personal misfortune but also creates turmoil in the society.

The extent up to which the human rights are respected and protected as socio-political value is an important indicator of evaluation of development of any State.<sup>2</sup> Media, as the fourth pillar of democracy, is an institution which plays pivotal role in ensuring the enforcement of human rights.<sup>3</sup> Media has to perform the onerous duty of providing correct information and educating the masses about the human rights and ensuring rule of law in the society.<sup>4</sup> It plays a crucial role in shaping the public opinion and it also creates a perception in the society about the issues which concerns the public at large.<sup>5</sup> This task of dissemination of information and educating the masses, which is in itself a fundamental right conferred by the Constitution.<sup>6</sup> This right is a necessary concomitant for the exercise of freedom of speech and expression by the individuals. Therefore, freedom of press should be exercised in a manner which does not jeopardize the human rights of the individuals.

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<sup>1</sup> These slogans are so well known in the academic discourse that any student of law, political science and other streams of humanities must have come across some or the other time. Various international documents dealing with the issue of human rights emphasise and reiterate these emotions in one or the other form and manner. See generally Universal Declaration of Human Rights, ICCPR, etc.

<sup>2</sup> McNerney-Lankford, S., & Sano, H.-O. (1970, January 1). *Human Rights Indicators in Development: An Introduction*. Open Knowledge Repository. <https://openknowledge.worldbank.org/handle/10986/2529>.

<sup>3</sup> Jansen, S. C. (2011). Introduction: Media, Democracy, Human Rights, and Social Justice. *Media and Social Justice*, 1–23 in Jansen, S.C., Pooley J., Taub-Pervizpour L. (eds) *Media and Social Justice*. Palgrave Macmillan, New York. [https://doi.org/10.1057/9780230119796\\_1](https://doi.org/10.1057/9780230119796_1)

<sup>4</sup> Sarkar P. “Role of Media in Strengthening Democracy in India” *J Adv Res Jour Mass Comm* 2017; 4(3&4): 111-115. ISSN: 2395-3810

<sup>5</sup> *Ibid.*

<sup>6</sup> Jain, M. P., Chelameswar, J., & Naidu, D. S. (2019). *Indian Constitutional Law*. LexisNexis, p.1066.

Media plays a crucial role of striking a balance between the competing claims with respect to protection of human rights and interests relating to providing and obtaining the information to the masses. This paper deals with the role of media while a criminal case is under progress. In this paper an effort is made to analyze what are rights of media with respect to the reporting of a criminal case? What are the rights of persons involved in the criminal justice systems? How the rights of media and the rights of such persons cross paths? The paper also makes an endeavor to identify the role of judiciary in keeping a check on the media reporting of criminal cases and materials around.

This paper is divided in five parts. First part is introductory in nature. The second part of the paper deals with the criminal justice and human rights in India. The third part deals with issues such as media trial, fake news sensationalism and criminal justice system. The fourth part of the paper critically analyses the freedom of press and contempt of court in the light of provisions of the Contempt of Courts Act, 1971. The last part draws the conclusions.

## II. CRIMINAL JUSTICE AND HUMAN RIGHTS IN INDIA

Human rights have gained momentum during the 20<sup>th</sup> century but they are as old as the dawn of civilization, ever since the existence of human race, there has been an intuitive tendency to protect one's person and property.<sup>7</sup> Human rights can be understood in two simple contexts – moral rights and legal rights.<sup>8</sup> They are not the gift of any political authority, however the laws are meant to reaffirm and recognize them in order to provide for a mechanism to enforce these rights.<sup>9</sup> Thus, the rights which are inherent in a human being should be recognized by the State and it should provide the mechanisms for the enforcements of such rights.<sup>10</sup> There are multiple international instruments<sup>11</sup> which highlights various rights which are considered as a *sine qua non* for dignified human life. These instruments also provides that the States must ensure that these rights should be protected in all the jurisdictions without any discrimination.

The UDHR recognizes human rights as a necessary concomitant of justice and peace in the world.<sup>12</sup> These rights are available to all human being without any discrimination.<sup>13</sup> Human rights are considered as a *sine qua non* of any system based on rule of law.<sup>14</sup> UDHR recognizes various

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<sup>7</sup> Encyclopædia Britannica, inc. (n.d.). *Human rights*. Encyclopædia Britannica. <https://www.britannica.com/topic/human-rights> last accessed on 14 July 2021.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Supra* note 6 at p. 874.

<sup>11</sup> See generally United Nations High Commissioner for Refugees. (n.d.). *Universal Declaration of Human Rights*. (Hereinafter as UDHR); United Nations High Commissioner for Refugees. (n.d.). *International Covenant on Civil and Political Rights*. (Hereinafter as ICCPR); United Nations High Commissioner for Refugees. (n.d.). *International Covenant on Economic, Social and Cultural Rights* (hereinafter as ICESCR); United Nations High Commissioner for Refugees. (n.d.). *Convention on the Elimination of All Forms of Discrimination Against Women* (hereinafter as CEDAW); United Nations High Commissioner for Refugees. (n.d.). *Convention on the Rights of the Child*. (Hereinafter as CRC).

<sup>12</sup> Preamble, UDHR and ICCPR.

<sup>13</sup> Preamble and Article 2, UDHR.

<sup>14</sup> Preamble, UDHR.

human rights in the context of criminal justice as well. Right against arbitrary arrest<sup>15</sup> impartial adjudication of the rights and liabilities,<sup>16</sup> fair trial,<sup>17</sup> presumption of innocence,<sup>18</sup> opportunity to defend oneself,<sup>19</sup> right against *ex post facto* laws<sup>20</sup> are some of the rights which have been expressly recognized.

The ICCPR recognizes the right to life and it is provided that the same may not be taken away arbitrarily.<sup>21</sup> Any deprivation of life and liberty must be based on the procedure established by law.<sup>22</sup> Each person is entitled to have a recourse to the impartial adjudicatory body against any such deprivation.<sup>23</sup> It is also emphasized that a basic minimum standard of treatment must be ensured in every country with respect to persons who come in contact with the criminal justice system.<sup>24</sup> Thus, no person should be subjected to arbitrary arrest and detention.<sup>25</sup> Each person is entitled to a full and fair public hearing of the case by an independent court for the determination of the rights, duties and the criminal charges against him.<sup>26</sup> Further, no person shall be subject to arbitrary interference in privacy, family and home or correspondence and nor there shall be any attack on his honor and reputation.<sup>27</sup> And finally, any person who is deprived of liberty is to be treated with respect for their inherent dignity.<sup>28</sup>

Most of these rights have been incorporated under Indian legal system as well by the express inclusion in the Constitution and various statutes dealing with the criminal laws. If not, they have been recognized and enforced by the judiciary with the help of various interpretational tools. The Constitution of India, with the help of the golden trinity of Arts. 14,<sup>29</sup> 19<sup>30</sup> and, 21<sup>31</sup> along with articles 20<sup>32</sup> and 22<sup>33</sup> acts as safeguards against human right violation when a person comes in contact with the criminal justice administration. The right to equality and equal treatment, as provided under Article 14, the six freedoms, as provided in Article 19, and finally the right to life and liberty, as provided in Article 21, breathe life and vitality to the concept of rule of law and provide a protective covering to all the individuals against the encroachment of rights by the authorities. The association amongst the three rights of equality, liberty and right to life has been

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<sup>15</sup> Article 9, UDHR.

<sup>16</sup> Article 10, UDHR.

<sup>17</sup> *Ibid.*

<sup>18</sup> Article 11(1), UDHR.

<sup>19</sup> *Ibid.*

<sup>20</sup> Article 11 (2), UDHR.

<sup>21</sup> Article 6, ICCPR.

<sup>22</sup> Article 9(1), ICCPR.

<sup>23</sup> Article 14, ICCPR.

<sup>24</sup> Article 14, ICCPR.

<sup>25</sup> Article 17, ICCPR, see also Article 9 UDHR.

<sup>26</sup> Article 14, ICCPR, see also Article 10 UDHR.

<sup>27</sup> Article 17, ICCPR, see also Article 12 UDHR.

<sup>28</sup> Article. 10, ICCPR.

<sup>29</sup> See The Constitution of India, 1950, Article 14.

<sup>30</sup> *Id.* Article 19.

<sup>31</sup> *Id.* Article 21.

<sup>32</sup> *Id.* Article 20.

<sup>33</sup> *Id.* Article 22.

pointed out in the case of *Maneka Gandhi*.<sup>34</sup> It was held by the Apex Court that any law depriving the personal liberty has to stand the test of Arts. 14, 19 and 21.<sup>35</sup> The Apex court has repeatedly held that the word 'life' under Art. 21 means life with human dignity and not mere living corpse.<sup>36</sup> Thus, Art. 21 has sprung to life after the landmark decision in *Maneka Gandhi* where the Apex Court had held that – “the procedure established by law under article 21 must be fair, just and reasonable and it cannot be arbitrary. This liberal interpretation of Article 21 has led to the recognition of various facets of right to life including rights which has to be protected by the State when the individuals come in contact with the criminal justice administration.<sup>37</sup> This interpretation has led to the shunning away of the pigeon-hole theory<sup>38</sup> with respect to right to life and other rights under Part III of the Constitution.

Along with the golden triangle of rights, Arts. 20 and 22 are the specially meant to protect the individuals against the unjust and atrocious acts of criminal justice administration. Art. 20 (1) prohibits *ex-post facto* operation of laws which inflicts punishments i.e. no person shall be convicted of any offence except for violation of law at the time being in force, 20 (2) provides immunity against double jeopardy and 20(3) provide rule against self-incrimination. Art. 22 of the Constitution enacts provisions against arbitrary arrest and detention. It provides that – no person shall be detained in custody without being informed the grounds of arrest. Further, right of consultation from a legal practitioner of choice has also been recognized. Any person arrested must be produced before the magistrate with twenty-four hours and only a limited duration of preventive detention without scrutiny is allowed. Over and above these rights, Art. 32 and 226 provides a right to approach the Supreme Court and High Courts in case of violation of the fundamental rights.

In plethora of cases it has been recognized and emphasized by the Supreme Court and the High Courts that an accused or convict or defendant is presumed to be innocent until proven guilty.<sup>39</sup> This is a cardinal principle as enunciated by the common law doctrine. Though this principle is not

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<sup>34</sup> *Maneka Gandhi v. Union of India*, MANU/SC/0133/1978.

<sup>35</sup> *Id.* at pp. 21-23

<sup>36</sup> *Francis Coralie v. Union Territory of Delhi*, MANU/SC/0517/1981.

<sup>37</sup> See generally the cases such as *Rudul Sah v. State of Bihar and Ors.*, MANU/SC/0380/1983 which deals with the compensation to be provided in case of illegal or unauthorized detention; *Hussainara Khatoon and Ors. v. Home Secretary, Bihar and Ors.*, MANU/SC/0760/1995 dealt the plight of the under-trial prisoners; *Moti Ram and Ors. v. State of Madhya Pradesh*, MANU/SC/0132/1978 dealt with the right to bail being implemented in a liberal manner so that poor are not dependent on moneylenders for obtaining bail; *Sunil Batra v. Delhi Administration and Ors.*, MANU/SC/0184/1978; *Sunil Batra (II) v. Delhi Administration*, MANU/SC/0265/1979 these cases dealt with the right of the prisoners. These cases highlighted that the prisoner does not get deprived of all the rights and only the limited rights are taken away when imprisoned.

<sup>38</sup> The pigeon-hole theory was given by John Salmond in the context of law of torts. He had argued that the law of torts is an amalgam of various recognized torts for which the remedy exist. If there is no specific remedy for a particular wrong, then the same cannot be controverted in the court of law. Similarly, the earlier view of the Supreme Court of India was that there is a compartmentalization of the rights under Part III of the Constitution, such as right to equality and right to freedoms have nothing to do with right to life. However, this compartmentalization was done away by the *Maneka Gandhi* case while creating a golden triangle of articles 14, 19 and 21.

<sup>39</sup> *Wilayat Khan and Ors. v. The State of U.P.*; MANU/SC/0068/1951; *Surajpal Singh and Ors. v. The State*, MANU/SC/0033/1951; *Abdul Gani and Ors. v. State of Madhya Pradesh*, MANU/SC/0097/1952; *Noor Aga v. State of Punjab and Ors.* MANU/SC/2913/2008.

explicitly present in any criminal legislation. Yet, it is very much part of the Indian criminal justice system due to the legacy of the English rule, from which we have borrowed a lot in criminal law along with other areas of laws.<sup>40</sup> In *Noor Agha Khan v. State of Punjab* the Apex court held that “though not explicitly mentioned in the constitution, presumption of innocence is nevertheless a potent background to the conception of justice...”<sup>41</sup>

Various rights ensuring the fair trial and protecting the human dignity of a person in the context of criminal justice administration also find place in statutory provisions dealing with criminal justice system in India. Sections 41A to 41D of Code of Criminal Procedure, 1973 have been inserted by an amendment to incorporate the guidelines relating to arrest of a person as issued by the Apex Court in the landmark case of *D.K. Basu*. Similarly, provisions relating to bail,<sup>42</sup> right to medical examination of the accused<sup>43</sup> and the victim<sup>44</sup> are some examples of which intend to enforce the right to life and personal liberty in practice. Further, right against self-incrimination<sup>45</sup> and, protection against double jeopardy<sup>46</sup> are also present in the procedural code.

The courts have in plethora of decisions have protected human rights of the persons in the matters relating to criminal justice system and brought them in conformity with the international human right standards.<sup>47</sup> For instance, the Apex Court has passed a number of directions and guidelines in catena of cases for making arrests. Cases like *D K Basu*,<sup>48</sup> *Joginder Kumar*<sup>49</sup> and *Arnesh Kumar*<sup>50</sup> have crystallized the powers of the police relating to arrest and the rights of arrested persons. Further, the practice of arbitrary use of handcuffs and fetters, which is violation of the principle of human dignity enshrined under article 21, have been severely deprecated in cases like *Charles Shobhraj*<sup>51</sup> and *Prem Shankar Shukla*<sup>52</sup> and multiple cases of the same nature.<sup>53</sup>

Further, in the judgment of *Arnesh Kumar* case,<sup>54</sup> the court made it clear that the power to arrest and the need of arrest are two different things. The Apex court held that in all cases where the arrest under section 41(1) Cr.P.C. of the person is not needed then the police officer is required to simply

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<sup>40</sup> See The Constitution of India 1950, Article 372.

<sup>41</sup> *Noor Aga v. State of Punjab and Ors.*, MANU/SC/2913/2008.

<sup>42</sup> *Hussainara Khatoon and Ors. v. Home Secretary, Bihar and Ors.*, MANU/SC/0760/1995 led to the enactment of the section 436A of Code of Criminal Procedure which provided that maximum period for which an under-trial prisoner can be detained.

<sup>43</sup> See The Code Of Criminal Procedure, 1973 Act No. 2 of 1974. (Hereinafter as Cr.P.C.) [25th January, 1974.] Ss. 53, 53A and 54.

<sup>44</sup> *Id.* s. 164A.

<sup>45</sup> *Id.* ss.163 and 164 read with The Indian Evidence Act, 1872 Act No. 1 of 1872 [15th March, 1872.] ss. 24, 25 and 26.

<sup>46</sup> See Cr.P.C, s. 300.

<sup>47</sup> See generally *Sunil Batra v. Delhi Administration and Ors.*, MANU/SC/0184/1978; *Sunil Batra (II) v. Delhi Administration*, MANU/SC/0265/1979

<sup>48</sup> *D.K. Basu v. State of West Bengal*, MANU/SC/0157/1997.

<sup>49</sup> *Joginder Kumar v. State of U.P. and Ors.*, MANU/SC/0311/1994.

<sup>50</sup> *Arnesh Kumar v. State of Bihar*, MANU/SC/0559/2014.

<sup>51</sup> *Charles Sobraj v. Supdt. Central Jail, Tihar, New Delhi*, MANU/SC/0070/1978.

<sup>52</sup> *Prem Shankar Shukla v. Delhi Administration*, MANU/SC/0084/1980.

<sup>53</sup> *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors.*, MANU/SC/0478/1991.

<sup>54</sup> *Arnesh Kumar v. State of Bihar*, MANU/SC/0559/2014.

issue a notice directing the accused person to appear before him on a specified place and time, and if the accused accepts the notice and acts upon it he shall not be arrested. Further, it has been emphasized that the registration of first information does not necessarily mean the arrest is to be made in routine manner.<sup>55</sup>

The Indian Evidence Act, 1872 also contains various provisions which create an indirect bar on cruel or inhumane treatment. Only relevant evidences can be adduced to prove the guilt of the accused and no other material is to be considered by the court. Confessional statements made in police custody<sup>56</sup> or to the police personnel<sup>57</sup> are considered irrelevant and not relevant, respectively. The burden of proof being on the prosecution to prove the case that too, beyond reasonable doubt. The benefit of doubt belongs to the accused and the presumption of innocence is the rule.

Thus, the bottom line is abundantly clear that an individual, whenever comes into contact with the criminal justice system is entitled to a fair trial along with the basic human dignity. The human dignity must be maintained even in those times when he is subject to criminal legal process. The human dignity is an inalienable concept and it remains with each individual at all the times. It can be clearly seen that the Indian law relating to protection of human rights in the context of criminal justice system has been concretized by various methods-- constitutional and statutory provisions or judge made law. It can be said that the law as it exists in law books sufficiently recognizes and protects the basic human rights.

### **III. MEDIA TRIAL, FAKE NEWS SENSATIONALISM AND CRIMINAL JUSTICE SYSTEM**

Even before the advancement of technology and modern media outlets, media has played the role of an active news provider to the bulk of masses. Johannes Gutenberg's invention of the printing press enabled the mass reproduction of information and the German printer Friedrich Koenig industrialised printing process in the early 1800s. Books, newspaper leaflets became the routine and mode of exchange of ideas. This led to the birth of media and it became popular instantaneously.<sup>58</sup> Today, the media is not restricted to newspapers only. It is an era of various types and sources of information. These types of media include print media, electronic media, digital media, social media etc. Print Media is one of the oldest and most basic forms of mass communication. Its involvement in providing material and transfer of knowledge is of immense importance even after the advent of electronic media and technology. It is available in the form of newspapers, magazines, journals, leaflets, periodicals.<sup>59</sup> It generally involves printing of

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<sup>55</sup> *Lalita Kumari v. Govt. of U.P. and Ors*, MANU/SC/1166/2013.

<sup>56</sup> The Indian Evidence Act, 1872, S. 26.

<sup>57</sup> The Indian Evidence Act, 1872, S. 25.

<sup>58</sup> [Author removed at request of original publisher]. (2016, March 22). *1.3 The Evolution of Media*. Understanding Media and Culture. <https://open.lib.umn.edu/mediaandculture/chapter/1-3-the-evolution-of-media/>.

<sup>59</sup> Anjaiah, D., Prathap, G. & Mohan, M.R., "Different Types of Media in India: A Study", 8 *Review of Research* 1-8 (2019).

information and distribution amongst the masses. The ideas and information are conveyed in the forms of words, figures, diagrams and pictures.

The advent of electronic media broadened the horizon of media and communication. This form of dissemination of information became very popular in the 20<sup>th</sup> century. It provided speedy information gathering and distribution. The world became a global village. It changed methods of sharing and receiving of information and made it easy to communicate.<sup>60</sup> Broadcast *via* radio and television are examples of electronic media.

After the second half of the 20<sup>th</sup> century, the digital age began to unfold. It involved digital cables, binary signals and satellites with the growth of internet. Today, as we progress the innovation in the science and technology is changing the modes of communications as well. It is difficult to define digital media but some forms of it are videos, podcasts, digital art etc.<sup>61</sup>

In comparison to earlier times, today news travels faster than the speed of light and it is available 24\*7 without a pause. Media is made up of numerous outlets of broadcasts – news on papers or digitally *via* television & radio, documentaries, social media, editorials, magazines etc. The present day, the term used to describe the new group of digital media is social media. It provides a larger user base and instantaneous interaction. Social networking sites became popular and adopted by the large section of the population during the first decade of the twenty first century. Today social media is dominating the major part of media and has attracted people of all ages particularly the Millennials. Social Media sites have gained popularity and has become the major source of information. The popularity of social media is such that most of the media house be it print, electronic or digital media, all have official pages on these social media platforms. This has led to the explosion of the information. It can be said that today, even if a person does not want to know something, he can be compelled to know. The need and the necessity of being connected in this world has also resulted in the imposition of information.

If we look at the media reporting, we will find that reporting of criminal incidents are one of the major chunk of the stories which are covered by the media on a daily basis. A research conducted in 1989 had indicated that the majority of the knowledge of crime and justice to the public is delivered to the public *via* information obtained through media.<sup>62</sup> Crimes receive very wide coverage by the media and it leads to create a challenge for the defense, prosecutor, victim and the accused. Reporting of crime by media and the day today developments on criminal cases makes a significant impact on the outlook and perception of the society. Individuals and the society at large is forced to formulate certain judgments and opinions on the crime, victim and the criminals.<sup>63</sup>

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<sup>60</sup> *Ibid.*

<sup>61</sup> *What Is Digital Media? All You Need to Know About New Media.* Maryville Online. (2020, March 4). <https://online.maryville.edu/blog/what-is-digital-media/>.

<sup>62</sup> Roberts, J. V., & White, N. R. (1986). Public Estimates of Recidivism Rates: Consequences of a Criminal Stereotype. *Canadian Journal of Criminology*, 28(3), 229–241. <https://doi.org/10.3138/cjcrim.28.3.229>.

<sup>63</sup> Ghosh, S., & Mukherjee, T. (n.d.). *Narcotization by Media: The Public Perspective of Crime.* Manupatra. <http://www.manupatra.com/roundup/375/Articles/Narcotisation%20by%20Media.pdf>.



Sometimes these opinions and the perceptions created by the media may go beyond the expected limit and it may transgress the boundaries set and hamper the rights of the persons involved in the criminal justice system. They may disregard the rights of the accused and victims develop the tendency to hinder the administration of justice and fair trial which may ultimately lead to the violation of essential rights of the victims as well as offenders. There is always a strong apprehension that the police officer making the investigations might be influenced by the media while providing the case related information. Even the judges who are required to be impartial in discharge of their judicial duties may develop subconscious bias due to media reporting.<sup>64</sup> Some of the major concerns of media reporting in criminal cases may be highlighted as follows.

### **(a) Media Trial, Fair Trial and Sensationalism**

Media Trial has become a very popular term in the current scenario. It is generally contrasted with the fair trial. Media trial is often used to describe the impact of the media coverage (printed or pictorial) on the reputation of the person before and after the trial in the court of law.<sup>65</sup> Today, even the social media platforms may also create such reputations. Media trial has emerged too strongly. It is associated with the media publishing reports about a suspect, accused or a convict before a trial has ended or after the punishment has ended.

Fair trial is embedded in the Indian criminal justice system<sup>66</sup> and various facets of the fair trial have relevance in different context. The independent, impartial and competent judges, proper representation of the parties by the competent lawyers, dispassionate assessment of the rights and liabilities of the parties are some of the features of fair trial.<sup>67</sup> Fair trial is meant to ensure that the adjudication of the guilt or innocence of the accused must be in such a manner which is free from any type of bias. It is a well-known aphorism that the justice should not only be done but it should also seem to be done. If the media sensationalizes any criminal case, it is difficult for the parties to repose faith in the criminal justice system based on fair trial. Irresponsible media reporting can adversely affect a person involved in the criminal justice process.<sup>68</sup> It can lead to deprivation of human rights of such an accused, convict and even the victim.<sup>69</sup> The unsubstantiated claims of the accused, victim, witnesses and authorities and undue exposure of evidences can lead to bias against the parties in the minds of authorities involved as well as the public at large.<sup>70</sup> There is tendency of regulating public opinion on the handling of the case by the court or gauging the efficiency.

The media's role as influencing trials came to light during the *Jessica Lal Murder*<sup>71</sup> case where media influence had dramatically changed the course of case and such an intervention was desirable

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<sup>64</sup> LAW COMMISSION OF INDIA, 200<sup>th</sup> Law Commission Report on Trial by Media Free Speech and Fair Trial under Criminal Procedure Code, 1973.

<sup>65</sup> Sastry, V. (n.d.). *Influence of Trial by Media on the Criminal Justice System in India* (Walden University) (2019) <https://scholarworks.waldenu.edu/dissertations/6805/>.

<sup>66</sup> Pillai, K. N. C. (2014). *R.V. Kelkar's Criminal Procedure* (Sixth). EBC, pp. 345-358.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Supra* note 64 at 144.

<sup>69</sup> *Supra* note 64 at 15.

<sup>70</sup> *Supra* note 64 at 56.

<sup>71</sup> *Sidhartha Vashisht v. State (NCT of Delhi)*, MANU/SC/0268/2010.

to prevent gross miscarriage of justice. Similarly in the *Priyadarshini Mattoo*<sup>72</sup> case it was for the media that the justice was finally served by way of releasing censorious information. The Court had acquitted the accused giving him the benefit of doubt due to lack of proper evidence, this was followed by a widespread uproar and protest. The media rose to the occasion and demanded justice, a positive side of media was witnessed in these case where, media by way of ‘investigative journalism’ ensure that the truth prevails. The information and evidence gathered by the media was so strong that it led the investigating agency to succumb to the pressure. Appeal against the verdict was made and ultimately justice was done.<sup>73</sup>

However, this positive approach of investigative journalisms and unaccounted media reporting has become a bone of contention today due to the fact that each media house wants to be ahead of others in the race of popularity. In the *Manu Sharma* case<sup>74</sup> the Apex court outlined the dangers of media trial. It had observed that – trial by media causes a prejudice to the fair trial of an accused when the media is exercising unregulated and unrestricted freedom of expression by carrying out a trial in parallel to the one in the court of law. Media has reincarnated itself as ‘public courts’ and it completely overlooks the principles of ‘presuming innocence’ and ‘not guilty unless proved beyond reasonable doubt’. Media trial involves its own process and procedure where it conducts an ‘investigation’ of its own and then builds up a public opinion against the accused even before the courts have taken the cognizance of the case.<sup>75</sup>

There have been numerous instances where the media has adversely affected the administration of justice. In the case of *Ajmal Kasab*,<sup>76</sup> who was sentenced to death penalty by the Apex Court in the year 2012, the media sensationalized the matter leading to public mistrust which caused a hindrance in the delivery of justice.<sup>77</sup> Recently, the investigative journalism by media in the case of death by suicide of an Indian film industry actor,<sup>78</sup> glorifying encounter killings in the State of Uttar Pradesh<sup>79</sup> and Telangana,<sup>80</sup> have made a dent on the openness, fairness and impartial role of media.

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<sup>72</sup> *Santosh Kumar Singh v. State through CBI*, MANU/SC/0801/2010.

<sup>73</sup> Gade, M. (2016). MEDIA – A VALUABLE MEANS TO JUSTICE. *Journal of Legal Studies and Research*, 2(3), 89–97 <https://thelawbrigade.com/wp-content/uploads/2019/05/Monisha.pdf>.

<sup>74</sup> *Sidhartha Vashist v. State (NCT of Delhi)*, MANU/SC/0268/2010 (2010) 6 SCC 1.

<sup>75</sup> Tripathi, S. D. (n.d.). *Prologue - Dr. Ram Manohar Lohiya National Law University* [http://rmlnlul.ac.in/webj/devesh\\_article.pdf](http://rmlnlul.ac.in/webj/devesh_article.pdf).

<sup>76</sup> *Mohammed Ajmal Mohammad Amir Kasab and Ors. v. State of Maharashtra and Ors.*, MANU/SC/0681/2012

<sup>77</sup> *Ibid.*

<sup>78</sup> Tripathi, A. (2020, September 14). *Media coverage in Sushant Singh Rajput case opens up a debate on role of press*. Deccan Herald. <https://www.deccanherald.com/national/media-coverage-in-sushant-singh-rajudt-case-opens-up-a-debate-on-role-of-press-887031.html>.

<sup>79</sup> Pujara, D. (2020, July 10). *Uttar Pradesh: Vikas Dubey's encounter raises doubts*. Deccan Herald. <https://www.deccanherald.com/national/uttar-pradesh-vikas-dubey-s-encounter-raises-doubts-859432.html>.; See the video where the journalist is adamant to prove that the encounter is justified and there should not be raised any doubt on such killing. YouTube. (2020, July 10). *Vikas के परिवार ने कहा एनकाउंटर सही तब सबूत गैंग के सवाल क्यों? देखिए Arnab के साथ Puchta Hai Bharat*. YouTube. <https://www.youtube.com/watch?v=NU1cjYMiL1k>.

<sup>80</sup> Another video where the judgment has been passed by the media house. YouTube. (2019, December 6). *Watch: Crowd Showers Rose Petals On Hyderabad Cops After The Encounter Of All Rape Accused*. YouTube. [https://www.youtube.com/watch?v=Ob\\_WMSyTX8M](https://www.youtube.com/watch?v=Ob_WMSyTX8M).

Recently in January 2021, in the case of former student of a well reputed university who was accused in North East Delhi riots had raised the challenge that the copy of his supplementary challan was allegedly leaked to the media even before he received the copy of the same. He also pleaded that the dissemination of the challan to media the contents of which are false and malicious compromised his right to a fair trial.<sup>81</sup> The court observed that the media will follow “self-regulation techniques” in such matters.<sup>82</sup>

Further, it has become a practice wherein the evidences or intricate material of trial first comes into the public domain in an unprofessional manner even before it is presented in the court of law.<sup>83</sup> The media has gone to the extent passing the verdict on the basis of evidences collected. In a case of rape and murder of a veterinarian in Hyderabad on the evening of 27<sup>th</sup> November 2019, irresponsible media reporting was seen to such an extent where the public opinion was influenced in such a manner that not only the people and police but the media was also seen glorifying the encounter of the alleged accused by the Telangana Police. In the same case, the name and the picture of the rape victim was also disclosed by the media houses which is prohibited by the penal law of the country.<sup>84</sup> In another case, when the UP Police was being lauded and glorified by the media to an extent that the whole encounter killing was being justified by the media and news channels for killing the history sheeter while in transit.<sup>85</sup> These are clear cases of usurpation of the powers which belongs to the criminal justice administration and the same cannot be allowed in the name of freedom of speech and expression.

Media trial out and out violates the right to fair trial of an individual, a widely publicized trial by media where potential theories are explored without any evidences and established procedures of law and other criminal proceedings is a substantial and grave threat to the concept of fair trial by the State. Though the law recognizes that the criminal trial is generally to be held in open court<sup>86</sup> which shall be accessible to the public, but media is leading to a trial all by itself by completely overlooking the court of law. In another coverage of hit and run case<sup>87</sup> (judgment delivered in 2015), there was rigorous media reporting and critical analysis of the decision of the court pointing out the loopholes and to the extent of calling it a failure of justice and diminishing the position of the court, that the nation lost its opportunity to make drunk driving a deterrent.

There have been few instances where the courts have come down heavily on sensational reporting of criminal matters by the media. In the year 2018 the Delhi HC in *Court on its own Motion v.*

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<sup>81</sup> *Court Seeks Reply From Police on How Umar Khalid's Chargesheet Was 'Leaked' to Media*. The Wire. (n.d.). <https://thewire.in/law/delhi-police-court-umar-khalid-charge-sheet>.

<sup>82</sup> *Umar Khalid Case: Presumption of Innocence Shouldn't Be Destroyed by Media Trial, Says Court*. The Wire. (n.d.). <https://thewire.in/law/umar-khalid-delhi-riots-media-trial>.

<sup>83</sup> YouTube. (2019, January 14). *Exclusive Details of Kanhaiya Kumar, Umar Khalid Chargesheet in JNU Sedition Row*. YouTube. <https://www.youtube.com/watch?v=Wqr1YiOdyA>. The channel claims that they have exclusive details of the chargesheet.

<sup>84</sup> Sharma, K. (n.d.). *Why does India's media cover some rapes extensively and ignore others?* NewsLaundry. <https://www.newsLaundry.com/2019/12/04/indian-media-rape-coverage-journalism>.

<sup>85</sup> *Supra* note 83.

<sup>86</sup> Cr.P.C, s. 327.

<sup>87</sup> *Salman Salim Khan v. The State of Maharashtra*, MANU/MH/3382/2015.

*Union of India and Ors.*<sup>88</sup> slapped fine of 10 Lakhs rupees to 12 media houses for disclosing the name of victim who was gang raped.<sup>89</sup> Justice D.Y. Chandrachud while offering his dissenting opinion in *Romila Thapar v. Union of India*<sup>90</sup> observed that—using the electronic media by the investigation agency of the State during the pendency of investigation suppresses the fairness of the investigation. The police are not adjudicators nor can they pronounce judgments. It was further observed that the briefings made by the police to the media becomes a source of manipulating the public opinion by damaging the reputation of individuals who are involved in the process of investigation. It was observed that“...what follows is unfortunately a trial by the media”. Hence the media needs to be restricted properly when it causes an interference in the criminal proceedings and takes up the role of courts outside of its scope.

Thus, it can be seen that the media can play a constructive role in strengthening the criminal justice system. However, such instances have been few and the recent trends has been shifted to sensationalise the issues and earn the viewership. The media trial and sensationalism has reached to such an extent that it has the potential of shaking the faith of the masses in the criminal justice administration.

### **(b) Fake News and Hate Speech**

Another aspect which needs due consideration is the increasing prevalence of fake news. Fake news is not a new phenomenon and has existed since the dawn of printing press<sup>91</sup> but with the advancement of technology, internet and social media it has no bounds. It is not only becoming a social challenge but also a legal concern leading to an atmosphere of hatred ultimately causing riots, lynching and a situation of law and order.<sup>92</sup> Rumors, morphed images, unverified information, intentionally planted stories are all part of the fake news. India has approximately 448 million active social media users on various social media platforms.<sup>93</sup> Social media platforms, with the help of morphed pictures, unverified data and other unauthentic sources have the capability to witch-hunt any person.<sup>94</sup>

The strength of social media lies in the reach to the masses on a fingertip. Anything which is circulated through social media is accessible to the masses at an instant and it can be preserved for perpetuity and reused. The social media can lead to witch-hunting of persons even when they are

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<sup>88</sup> W.P. (C) 3725/2018 & CM APPL.16363-66/2018.

<sup>89</sup> Singh, A. (2018, April 18). *Kathua rape: HC imposes Rs10 lakh fine each on 12 media houses for disclosing victim's identity*. mint. <https://www.livemint.com/Politics/LIVzLicAudFIG3AG8bYZ6K/Kathua-rape-HC-imposes-Rs10-lakh-fine-each-on-12-media-hous.html>.

<sup>90</sup> *Romila Thapar and Ors. v. Union of India and Ors.*, MANU/SC/1098/2018.

<sup>91</sup> *Journalism, 'Fake News' and Disinformation: A Handbook for Journalism Education and Training*. UNESCO. (2021, May 7). <https://en.unesco.org/fightfakenews>.

<sup>92</sup> *Ibid.*

<sup>93</sup> Published by Sandhya Keelery, & 27, A. (2021, April 27). *India: social media penetration*. Statista. <https://www.statista.com/statistics/284436/india-social-network-penetration/>.

<sup>94</sup> NewIndianXpress. (2019, October 27). *Jasleen Kaur case: Sarvjeet acquitted after four years, netizens demand apology from Kejriwal, Arnab for maligning him*. The New Indian Express. <https://www.newindianexpress.com/nation/2019/oct/26/jasleen-kaur-case-sarvjeet-acquitted-after-four-years-netizens-demand-apology-from-kejriwal-arnab-2053322.html>.

not related to crime at all.<sup>95</sup> The extent of such with-hunting can be such that even if a person is adjudged as innocent at later stages, the damage is already done and acquittal by the judiciary may not yield the effective results as the social media has already tarnished the image of such a person.<sup>96</sup> This type of witch hunting can have a long term impact on such person. Hence trial by media (including social media) leads to an undue interference with the fair trial, which is one the most blatant violation of the right of an accused.

#### IV. FREEDOM OF PRESS AND CRIMINAL CONTEMPT OF COURT

As discussed earlier, role of media in a democracy is to ensure transparency and accountability, it plays a pivotal role in raising the awareness and educating the masses to facilitate a forum for public discussions and debates. It plays a crucial role in policymaking and reinforcing the punitive policies.<sup>97</sup> If we look at the Indian history, we will find that the India's struggle for independence was carried with the help of various media platforms. Freedom fighters such as Bal Gangadhar Tilak and Mahatma Gandhi used newspapers as a media to communicate with the masses to ignite the light of freedom. The use of newspaper was such that the imperial government had to impose the stringent laws of censorship on the publication of the newspapers.<sup>98</sup>

When the Constitution was enacted, freedom of speech and expression was recognized as one of the fundamental freedoms as sentinel of a democracy. Though, the press freedom was not incorporated expressly, however, the same was understood and interpreted within the ambit of Article 19(1)(a).<sup>99</sup> Freedom of press to propagate ideas by way of publication and circulation fall within the ambit of Art. 19 (1) (a) itself.<sup>100</sup> In *Bennett Coleman* case<sup>101</sup> the Apex court held that the press has the right of free propagation and circulation without any restraint on publication. This freedom encompasses within its ambit the right to express opinions and ideas either orally or written by way of pictures of even otherwise and this freedom is protected by Art. 19(1) (a).<sup>102</sup>

However, this right is not absolute in nature and there are certain restrictions imposed in the form of Art. 19(2). Media—which primarily deals in the business of gathering and circulating the

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<sup>95</sup> IANS. (2020, October 16). *Wife's pic being shown as of Hathras victim, man tells Delhi HC*. National Herald. <https://www.nationalheraldindia.com/national/wifes-pic-being-shown-as-of-hathras-victim-man-tells-delhi-hc>.

<sup>96</sup> Hunny Bhawna. (2021, April 2). *My experience as a social media victim | Sarvjeet Singh Bedi | TEDxChandigarh | TEDx Talks*. YouTube. <https://www.youtube.com/watch?v=tTb7rjRW2Vc>.

<sup>97</sup> S, A. (2016, July 15). *Role of Media in Making Public Policy on Indias Criminal Justice System: A Study of News Reporting on Actor Salman Khans Acquittal in A Murder Case*. Global Media Journal. <https://www.globalmediajournal.com/open-access/role-of-media-in-making-public-policy-on-indias-criminal-justice-system-a-study-of-news-reporting-on-actor-salman-khans-acquittal-in-a-murder-case.php?aid=76373#:~:text=The%20relationship%20between%20crime%20and,reinforce%20support%20for%20punitive%20policies>.

<sup>98</sup> Venkatraman, V., *The Indian Press Act of 1910: The Press and Public Opinion at Crossroads in the Madras Presidency, 1910 – 1922\** (November 6, 2020). Available at SSRN: <https://ssrn.com/abstract=3726057> or <http://dx.doi.org/10.2139/ssrn.3726057>

<sup>99</sup> *Supra* note 6 at 1066.

<sup>100</sup> *Sakal Papers (P) Ltd. and Ors. v. The Union of India*, MANU/SC/0090/1961.

<sup>101</sup> *Bennett Coleman and Co. and Ors. v. Union of India and Ors.*, MANU/SC/0038/1972.

<sup>102</sup> Gau, K. D. (1994). Constitutional Rights and Freedom of Media in India. *Journal of the Indian Law Institute*, 36, 429–454.

information--holds a dominant position, a position of power. As the saying goes, with great powers comes great responsibilities-- and to add, comes accountability. The media is thus answerable to the public.<sup>103</sup> Therefore, it is the utmost duty of the media houses and journalists to be attentive against any misleading, distorted and fake information or news.<sup>104</sup> Indian media follows a system of self-regulation which means that there are certain regulations which are imposed and followed by the bodies themselves by way of internal policies. It involves self-monitoring of the work by coming up with their own rules and regulations.<sup>105</sup>

In addition to the code of self-regulation, the reasonable restrictions as provided in Article 19(2) are also applicable to media. One of those restrictions relates to Contempt of Court. In India, the Supreme Court and High Courts are court of records and they have the inherent powers to punish any person who acts in a manner which is contemptuous in nature.<sup>106</sup> The Parliament has enacted the Contempt of Courts Act, 1971<sup>107</sup> which defines the meaning of contempt<sup>108</sup> and prescribes the punishments and procedure which is to be followed in matters of contempt of court.

The contempt of court has been classified in the categories of civil contempt<sup>109</sup> and criminal contempt.<sup>110</sup> Criminal contempt has been defined to mean “publication of any matter or the doing of any other act whatsoever which:

- (i) Scandalises or *tends to* scandalise, or lowers or *tends to* lower the authority of, any court; or
- (ii) Prejudices, or interferes or *tends to* interfere with, the due course of any judicial proceeding; or
- (iii) Interferes or *tends to* interfere with, or obstructs or *tends to* obstruct, the administration of justice *in any other manner.*”

As it can be seen from the bare reading of the provision, the definition of criminal contempt, does not necessarily require that there should be an actual scandalizing or lowering of the authority of the court. Even the tendency of such scandalizing and lowering is sufficient to amount to criminal contempt. Similarly, the interference with the judicial proceedings also need not be actual and the tendency of the same is sufficient. However, prejudice has to be actual prejudice and mere tendency is not sufficient, if read literally.

The literal interpretation of the clauses leads to the conclusion that clauses (i) and (iii) does not necessarily refers to the fact that the contumacious publication or the act must be at the time when the judicial proceedings are on foot. Thus, the contempt of court may be committed prior to or even

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<sup>103</sup> Mathew, M. (2016). Media Self- Regulation in India: A Critical Analysis. *ILI Law Review*, Winter, 25–37.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Id.* at 31.

<sup>106</sup> *Supra* note 6 at.208.

<sup>107</sup> The Contempt of Courts Act, 1971 (Act No. 70 of 1971). [24th December, 1971.]

<sup>108</sup> *Id.* s. 2(a).

<sup>109</sup> *Id.* s. 2(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;.

<sup>110</sup> *Id.* s. 2(c).

when the judicial proceedings have ended.<sup>111</sup> The constitutive facts as required under clause (i) and (iii) are that the publication or the act is such which has the (a) tendency to scandalize or lower the authority of any court and (b) tendency to interfere or obstruct the administration of justice, respectively. Further, clause (iii) provides that publication or the act which has the tendency of obstructing the administration of justice in any other manner will also amount to criminal contempt.

Thus, while the clauses (i) and (ii) specifically deal with the scandalizing or lowering of the authority of the court and prejudice and interference in the judicial process, clause (iii) leaves the gates open to any act of publication which has interferes, tends to interfere, obstructs or tends to obstruct in the administration of justice in any other manner. Therefore, it is interesting to understand the phrase ‘administration of justice’ in the context of criminal justice system. The phrase has not been defined in the Act. The administration of justice is a wider phrase and it includes administration not only by the court but by other institution involved in the administration of justice. One of the definitions of administration of justice is as follows:

*“...The administration of justice is not confined to the courts; it encompasses officers of the law and others whose duties are necessary to ensure that the courts function effectively. The concern of the administration of justice is the fair, just and impartial upholding of rights, and punishment of wrongs, according to the rule of law.”*<sup>112</sup>(Emphasis supplied)

If this meaning is applied to the phrase ‘administration of justice’ then the definition of criminal contempt becomes wider and it will include those cases also where there is tendency of interference or obstruction in the administration of justice at any stage, which is not restricted to the court alone. If we see the clause (iii) of the definition, then there is no such requirement that the matter must be before the court for invoking the provisions of the Act. If we see the clause (iii) from constitutive fact’s perspective, the only thing which is required to be alleged by the person invoking the jurisdiction of the court under the Act is that the publication has the tendency to interfere or obstruct the administration of justice.

The intent of the legislature, if inferred, with the help of literal interpretation of the phrase ‘administration of justice’ is understood, then we reach to the conclusion that the contempt proceedings can be initiated even in those situations where the matter has not reached to the court, yet the publication or the act is such which has the tendency to interfere with the administration of justice.

This argument also gets the support from the fact that under the scheme of the criminal procedure, we find that once the first information report (FIR) has been filed or lodged then the role of the judiciary begins instantaneously and supervision continues with the help of lowest rung of the

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<sup>111</sup> *Supra* note 6 at 207-216.

<sup>112</sup> Administration of Justice Definition. (n.d.).  
<http://www.duhaime.org/LegalDictionary/A/AdministrationofJustice.aspx>.

judiciary i.e. magistracy.<sup>113</sup> The police is required to immediately bring to the notice of the magistrate about the occurrence.<sup>114</sup> Thus, it is expected that the magistrates should ensure that if any publication takes place which is contemptuous in nature in that case they should make the reference of the same to the High Court as per the provisions of the Act.<sup>115</sup>

Further, once the FIR has been registered, it can culminate only in limited possibilities. All these possibilities belongs to the domain of the court, such as acquittal/ conviction,<sup>116</sup> closure<sup>117</sup> and quashing.<sup>118</sup> Therefore, any publication or the act which has the tendency to interfere or obstruct the administration of justice after the registration of the FIR must be liable to contempt of court.

Further, it is absurd to think that the criminal contempt should be invoked only when the judges or the magistrates may develop the bias or other instances of interference or obstruction of justice which is restricted to judges or judiciary alone. It will be a myopic view of justice in a criminal matter. It is well-known that the pre-trial stages of criminal proceedings is equally important for the accused as well as the prosecution. The interference or obstruction of justice by playing with the minds of the witnesses, the investigating officers and other persons involved in the pre-trial stage may also hamper the proper administration of justice. As the judiciary is bound to supervise criminal matters at all stages, therefore, it is very much expected that any prejudicial publications at such stages, must be within the ambit of the contempt of court.

Section 3<sup>119</sup> of the Act deals with innocent publication when the person does not have reasonable knowledge of the pendency of the proceeding. It is true that the provision provides absolute protection to the publication, even if the same is contemptuous in nature. However, it is to be noted that for claiming the protection under this provision the publisher must prove that the publication was made without the reasonable knowledge of the pendency of the proceeding.

The words used in this Section are ‘pendency of proceedings’ and the legislature has not used the terms pendency in the court or judicially pending. The two phrases ‘pendency before the court’ (judicial pendency) and the ‘pendency of proceedings’ cannot be equated. While the former refers to the situation when the judicial function of the court is on foot or about to start, the latter refers to pendency of any nature which may be with respect to administration of justice. It is not restricted to the court alone and even matters which are at the stage of investigation will be covered within this ambit. Thus, the intent of the legislature is clear that the if the proceeding is pending at any stage then the contemptuous publications cannot take place and for the same purposes it is not necessary that the matter must be judicially pending.

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<sup>113</sup> *Emperor v. Khwaja Nazir Ahmad*, MANU/PR/0007/1944.

<sup>114</sup> Cr.P.C. s. 157.

<sup>115</sup> The Contempt of Courts Act, s. 15.

<sup>116</sup> See Cr.P.C. ss 232, 235, 248, 255.

<sup>117</sup> See Cr.P.C. 169.

<sup>118</sup> See Cr.P.C. 482.

<sup>119</sup> See The Contempt of Courts Act, s.3.



Though, the explanation attached to Section 3 explains the meaning of pendency of judicial proceedings but the main provision does not use the phrase ‘judicial proceeding’ at any place. As per this explanation, in a criminal matter where the challan has been filed, or summons or warrant have been issued by the court, they become the matter pending in judicial proceedings. Further, cases where the court has taken the cognizance which are instituted otherwise than on the police report the case becomes pending.

It is to be noted that the phrase judicial proceedings has been used in clause (ii) of the definition of criminal contempt and therefore, this explanation is misplaced and it should have been placed immediately after the definition of criminal contempt. As only clause (ii) of the definition requires that there must be prejudice or tendency of interference in due course of judicial proceedings.

Further, it is to be noted that once the challan is filed after the investigation of the case then the court has to apply its mind whether to take the cognizance or not.<sup>120</sup> It is, therefore, logical to argue that once the documents have been submitted before the court then the matter is judicially pending even if the cognizance has not been taken by the court. Therefore, there was no need to insert the explanation for the same under Section 3. However, the same cannot be said about all the instances of issuance of summons or warrant. Summons or warrants may be issued by the court even at a stage where the investigation is on foot and the challan has not been submitted yet. If the summons or warrants are issued before the challan is submitted in the court then the matter cannot be considered as a matter under judicial proceeding as per the scheme of the criminal procedure. Thus, the explanation creates an artificial rule with respect to judicial pendency and casts the net wider and include even the stages of issuance of summons and warrants.

Therefore, it can be concluded that the explanation attached to Section 3 informs the clause (ii) of the definition of criminal contempt and there is no need of the explanation in section 3 as it nowhere uses the phrase ‘judicial proceeding’ in the main provision. Hence, the most appropriate place for such explanation is immediately after the definition of criminal contempt.

However, an argument is generally made by the advocates of freedom of press that such expansion of the meaning of criminal contempt will have a chilling effect on the press freedom.<sup>121</sup> It is humbly submitted that such arguments are fallacious and farfetched. If we look at the procedure dealing with the criminal contempt, we will find that the provisions for criminal contempt can be invoked by the High Courts and the Supreme Court *suo motu*, or only at the motion of the advocate general, or the motion moved by a person with the consent of the advocate general or the reference made by the lower court.<sup>122</sup> These all persons are legally trained authorities in the hierarchy of criminal justice administration. It is expected that they will allow such petitions to be moved only when they find the substance in such allegations.

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<sup>120</sup> *Supra* note 66 at 221-222.

<sup>121</sup> Mandhani, A., -, D. K. S., -, P., & -, S. A. P. (2020, August 1). *Shourie, Bhushan, N Ram challenge validity of criminal contempt in SC, say it curbs free speech*. ThePrint. <https://theprint.in/judiciary/shourie-bhushan-n-ram-challenge-validity-of-criminal-contempt-in-sc-say-it-curbs-free-speech/472491/>.

<sup>122</sup> See The Contempt of Courts Act, s. 15.

It is to be noted that the court is empowered to punish the publishers only for the contemptuous publications and therefore, if the publications are non-contemptuous, then there will be no punishment. Recently, in one of the cases, the Bombay High Court<sup>123</sup> observed that it is difficult to provide the exact meaning of the acts which interferes with administration of justice.<sup>124</sup> It was observed by the court that no strait jacket formula can be prescribed for the same.<sup>125</sup> Further, it was observed that such acts must be decided keeping in mind justice, equity and good conscience.<sup>126</sup>

It is humbly submitted that the Law Commission has very succinctly highlighted the difference between the contemptuous publications and non-contemptuous publications in criminal matters which can be a criteria to decide whether the act of publication interferes with administration of justice or not.<sup>127</sup> The difference between the media trial and media reporting of crimes is succinctly discussed with the help of plethora of cases. After analyzing the laws of various jurisdictions, which is also applicable to Indian Context, such as the USA, U.K, Australia and, New Zealand the Commission has highlighted various categories of publications which may amount to prejudicial publications. These categories are as follows.

- Any publication which concerns the previous character of the accused<sup>128</sup> which creates or has the tendency to create hostile environment leading to the prejudice against the accused will amount to contempt of court.
- Similarly, reports which tend to give previous conclusions<sup>129</sup> on the case or any publication which publicizes the confession made to the police<sup>130</sup> is contemptuous act as it has the direct impact on the public perception with respect to the accused.
- Further, publication concerning comments on the merits of the case, including claiming of innocence of the accused, which amounts to usurpation or partial usurpation of the powers of the courts will amount to contempt of court.<sup>131</sup>
- In addition to above, the publication of the photograph of the accused<sup>132</sup> or any identification which can reveal the identity of the accused with certainty--including the activities which are carried by the police officials in respect to the investigation or searches in relation to the commission of any offence also amounts to contempt of court.<sup>133</sup>

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<sup>123</sup> *Nilesh Navalakha and Ors. v. Union of India and Ors.*, MANU/MH/0044/2021.

<sup>124</sup> *Id.* at 65.

<sup>125</sup> *Id.* at 94.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> *Supra* note 64, Last Chapter pp. 195-220.

<sup>129</sup> *Id.* at 195.

<sup>130</sup> *Id.* at 199.

<sup>131</sup> *Id.* at 201.

<sup>132</sup> *Id.* at 202.

<sup>133</sup> *Id.* at 204.

- Over and above all these things, even the criticism of the witness, or interview of the witnesses, or premature publication of evidence may also amount to contempt of court.

It is submitted that these criteria can be of help to the judiciary decide whether the reporting by media interferes with administration of justice or not.

## Conclusion

It was hoped and believed that the media, as the fourth pillar of democracy, will act hand in hand for ensuring the enforcement of rule of law. The media will perform the task of educator of the illiterate masses of that time so that the roots of the democracy and rule of law can be strengthened. Free public discussion is a prerequisite for proper functioning of the democratic government. Media was looked upon by the people and trusted for its role as keeping a check on the state authorities for instance – exposing lacunas in police investigations, busting rackets, mal-performance of the duties and obligations, but today media trial has moved on to media verdict and media judgment, where the media pronounces judgments and punishments and hold a person guilty without making any serious efforts at finding the truth. On the other hand, the social media—which is the potent weapon of the dissemination of information and being connected—has also proved to be a platform where the rumors and unverified information has the tendency to create an impression in the mind of lay persons which may prove unhealthy to the democratic setup based on the rule of law. Researches have been carried out where it has been proved that social media platforms are being utilized for bullying adolescents<sup>134</sup> and long duration usage of social media is also being linked to depression.<sup>135</sup> Thus, it can be said that the social media platforms are also being abused.

The Constitution of India recognizes freedom of speech and expression inclusive of freedom of the press. It is expected of the media to ponder within its ethical and moral limits and impose certain self-censored guidelines while there are no such legal controls present for the same and sensitize itself with the implications of its failure to uphold justice. Freedom of press when controlled within its justified limits acts as a blessing in disguise by way of revolutionary sting operations, keeping a watch on the investigations, police administration and also the executive. Media has to acknowledge the fact that any irresponsible reporting leaves a negative impact on the spectator to whom the media is supposed to provide the ultimate truth. There needs to be a reasonable and self-regulatory and restrictive policy which should be adopted by the media houses in order to let the right of fair trial and privacy prevail, the procedures established must be respected with a sense of responsibility.

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<sup>134</sup> Craig, W., Boniel-Nissim, M., King, N., Walsh, S. D., Boer, M., Donnelly, P. D., Harel-Fisch, Y., Malinowska-Ciešlik, M., Gaspar de Matos, M., Cosma, A., Van den Eijnden, R., Vieno, A., Elgar, F. J., Molcho, M., Bjereld, Y., & Pickett, W. (2020). Social Media Use and Cyber-Bullying: A Cross-National Analysis of Young People in 42 Countries. *Journal of Adolescent Health, 66*(6). <https://doi.org/10.1016/j.jadohealth.2020.03.006>

<sup>135</sup> Primack, B. A., Shensa, A., Sidani, J. E., Escobar-Viera, C. G., & Fine, M. J. (2021). Temporal Associations Between Social Media Use and Depression. *American Journal of Preventive Medicine, 60*(2), 179–188. <https://doi.org/10.1016/j.amepre.2020.09.014>

Regulating media is important in the light of the feud of TRP manipulating and being ahead of each other. Today the line between news, infotainment, entertainment, fake news and sensationalism is blurring. It is expected by the government to create a dialogue with the media and develop a policy framework by facilitating the availability of true, accurate and consensual information of the crime and related events. Certain code and ethics are particularly important to keep the media in check, so that the media itself doesn't take advantage of its unbridled power. Media trials and investigative journalism is an anathema to the society and has no valid justification in the name of freedom of speech and larger public interest. A strict check needs to be kept on the fourth estate in order to keep the pedestal of human rights at an all-time high. It becomes the responsibility of the State and judiciary to see that there is no misuse of the power and freedom available to the media and they exercise their rights within the fore-corners of the law.

Various provisions find place in the Constitution and other laws which conforms to the concept of fair trial and human dignity of individual who come in contact with the criminal justice system. Further, with the changing jurisprudence, various amendments have been made in the procedural code and evidence law to ensure that the laws are updated. Various cases have been argued where a correct balance between the freedom of speech and expression and the rights of the accused have been attempted. The issue of media trial and the rights of the accused have drawn the attention of the Indian judiciary since the independence itself. If the provisions of Contempt of Courts Act, 1971 is interpreted in the manner as highlighted above, a balance can be struck between the freedom of press and rights of the persons who come in the contact of criminal justice administration. Lastly, it is the duty of the citizens/individual to broaden the scope of their thinking and apply reason and rational rather than just being fed information.