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## LEGAL FOXES TIMES

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### ENSURING FAIRNESS IN CRIMINAL TRIALS: ROLE OF MEDIA

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#### ABSTRACT

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*The technological enhancements and the new emerging trends in the population has increased our availability of data for conduction of investigation even among common people. In this paper researcher highlights some crucial aspects relating to medias involvement and intervention in the trial process. The researcher makes an assessment of fairness of trial in criminal justice system. By looking into involvement of media in trial process the researcher critically analyses whether it could be considered to be fair or not and to what extent the fairness is being maintained in our trial process in times when media is overflooded with information. In background of media's anticipation and publication of crucial information relating to pending files which might influence judges, the researcher highlights importance of having a regulatory system and assessment of its role in delivery of justice. The researcher focuses on some landmark decisions of court and case studies along with relevant legal provisions of having fair trial in India*

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## I. INTRODUCTION

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Fair trial in most basic terms means a trial which is conducted without any sort of biasness or partiality at the hands of judges. The denial of fair trial will include unnecessary obstruction or interference done by media towards the person who is facing the trial, creating a prejudicial mind set which will affect the mind of people resulting in character assassination of the person is also denial of fair trial and whenever media is trying to suggest Court about the manner of the directions of the proceedings.<sup>1</sup> The term “Media Trial” became popular towards end of 20<sup>th</sup> century and start of 21<sup>st</sup> century as a description of television and newspaper coverage impact on reputation of a person creating an extensive perception of guiltiness or innocence of an innocent or guilty individual way before final court verdict. In our rapidly changing country, India being a largest democracy the media has gained eminence as fourth pillar of democracy. A number of news channels indulge into strong unfair competition like a cut-throat competition amongst them with regard to cooking up the best cooked story according viewers interest to grab in their interest for raising up their TRP. This ends up in delivery of wrong information at the cost of making it interesting to listen. The Black’s Law Dictionary define trial by media as, “A campaign to affect public opinion on a legal issue; specif., the attempted influence of the public’s perception of someone’s guilt or innocence through press and social-media sources, regardless of whether the person has been actually charged with a crime or tried in a court of law.” The original term for the phenomenon, trial by television, appeared in 1967 after David Frost, a talk-show host, conducted a confrontational interview of Emil Savundra, an insurance-company owner suspected of swindling claimants.<sup>2</sup>

We have in our present times even in a decade seen a good amount of cases where due to overwhelming intervention by India, either justice was denied to some or manipulated by accusations or innocence trials by media for their own entertaining environment. Like in:

1. Aarushi Talwar murder mystery-

The media was responsible for crossing limits of irresponsibility by rolling out defamatory stories.

Murder of Aarushi was a mystery as there was not a single eye witness to it, yet everyone kept

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<sup>1</sup> Trial by media, *Available at:* [https://en.wikipedia.org/wiki/Trial\\_by\\_media](https://en.wikipedia.org/wiki/Trial_by_media) (last visited on 22 September 2020)

<sup>2</sup> Black’s law dictionary 11th edition, featured new terms, *Available at:* <http://www.legalcurrent.com/blacks-law-dictionary-11th-edition-featured-new-terms/#:~:text=trial%20by%20media, in%20a%20court%20of%20law>. (last visited on 22 September 2020)

assuming murder be done by her own parents when they found her in compromising state. Some people are rather so sure about the guiltiness of parents that they thought judicial proceedings to be a legal proceeding to give verdict against Mr and Mrs Talwar. This played a role in reconstruction of crime scene based on medias and people's hypothesis. The media according to mass public pleasure came to such a conclusion that any other possibilities was beyond imagination. Media impact was so huge that Inspector General Gurudarshan Singh was first to float the narrative saying the case is solved in spite the fact that investigation did not even begin, he declared victim's father as a characterless man as his daughter.

## 2. Nirbhaya Case

Telling about the pressure judiciary faces due to media trials Supreme Court Judge Kurian Joseph it should be highly avoided in pending cases and thus save them from huge strain created. He requested to stop trying cases through media platforms till case is over as it created a lot of pressure on judges. He refers to a situation where once a judge said if media trial had not been done, he would have had got the culprit hung to death but media already gave in the verdict to which people agreed so at large that anything else would have seemed to them unconstitutional.

He said that, "in this case he was under so much pressure that people would have hung him. He appealed the media to not criticise the work of judges through oral comments." The guilty in this case were given sentence but the rape and murder of a 23-year-old woman from Rohtak at that time raised question on efficacy of our judicial system as the society and media were silent at this incident. The rapists pushed sharp edged weapon into her private parts and killed her head by banging it with a brick. Then four women were raped in Greater Noida and male member was shot dead for resisting. Justice is media driven nowadays which for matter of fact is a negative sign in democracy. Prior to Nirbhaya case Kiran Negi was raped in Dwarka where her breasts were chopped off and bottle was inserted in her private parts.

These cases were nowhere to seen as media created so much of chaos of Nirbhaya case that they remained without being granted justice.

## 3. K M Nanavati

The case of Nanavati was not just a simple crime of passion but also showed how rich influence even the judicial system. It was a case where first instance of media trial was seen in India and the first national level coverage crime. The Commander was favourite of defence minister and he told

in an interview to The New York Times that he could not let career of a promising officer be destroyed. Admiral R.D. Katari himself came down via official jet to give in his character certificate. PM Nehru himself pacified the press. In exercise of powers to Sri Prakasa, Governor of Bombay under Article 161 suspended life sentence which was awarded to the commander. Russi Karanjia's Blitz was the one playing emotional part to the public. Karanjia along with the defence lawyer being an influential media part where commander was shown in an image of a hero. He was given a picture of Lord Rama- one avenging the seduction of his wife, still being noble in face of betrayal. Media then copied Blitz's craft all over their headlines in background of politically influential Nanavati's friends. It was even compared to Gandhiji's assassination as conspiracy.

Media has always been a voice of thousands of people but the change in socio economic conditions of our country, the media is gaining structural prominence that the pen is more powerful than anything in the world. The accused is to be given a fair trial and there should not be a media trial before the person is declared innocent or guilty by a court of law. The problem is that the fair trial is being denied at many instances to individuals because of unnecessary intervention by the media. Parties to a case have a right to be tried fairly and media should not by interfering in those cases by conducting own trials should deny them that. Media easily influences people because of which the judiciary is so pressurised to take up cases being tried by media before, maybe the more or even equally important cases and thus justice is delayed or even denied to some sufferers. Democracy demands fair play which media intervention repudiate, and the concept of democracy is at stake.<sup>3</sup>

We all know that whenever Liberty or any sort of freedom is provided to any person it is but obvious that it will be exploited and abuse according to person's own benefit. So, the need of the hour is to put up reasonable restrictions on the media along with ensuring fair trial without creating prejudice in mind of public, lawyers and judges.

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<sup>3</sup> Anonymous, "Understanding Media and Culture: An Introduction to Mass Communication" ( 28 September 2020)

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## II. FAIR TRIAL IN CRIMINAL JUSTICE ADMINISTRATION

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Every party has a right to fair trial Court which should be done by impartial and uninfluenced judges, on the basis of link between law and crime committed and not on popular glamour. Democracy demands fair play and if it is not allowed or permitted the concept of democracy is at stake. Our law does not allow and completely forbids the person to publish any article commenting on the litigation even before the proceedings are started or after it has ended and the publisher of the offending article cannot hide behind the plea that the article begin after the end of trial.<sup>4</sup>

With having no virtual accountability, Indian courts are the most powerful courts in the world. Judiciary but also has its share of corrupt judges and influence lawyers, as they are also human and being Human you can be easily manipulated and occasionally motivated by whatever is being set up as a public opinion by the media with tampered evidences. Judges are also then manipulated by personal ideology, affiliations and nepotistic and corrupt decision. The ultimate accountability is of judiciary, so the judges need to be accountable if proper justice administration is not done and an innocent is convicted based on public opinion or judge's personal biasness.

Supreme Court in year 1958 in *Express newspaper case* held that Freedom of Speech includes press freedom. To reflect upon the citizen's right to know, Supreme Court considered freedom of press to be very important even though it is not mentioned in the Indian Constitution. The visual media as well as the written media cannot be censored beyond what will be the reasonable restriction under Article 19 of Indian constitution as in cable TV Networks Act as well as Cinematograph Act. The Supreme Court's focus was once again drawn towards press case where on Sudarshan TV when it was airing its Bindas bol programme 'UPSC Jihad' was vilifying community. It was considered to be clear, imminent, present threat to morals and safety of public where people started falsely crying 'fire' all of a sudden in a crowded theatre or violence was being charged deliberate rumours regarding poisoning of a village which was such a spark that could lead to unnecessary interference to peace and harmony of the country.

The option to Fair Trial is one of the foundations of an equitable society. Without reasonable preliminaries, honest individuals are indicted and the standard of law and public confidence in the equity framework

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<sup>4</sup> Where Does Press Freedom End and Trial by Media Begin, Raghav Tankhav, Available at: <https://thewire.in/media/press-freedom-trial-by-media-supreme-court> (20 September 2020)

breakdowns. It is a vital part of any Government to keep up Law and Order for the entire society. In the fight against wrongdoing and misconduct, state and its Officers can't regardless neglect, the respectability of State conduct and have response to extra lawful techniques for the purpose of location of violations and even lawbreakers. In a Democratic culture, even the privileges of the denounced are consecrated. The option to reasonable preliminary implies that individuals can be certain that cycle will be reasonable and certain, it forestalls Government from manhandling their forces. The privilege to a reasonable preliminary is perceived globally as a key basic freedom and nations are needed to regard it.

### PRESUMPTION OF INNOCENCE

Each criminal preliminary start with the assumption of blamelessness for the charged. The weight of demonstrating the blame of the denounced is upon the indictment and except if it relieves itself of that trouble, the courts can't record a finding of the blame of the charged. This assumption supposedly flows from the Latin lawful rule *ei incumbit probatio qui dicit, non qui negat*, that is, the weight of evidence lays on who states, not on who denies. The assumption of honesty must, furthermore, be kept up not just during a criminal preliminary versus the respondent, yet in addition corresponding to a suspect or charged all through the pre-preliminary stage.

*State of U.P. Vs. Naresh and Ors*<sup>5</sup> announced in,

the Supreme Court noticed "each accused is thought to be honest except if his blame is demonstrated. The assumption of honesty is a basic liberty subject to the legal special cases. The said rule shapes the premise of criminal law in India."

### PROHIBITION ON DOUBLE JEOPARDY

The idea of double jeopardy depends on the regulation of 'autrefois acquit' and 'autrefois convict' which implies that if an individual is tried in court of law and absolved or sentenced for an offense he can't be attempted again for the equivalent offense or on similar realities for some other offense. This proviso typifies the custom-based law rule of *nemo debet vis vexari* which implies that no man should be placed twice in risk for a similar offense. Section 300 of the Code of Criminal Procedure gives that people once sentenced or absolved are not to be pursued for a similar offense or on similar realities for some other offense. Supplication of twofold risk isn't material on the off chance that the procedures for which the denounced is being attempted are unmistakable and separate from the offense for which the blamed has just been attempted and convicted.

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<sup>5</sup> (2001) 4 SCC 324

## THE RIGHT TO COMPENSATION FOR MISCARRIAGE OF JUSTICE

"At the point when an individual has by a ultimate choice been convicted for a criminal offense and when in this manner his conviction has been turned around or he has been exculpated on the ground that another or newfound reality shows convincingly that there has been an unsuccessful labour of equity, the individual who has endured discipline because of such conviction will be repaid as per law, except if it is demonstrated that the non-divulgence of the obscure truth in time is completely or incompletely trait to him."

## RIGHT TO OPEN TRIAL

Fair Trial likewise requires formal conference in an open court. The privilege to a formal conference implies that the consultation ought to generally speak is led orally and openly, without a particular solicitation by the gatherings with that impact. Under Section 327 of the Criminal Procedure Code makes arrangement for open courts for formal review yet it additionally offers attentiveness to the Presiding judge or justice that in the event that he thinks fit, he can deny the entrance of the public by and large or a specific individual to the court during revelation of foul issue or when there is probability of an aggravation or for some other sensible reason.

On account of *Naresh Sridhar Mirajkar Vs. State of Maharashtra*<sup>6</sup> detailed in,

The Supreme court saw that the option to open preliminary must not be denied aside from in remarkable conditions. High Court has inborn locale to hold preliminaries or part of a preliminary in camera or to restrict distribution of a piece of its procedures. The appointed authority isn't to draw any deductions against the blamed from the way that he has been accused of a wrongdoing. He should choose the case exclusively on the proof introduced during the preliminary. It is all around settled that while managing a judgment of exoneration, a re-appraising court must consider the whole proof on record in order to show up at a finding with regards to whether the perspectives on the preliminary court were unreasonable or in any case impractical.

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<sup>6</sup> AIR 1967 SC 1

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### III. MEDIA TRIAL: IS IT A HINDRANCE TO FAIR TRIAL

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Freedom of press is nowhere substantially been discussed or mentioned in Indian Constitution but by various judgements we have recognised that freedom of speech and expression is all inclusive of freedom of press. As discussed above we very well know that the fourth pillar of democracy is media and with changing environment and globalisation media has gained immense importance in our country. Principles of criminal jurisprudence clearly tells us that a person is presumed to be innocent until proven guilty and there is no one who can plead the person to be guilty before the completion of the trial. Media but goes beyond the basic coverage and publishers covering interviews with witnesses, victims and sometimes even the accused while the matter is pending in court of law. This creates of preconceived notion in the mind of the lawyer, Court and the society at large. A Hindrance is being created in the fair trial by various reasons.

**It was appropriately stated by George Washington that, “Don’t believe in everything you read on internet just because there is a picture with quote next to it.”**

In India when police conclude their investigation and an investigation report is presented before the court and the competent court then frames a charge against the accused, then only a criminal trial begins in. But through eyes of a common person, we see an accused as a criminal allegedly as soon as he is being said guilty by the investigating authorities which also means that as soon as a complaint is filed against the accused in any law enforcement agency which has power to prosecute the person. Life of an ordinary person when he has been only accused of a crime and is proved guilty by media and public at large becomes very difficult and for the person to even survive in society when he has been wrongfully judged sometimes for the things that he hasn't even done becomes impossible.

As our Indian constitution under article 14 and 21 gives every citizen right to fair trial and investigation which was also sad in *Zahira Habibullah Sheikh vs State of Gujarat*<sup>7</sup>, where it was said that criminal jurisprudence is based on the principle that every person is innocent until and unless his guilt has been proven in court of law. However, the media in its trial does not even care about what the court or our constitution has to say about it and the consequences are to be suffered by the people, it is a matter that is to be of concern in a democratic country where this system is based on rule of law. We have many instances and cases where the investigation by the media has led to mis handling of a person's death. The media narrates story of people death or their despair in a manner that continuously induces and brings an anger

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<sup>7</sup> (2004) 4 SCC 158

and frustration to the general public which makes them believe that there is some sort of fishy thing in a particular incident. Media then goes on publishes the information based on the assumption and a line of suspicious activities done by the person be it the fact that the person is completely innocent of the Crime series being accused of. The media vigorously bases keeps on commenting by molding the factual instances into the manner that would create despair and anger among the public towards the accused and sometimes towards the government as well. Media keeps on conducting a parallel investigation which is also called investigation by journalism which is strictly prohibited in a court of law in our country. Media needs to be reminded that the Freedom of Press and Media is not absolute freedom and there are so many restrictions being imposed upon them as part of Article 19 of Indian Constitution.<sup>8</sup> They are to be taught to abide by the norms and regulations that make them the pillar of democracy and not to be someone shaking down the democracy to ground. The principles of natural justice and the trial affair medium needs to be keep in mind. Media channels keeps on exam meaning and cross examine in witnesses of various cases and convicts someone of foul play even before the court could give its verdict. The Press Council of India, the Government of India, the Supreme Court of India are the norms of journalism have given strict advisory to media not to cover cases under jurisdiction of court giving them a trial in their own manner and ask the journalist to adhere to the norms that have been provided to them by the Press Council of India. We do not talk about restraining on individual right to express themselves a freedom to speech but what needs to be done is to make a criminal trial path of media trial as it continuously forms in opinion of a person into Minds of society and if the person is innocent of the charges, he is being accused of then his life devastating even if he is proved innocent by the court of law. In Landmark case of *Sahara India Real Estate Corporation Limited V. Security and Exchange Board of India*<sup>9</sup>, the court observed that publication of matters that are pending for trial in court by the media is a different action by them and the supreme court past orders that framed guidelines for visual media to adhere to. Media being the cornerstone of our Indian democracy has a loud voice that needs to be read out to public and the matters are to be brought into public notice but not in a way the that rights of a person are being infringed to a high coverage.

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<sup>8</sup> Aditya Talpade and Pratik Karande, "Media Trial: A Hindrance to Fair Investigation", Latest Law, 9 September 2020

<sup>9</sup> SEBI, (2013) 1 SCC 1: (2013) 1 SCC(Civ) 1: (2013) 1 SCC (Cri) 257).

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#### IV. MEDIA TRIAL: THE RECENT TRENDS

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Media plays one of the most prominent roles in molding in opinions of society at large. However, they while doing the trial overlook the work ethics and professionalism that is expected out of a professional occupation like journalism. Numerous amounts of cases have been in news when media gave in its verdict even before the investigation proceedings began and the most recent is the Late Bollywood Actor Sushant Singh Rajput's suicide case.

The latest trend brought in by media was hashtag #sorrybabu which was something brought in by Karni Sena Organisation leader who overheard Rhea Chakraborty saying the same at mortuary seeing late actor's dead body and the media concluded she was apologising for brutally murdering him. A news channel also highlighted that Sushant was not suffering from any medical disorder as he was wishing someone good luck. In cases like Jessica Lal Murder case and Bijal Joshi rape case media covered at large scale guilt of accused creating a preset notion about him making it impossible to have a fair trial. Medial trials have always been destroying careers and images of many individuals as they give in their verdict of guilty of an individual even before the actual start of proceedings.<sup>10</sup>

Our constitution under Article 19(1) which talks about right to hold opinion without any interference and freedom to seek, receive, impart information, ideas of any kind without any sort of interference by the way the person likes orally or in writing all even printed form is the choice of the person it brings with itself some rights or responsibilities as it carries with itself reputation of some person.

Media freedom is that people should remain informed about whatever is happening around their surroundings and in public. Therefore, free and fair press and media is important for smooth functioning of democracy. People actively participate in each and every affair of the country in a democratic state and they have a right to be informed about everything that is happening in social, economic, cultural and political environment around them so that they can also form an opinion and intervene in governmental functionaries. People need to have truthful true account of each and every subject matter that is happening and have clear course of action. This freedom does not come absolute. Media led to once declaring parents

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<sup>10</sup> Media trial: Pressing for charges , Available at : <https://www.indialegallive.com/cover-story-articles/focus/media-trial-pressing-for-charges/> (last visited on 3 October 2020)

of Aarushi Talwar in her murder mystery as murderers which created public to be hysterical and them wanting to be Aarushi's parents to be convicted for her Murder.<sup>11</sup>

Media trial pressurises lawyers and judges to take in the cases where public actually deals someone is guilty without any proof just on the basis of their analysis.

Every news channel to increase in their TRP actually starts digging up the case and declare someone innocent or guilty according to their whims and fancies. The question arises that when the government can easily intervene and control over movies and why cannot government intervene in to trial being continuously done by the media which is even against the fair trial. Right to freedom of press is an important right in a democratic country but it needs to be exercised with utmost care as the people easily are convinced over anything and everything said by esteemed news channels. Media been the cornerstone of our democracy needs to exercise and state with utmost consciousness without molding in the information to gain viewers. The right to free and fair trial under article 21 must be upheld.

Whenever a sensational crime occurs then comes an upsurge among the news channels to start the trial which in one way or other is an obvious intervention in fair trial. They practice of investigation journalism which is prohibited under Indian laws. Sometimes media security of defamation to a particular individual as they publish and declare an innocent as a criminal sometimes even of heinous crimes like murder just on basis of their individual perception. Impact of television on newspaper coverage over and individual persons reputation also creates a perception about his guilt or Innocence even before the start of proceedings called trial by media and is also in version of an individual privacy. Ex Chief Justice of India, RM Lodha said that this issue to be very serious and retain some guidelines that needs to be observed by the stakeholders.

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<sup>11</sup> Abhilash Kumar Singh, "Media Trial", 29 August 2020

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## V. TRIAL BY MEDIA AND CRUCIAL ROLE OF JUDICIARY

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Modern world has an important part that is media. Being one of the pillars of democracy media has a very important role to play in our country. Media has been divided into that is the electronic media which comprises of radio, television etc and printed media which consist of magazine, newspaper etc. Media today has an image such that people keep on trusting them blindly and accept everything they say. Media in a way is voice of society but if that voice proves some innocent as guilty in front of society it creates a lot of pressure on fair trial. Media trial is a trial where in any legal case society along with media put the person into a societal trial and declare them innocent or guilty before the court verdict. The media verdict before the beginning of court trial dead as a contempt of court because it is not correct and an insult to the court. At any stage does not have any right to be saying anything about the Court verdict and it needs to work properly in accordance to the society and the legal formulations given to it by our legislature. Media is now highly influenced by the political scenario and they do things that political leaders ask them to. This is leading media to forget what their actual duty is and it's becoming ridiculous and should be removed from society. Face of corrupt media first came into being seen in India 2012 when two of the Zee News senior editors were arrested by Delhi Crime Branch who were acting under guidance of a Congress leader and tried to extort rupees hundred crore of advertisement for dropping their stories linking Jindal Group. Today the media is being highly criticized because of Sushant Singh Rajput suicide case where the media declared his friend and girlfriend as murderers of the late actor without waiting for the crime branch to conclude their investigation. On conclusion of Investigation of Crime Branch it was concluded that Sushant hung himself and was also suffering from depression after which serious case of defamation should have been charged against the media for putting up them into a public trial. Media trial can be true and correct only if it is done by honest feelings and not with an intention to influence people into their fake and self-centered dramatic news just to increase their TRP and also highly influenced by the political parties. The media intervention so much that Supreme Court has to pass an order to punish them if they start to interfere into jurisdiction of the court but still, they found out the loopholes of supreme courts principles and still continue to unnecessary interfere now and then.<sup>12</sup>

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<sup>12</sup> All Answers Ltd. (November 2018). Effect of Trial by Media Before Courts. Retrieved from <https://www.lawteacher.net/free-law-essays/commercial-law/effect-of-trial-by-media-before-courts-law-essay.php?vref=1> (last visited on 28 October 2020)

The publications or the media coverage which have continuous interference with fair trial and smooth justice administration is considered to be contempt of court under contempt of court act and there can be reasonable restrictions be imposed. In our constitution we have freedom of press right as well as right to fair trial as a fundamental right therefore the need of the hour is to balance and to avoid the inevitable which their needs to be clear norms and restrictions on the media to which they have to adhere to no matter what the condition is. Court have to create and evolve balancing measures with time because the media is gaining importance in the society with span of time and their needs to be drafting of a constitutional scheme so as to prevent media in interfering to smooth and fair trial.<sup>13</sup> The Law Commission of India name the balance in its 203 report in year 2006 had recommended amendments to contempt of court act where is said that courts should not have power criminal proceedings are active and should have no power how to initiate proceedings of contempt of court. Media is not always wrong and it has even played a good role in uncovering corruption activities and bringing in serious criminals providing people with justice at various instances. But due to their positive consequences their intervention increased with time and people started being completely devoted to whatever the media was saying and there was a neck to neck competition between the publication houses of media all the news channels who has the power to bring in the justice YouTube which they started their own trial leaving behind the guidelines that they have to follow.

This is presumably why the court thought in the *Sudarshan TV case*<sup>14</sup>, where Justice D Y Chandrachud orally commented that a legal directive must be the final retreat as it resembles an "atomic rocket". High Courts in Delhi and Bombay have just held onto certain issues of preliminary by the media. Reports state that a supplication for rethinking the arrangements identified with criminal disdain has been documented in the Bombay High Court. The interest is to extend Section 3(2) of the Contempt of Court Act "to cover distributions deterring the organization of equity in forthcoming cases from the phase of FIR enrolment" itself, as indicated by an ongoing report by Meera Emmanuel in an online stage.

A full Bench of the Kerala High Court has alluded the issue concerning the need to outline "rules" on court answering to a bigger Bench in 2018. The Supreme Court has communicated worry over the issue on a few events. *Cases like In Re P C Sen (1968), Sushil Sharma (1996) and M P Lohia (2005)* are a few models. The preliminary on TV tends to depict anybody as a charged and any denounced as a guilty party. This can impact the legal cycle, however it ought not. A few investigations have indicated that conviction rates in

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<sup>13</sup> "Effect of Trial by Media Before Courts." lawteacher.net. 11 2018. All Answers Ltd. 11 2020  
<<https://www.lawteacher.net/free-law-essays/commercial-law/effect-of-trial-by-media-before-courts-law-essay.php?vref=1>>.  
(last visited on 6 October 2020)

<sup>14</sup> Arghya Sengupta, "Supreme Court giving Sudarshan News case a constitutional colour is curious" 21 September 2020

superstar wrongdoings are generally higher. Bias, predisposition and dread of 'general conclusion' are obstructions to the juridical cycle.

Supreme Court of India has given us guidelines for media for cases which are pending and not have been advocated upon following measures to be undertaken:

#### 1. Restraint

Our judicial system has a concept of open justice which brings faith in the mind of people to follow what the court is and that what is not influenced by political or societal impact. The court has power to pass orders by which it can prohibit temporary publication of any related to the case and can allow the same when Court is satisfied regarding the same and it does not even offend all crosses any of the provisions of article 19.

#### 2. Contempt of Court Act, 1971

Media too has the power to know each and everything that is happening court and to follow up the information and to bring that information to the public at large so that the transparency in a judicial system could be maintained. But sometimes for fair trial like the trials of heinous crimes where there is possibility that media could start up with their own trial where it will be examining and cross examine in the easily available witnesses and to avoid any risk of infringement of Justice and to avoid risk of prejudice, the act of publishing anything by the media could be considered as the contempt of court if the Court wishes.

Through these and many other principles which are brought in by court through these and many the principles media is one of the important domain of a democracy and the media should be very precise pictures by giving in their statements as their statement could bring in public condemnation of an individual and if such things are done the court should take serious note along with the investigating agency so that the investigations are also not hampered and the prior parallel trial is not being set by the media.

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## VI. MEDIA TRIAL: ISSUES AND CHALLENGES

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The impact this particular topic has over people even at National level has been well seen in last month. As we can see that this is a technological era where cable TV, access to mobile phones, newspapers net in every possible area which is available even in local language and here the media came and created its impact so as to success strong that it has an impact on every strategy of person society and people all around the world are aware about each and everything happening all around the world. We can say that if the media starts a trial, even prove a person in a sent light we have example of K M Nanavati where his image was created of such respectful and the law-abiding citizen that the moulded its decision into proving him innocent. We also have instances where the corrupt ministers had police officials refuse to file in the FIR and the media becomes the watchdog expose the Dark Side of the matter. Media moulds the mindset of people and the fear of public exposure and humility sometimes prevent people from going into actions that have consequences of public defamation. But we also have various cases and instances where media has put in the mind of the common people that the innocent is The Criminal Mind behind the crime.

It keeps on digging up the investigation and sometimes that leads to tampering of evidence which can be crucial to an investigation. The news channels have cut throat competition among themselves and just keep on thinking about the ways that you can come up with the best cooked story to get in audience's attention and raise their TRP. The complete code administration is hampered and the media is only investigating as the People's verdict pressurizes the people involved in the investigation.

The main concern is that the constitution should now restricting public trials as it is a bad impact on the accused city of the crime and this hampers the harmony and peace of the country and secondly proper boards for disciplinary actions must be made. Media has always been a voice of thousands of people but the change in socio economic conditions of our country the media is gaining structure prominence that the pen is more powerful than anything in the world. The accused is to be given a fair trial and there should not be a media trial person is declared innocent or guilty by a court of law.<sup>15</sup>

Every accused has a right to fair trial all of natural justice which is also studied together with justice may not be done it must also seem to be done. Prejudice trial is attempted in multiple ways and if it is considered truthful and successful there will be people number of cases convicted for offences that they have not even

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<sup>15</sup> <ref>{{ cite web|last=Answers |first=All |url=https://www.lawteacher.net/free-law-essays/commercial-law/effect-of-trial-by-media-before-courts-law-essay.php?vref=1 |title=Effect of Trial by Media Before Courts |publisher=LawTeacher.net |date=November 2018 |accessdate=16 November 2020 |location=Nottingham, UK }}</ref>

committed. To prevent unfair trials contempt of court used which also included that if any Publication or saying is able to poison the minds of the judiciary or intermediate witnesses and to create an atmosphere where the justice can be denied or will be difficult to decide can be considered to be part of contempt of court. Indian law system does not allow anyone other than the delegated authorities to become investigator and start their own trial.

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## VII. CONSTITUTIONALITY OF MEDIA TRIALS

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The impact that media trials leave on society established constitutionality of media trial. The media is very much capable of changing mentality of people at a very large and make people view everything according to what they see their eyes.

Freedom to an individual is given by Indian constitution under article 19 which guarantees the person to express himself and to hold opinions without any sort of interference. However, there are many instances where Supreme Court said that media trial or any other ways through which public emotions are agitated are times which are anti-thesis of general rule of law which leads to miscarriage of Justice. Under contempt of court act anything published under the provisions of free trial have been protected against contempt proceedings. But whenever it abstracts any proceeding taking place in court of law is a pending proceeding in court of law it will lead to contempt of court because published before the actual verdict has been given in by the court can mislead the public as well as the court and affect the right of an individual at various levels. Right to fair trial is a very basic right that every accused has until and unless he has been proven guilty by a court of law. Media trial according to me completely and constitutional and it should be made punishable under contempt of court because fair trial should be completely on influenced whatever happens in leading news channel decide is what decides the mentality of a person against the character of a person. Idea of democracy is to bring fairness a large level along with transparency and the media trial sabotages this very aspect and should be considered contempt of court by authorities.<sup>16</sup>

The field which is most free in our country in terms of legal regulations is the media. To maintain the democratic atmosphere the media along with freedom of expression provided to it by Indian constitution under Article 19 is the facilitator of its public grievances. One of the statements beautifully put in by the first prime minister of India, Pandit Jawaharlal Nehru said that rather have completely free press with all dangers involved in wrong use of that freedom than a suppressed or regulated press. He meant to say that the freedom press is very important for functioning of a democratic country and dangers accompanied by freedom of press is comparatively way better than suppressed democracy influenced by powerful. But with passage of time media started crossing its limit and unnecessary intervention of media in even in matter of

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<sup>16</sup> “Constitutionality of Media Trials in India: A Detailed Analysis”, Nimisha Jha, 13 November 2015

criminal jurisdiction could be seen which brought danger to administration of Justice which is the essence of Indian democracy. We all know that whenever Liberty or any sort of freedom is provided to any person it is but obvious that it will be exploited and abuse according to person's own benefit. Janata Adalat or the public court new rain card needed form of media which is continuously now interfering in court proceedings and completely overlooking the gap between the accused and the Convict which also leads them to ignore the basic principle of justice that is presumption of Innocence until proven guilty as well as guilt beyond reasonable doubt. Public opinion is built up by media where in the create their own prejudices and do a separate investigation report the court has undertaken the cognizance of a particular case. It creates the mind set or an opinion in the mind of public, lawyer even sometimes the judge and after that presumption of Innocence of an accused is not possible. There is a proper character assassination done by media the particular person in a case which creates undue interference with administration of Justice.

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## VIII. CONCLUSION AND SUGGESTION

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Even if media is considered to be watchdog and The Fourth pillar of democracy, it considering itself to be deciding upon the cases which are not even taken into cognizance by the court contempt. Media these days is having more negative impact on the administration of justice than the constructive outcome. Requirement of media to be controlled by the courts properly regulated by them not granted a freehand Court procedure as it is not any sort of game. Media should not be permitted the right to speak freely of disclosure and articulation to a degree as to bias the preliminary itself. We have recently seen that how Rhea Chakraborty faced character assassination of being the murderer of her late boyfriend and actor Sushant Singh Rajput and was later declared innocent by the CBI enquiry. The news at the point is such that the channels wants to moulds into public opinion and want to just get into Minds of individuals so that they could have gained TRP for bringing in lime light the so called " masala" news, irrespective of how much significance the news was. The researcher here has tried to cover the following issues, firstly, of understanding concept of fair trial in light of contemporary challenges. Secondly, the role of media as a hindrance to fair trial. Thirdly, the recent trends in medias role as an unnecessary thought molder of the society. Fourthly, constitutional validity of media trials. Fifthly what role is played by media in trial process and the challenges and issues faced. Lastly, researcher also highlights about the legal provisions of fair trial along with judicial role.

We can sum every part of research and our findings in following manner. Naturally, the press in India has no exceptional rights, said Dr Ambedkar. In any case, a free press is a political basic for majority rules system to endure. In a criminal preliminary, the arraignment and the blamed reserve the option to a reasonable preliminary. Between free discourse and reasonable preliminary, the fringes are once in a while crossed and the principles penetrated, prompting decimating results to people and foundations. The 'tele-fear' ought not be permitted to interfere with a preliminary as per the law. The advanced brutality in itself is a penetrate of harmony.

Media is an organized disorder, in a liberal and positive sense. The court, then again, needs to pass by the guidelines of settling and the command of the law. Equity V R Krishna Iyer commented that the court is "not a latent reflection but rather individuals in legal force". Media, then again, is individuals in reflection who can in a perfect world denounce the force. Since some among them go crazy, it doesn't follow that a case for decrease of media opportunity is made out.

The news sources, rather than attempting the case, need to intently watch the institutional and processual shortfalls. There are striking delineations where the media has played a positive and proactive job.

Restriction can repress such fine aspects of a free press. A reasonable equilibrium must be struck. It was in the Sahara case (2012) that the top court said that the media must be exposed to self-guideline. This has been, nonetheless, unrealistic reasoning. Awful offenses or grievous suicides or even standard passing get politicized, communalised or popularized.

His investigation demonstrates that numerous legal counsellors accepted there were occasions where judges modified the judgment due to media impact and where "escalated case examination by media before fruition of the lawful cycle" affected the decision. He says that "for quite a while, India's criminal equity framework has stayed apathetic about permitting free media admittance to their capacities and considerations". Individuals may endure massively when the dynamic cycle is vitiated by outer elements of any sort.

The major recommendations towards the role that media is playing can be summed up as follows. The media must be appropriately directed by the courts. The media can't be allowed a free hand in the court procedures as they are not some game. Any organization, be it council, leader, legal executive or administration, is obligated to be manhandled in the event that it surpasses its real ward and capacities. Media preliminary is additionally an apparent exertion alongside the progressive sting tasks as it oversees the examinations and exercises of police organization and chief. However, there must be a sensible self- limitation or some kind of guidelines over its field and due accentuation should be given to the reasonable preliminary and court strategies must be regarded with sufficient awareness of certain expectations. Media ought to recognize the way that whatever they distribute has an extraordinary effect over the observer. In this way, it is the ethical obligation of media to show reality and that too at the opportune time. The most appropriate approach to manage the media will be to practice the hatred purview of the court to rebuff the individuals who abuse the essential set of accepted rules. The utilization of scorn powers against the media channels and papers by courts have been endorsed by the Supreme Court in various cases as has been called attention to before.

Trial is very affected by sensation done by the media and in most prominent and high-profile cases passed by the media songs into the last decision or the final verdict by the courts.