BALANCING FREEDOM OF SPEECH AND MEDIA TRIAL: NEED OF THE HOUR

Ankit Ujjwal*

ABSTRACT

In the early years of the Constitution, the Supreme Court considered that the excessive license fee for starting a newspaper was constitutionally invalid. Subsequently, in the very first decade, it was held that the Wage Board imposing an intolerable burden on a media organization, would offend the Right to Free Speech. The role of media has gained utmost importance in today's socio-economic world especially in country like India and we all believe that "Media" is the fourth pillar of Indian Democracy. An accused is entitled to a free and fair trial and is presumed to be innocent till proven guilty by a Court of law under Criminal Jurisprudence. However, media on account of extreme coverage and crosses its limits and publishes and covers interviews of witness or relative of a victim and prejudges the issue of conviction of the accused while the matter is pending for adjudication in a court of law. This has a tendency to prejudice the mind of Court, prosecutor and general public at large. Therefore, balancing between the two fundamental rights has become certain and the time has arrived that Courts should give appropriate directions with regard to reporting of matters which are sub judice.

KEYWORDS- Free Speech, Role of Media, Judiciary, Censorship, Journalism, Fundamental Right

INTRODUCTION-

The question arose while drafting the Constitution was whether a separate provision should be made for freedom of press and was extensively debated in the Constituent Assembly and it was decided that there is no need for separate provision because the assurance of freedom of speech and expression enshrined in Article 19(1)(a) is wide enough to include the press. The value of media can't be ignored as it keeps us informed, educated and vigilant and from time to time it also behaves as an ombudsman of the government functions and its exploitations. In Romesh Thappar Vs. State of Madras[77], the Court observed that only narrow restrictions on freedom of expression were envisioned by the Constitution and therefore, any legislation which would

* Ankit Ujjwal, Student at School of Law, University of Mumbai. E-mail ID - ankitkrsingh63@gmail.com

[77] 1950 AIR 124

allow wider restrictions was to be considered invalid and recognized the importance of freedom of press despite the fact that Article 19(a) doesn't contain any specific enumeration. Dr. B. R. Ambedkar once said that: "The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression; and in my judgment therefore no special mention is necessary of the freedom of the press at all." In Prabhu Dutt v. Union of India[78], the Supreme Court held that the right to know news and information regarding administration of the government is included in the freedom of press. This right is not absolute and hence, restrictions can be imposed on it in the interest of the society, and the individual from whom the press obtains the information But nowadays, it is seen that the media houses are acting as "public court" and are starting to interfere with the proceedings of the court which completely oversees the difference between an "accused" and a "convict". The right of fair trial is getting defeated day by day because the media while reporting a matter uses such a way which effects to influence the mind of a Judge and control the judicial processes.

STATEMENT OF PROBLEM-

"Freedom of speech and expression" is of prime importance in a democracy and so is the "freedom of the press". But the freedom must be such that it does not affect another. Media trial is a very recent phenomenon which cannot be ignored as because it interferes with the proceedings of the court and it completely fails in understanding the difference between an "accused" and a "convict". The media being a powerful institution through its trial can have a great influence on the public which may have a negative impact. "Trial by media" amounts to undue interference with the "administration of justice". This problem needs to be fixed so that social order is maintained, and no one is misled in the name of imparting information.

AIMS AND OBJECTIVES-

The motive behind writing this paper is that the information provided will help in understanding the effect of media trial and the violation of Right to free speech and Expression. This paper also aims at providing analysis with the help of current Indian and International issues.

[78] 6 1982 SCR (1)1184

RESEARCH QUESTION-

- What role does the media play in a democratic society?
- Whether the freedom of the press should be completely unrestricted or absolute?
- Whether the trial by media affects the principle of the fair trial?

HYPOTHESIS-

For this paper, I have come up with two hypotheses

a) Null Hypothesis: There is no need to balance the Freedom of Speech and Freedom of Press.
b) Alternate Hypothesis: There is a need to balance the Freedom of Speech and Freedom of Press.

METHODOLOGY-

This seminar paper has been Penned down after extensive reading of multiple judgments and articles. The present paper deals with analytical research and descriptive study. Information for this research is collected from secondary sources. Data collection methods are

- ✓ Journals
- ✓ Books
- ✓ Magazines
- ✓ Legal Websites
- ✓ Newspapers

IMPORTANCE AND SCOPE-

Below is the importance of this research topic:

- To study the evolution of freedom of speech and expression in India and other countries.
- To study the law relating to freedom of the press in India.
- To look into the role played by media in a democracy.
- To understand the need for reasonable restrictions on the freedom of the press.

- To examine the consequence of trial by media and its conflict with the fair trial.

The scope of the study is to understand the impact of the trial by media on the administration of justice and to what extent the press freedom is to be exercised.

LITERATURE REVIEW-

- D. S. Chopra and Ram Jethmalani, "Cases and Materials on Media Law", Thomas Reuters, New Delhi.
  The authors of the book have attempted in presenting the statutory laws and judgments dealing with media. They have mentioned about series of cases relating to freedom of press and permissible restrictions on that freedom. The book contains a chapter solely based on "trial by media" in which various cases are being discussed in details and also the effect of the media trial on those cases.

- Zehra Khan, "Trial-by-Media: Derailing Judicial Process in India", 1 MLR 91 2010.
  In this article, the author discusses the immunity attached to pre-trial publications under the Contempt of Court Act of 1971. The author also focuses on the ineffectiveness of the legal norms relating to journalistic conduct. The author also raises the issue of media trial having an ability to influence the judges and also points out how media trial compromises with the fair trial.

- Kauser Hussain and Srishti Singh, "Trial by Media: A Threat to the Administration of Justice", 3 SAJMS 195 2016
  The authors of this article described the importance of media freedom and how media acts as the "fourth pillar" of democracy. The authors also points out the media's role in a democratic society. On the later part, the authors attempt to analyze the impact of trial by media on judicial proceedings and for this purpose made reference to prominent cases.

ARTICLE 19(1)(a)

Article 19 (1) (a) provides that "all citizens shall have the right to freedom of speech and expression." This freedom plays a vital role in creating "public opinion" regarding "economic, political and social matters". This freedom comprises within its ambit the "distribution of

information", "freedom of propagation and exchange of ideas" that helps forming one's opinion and point of view. This freedom also includes the expression of opinions and views regarding any matter through any medium such as by "words of mouth", "writing", "picture", "printing", "movie" etc.

Art. 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression and reasonable restrictions are imposed under Article 19(2). Under Article 19(1)(a) of the Constitution, the rights of the freedom of Press have been recognized as Fundamental Rights and under Article 21 of the Constitution the accused/suspect and under trial have Fundamental Right to have a free and fair trial[79]. When rights of equal weight clash, Courts have to evolve balancing measures based on re-calibration under which both the rights are given equal space in the Constitutional Scheme. In the Constitution of the United States of America, freedom of press is absolute and any interference with right of media to report, comment upon pending trial is illegal.

Factual reporting of a criminal proceeding and a media trial are two different aspects. A media 'trial' happens when the media starts conducting corresponding proceedings, and proclaiming its view as the correct view, over those statutorily entrusted with the task of adjudication. In Saibal Kumar vs. B.K. Sen[80], the Supreme Court tried to discourage the practice of media trial and stated,

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

In Maneka Gandhi v. Union of India, Justice Bhagwati has highlighted on the importance of the "freedom of speech and expression" as under:

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic setup. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the

[79] Maneka Gandhi Vs Union of India 1978 SCR (2) 621
[80] (1961) 3 SCR 460

democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.

ARTICLE 19(2)

Article 19(2) of the Constitution authorizes the government to impose, by law, reasonable restrictions upon the freedom of speech and expression "in the interests of… public order." To understand the Supreme Court's public order jurisprudence, it is important to break down the sub-clause into parts, and focus upon their separate meanings. Specifically, three terms are important: "reasonable restrictions", "in the interests of", and "public order". The reason behind this is that while it is necessary to maintain and preserve freedom of speech and expression in a democracy, it is also necessary to place some curbs on this freedom for the maintenance of social order.

Three significant characteristics of clause 19(2) are:

- The restrictions under this clause can be imposed only by or under the authority of law; no restriction can be imposed by executive action alone without there being a law to back it up.
- Each restriction must be reasonable.
- A restriction must be related to the purposes mentioned in Sec. 19(2).

There is thus a double test to adjudge the validity of a restriction:

- Whether it is reasonable; and
- Whether it is for a purpose mentioned in the clause under which the restriction is being imposed?

TEST FOR REASONABLENESS:

There is no definite test to adjudge reasonableness of a restriction. However, the Courts have laid down a few broad propositions in this respect.

The Court shall first ask what is the sweep of the fundamental right guaranteed, then the next question to be asked would be, whether the impugned law imposes a reasonable restriction falling within the scope of clause (2). However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is mere concomitant or adjunct of that right, then the test which it would be required to satisfy for its constitutional validity is one of reasonableness.

SOVEREIGNTY AND INTEGRITY OF INDIA:

This ground has been added as a ground of restriction on the freedom of speech and expression by the Sixteenth Amendment of the Constitution, with effect from 6th October, 1963. The object was to enable the state to control crisis for secession and the like from organizations such as the Dravida Kazhagam in the South and the Plebiscite Front in Kashmir and activities in pursuance thereof which might not possibly be brought within the fold of the expression 'security of the state'.

SECURITY OF THE STATE:

Since the object of freedom of speech is to "maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means", that opportunity can hardly be maintained without the existence of an organized government having the power to ensure the exercise of that right and to prevent interference with that right which belongs to every citizen. No State can, therefore, tolerate utterances which threaten the takeover of organized government by unlawful or unconstitutional means.

FRIENDLY RELATIONS WITH FOREIGN NATIONS:

Another ground based on which the "reasonable restrictions" can be imposed on the "freedom of speech and expression" is "friendly relations with foreign states". The reason for such restriction is to prevent any "malicious propaganda" against any foreign States having friendly relations with India. Such prohibitions are needed to maintain India's "friendly relations with foreign states" or else it may cause embarrassment to India. However, this ground of restriction cannot be used to suppress the fair criticism of foreign policies of Government.

PUBLIC ORDER:

The phrase "is accordingly referable to public order of local significance as distinguished from national upheavals, such as revolution, civil strife and war. Equally, it is distinguishable from the popular concept of law and or-der and of security of State. Law and order represent the largest circle within which is the next circle representing public order and the smallest circle represents security of the State. Hence an activity which affects law and order may not necessarily affect public order and an activity which may be prejudicial to public order may not neces-sarily affect security of State. This ground was introduced by the Constitutional (First Amendment) Act, 1951.

The Constitution was amended in 1951 to include 'public order' as an additional ground of restriction in Clause (2) of Art. 19. Subsequent to this amendment, in State of Bihar v. Sailabala the Court explained its observations in Romesh Thappar's case by saying that it was never intended that an offence against 'public order' could in no case affect the security of the State itself. So observed the Court, "It is plain that speeches or expressions on the part of an individual which incite to or encourage the commission of violent crimes, such as murder, cannot but be matters which would undermine the security of the State."

In Ramji Lal v. State of Uttar Pradesh[81] Sec. 295A of the I.P.C. was attacked. This section makes it penal to outrage the religious feelings of any class of citizens or to insult the religious beliefs of that class deliberately and maliciously. The petitioner was editor, printer and publisher of a monthly magazine "Gaurakshak" devoted to cow protection. He was convicted under this provision for publishing an article in this magazine.

In Anand Chintamani Dighe v. State of Maharashtra[82], the Government of Maharashtra had issued a notification declaring that every copy of the play titled "Mee Nathuram Godse Boltoy" and its translations in Gujarati or any other language would stand forfeited to the Government. In an order of the Bombay High Court granting a stay on the notification, one of us (DY Chandrachud, J.) opined thus: "the strength of our society and the stability of the constitutional structure lies in its ability to accommodate a diversity of viewpoints and cultures. The maturity of a society committed to a democratic way of life lies as much as in its respect for those who conform as in its deference for those who do not. The Constitution preserves a healthy tradition of respect for the believer and the nonbeliever, the conservative as well as the liberal, those on

[81] AIR 1957 SC 620
[82] 2001 Cri LJ 2203

the core as well as those on the periphery; the agnostic and heretic. The process of though control is alien to a set of democratic values. It would indeed be a dangerous trend in society if the fundamental rights of those who espouse views which run contrary to the views held by the majority are to be trampled upon because they do not conform to the prevailing trend of thought." The Court held: "the Constitution protects the creative expression of those engaged in human endeavor in the areas of fine art and culture. Article 19(1)(a) is, however, not the only article to which the protection of literary activities can be traced...Coupled with this is the right of the wider society and the community to know, to receive information and be informed. The right to information, or the right to know is an intrinsic facet of the right to life under Article 21 of the Constitution. An informed citizenry must have the means to receive news and information, and apart from this, to receive thoughts, perceptions and ideas. Those perceptions and viewpoints may not be in conformity with widely held social, economic and political beliefs. A diversity of viewpoint promotes an ability on the part of the society to exercise a right of choice, a right to decide and the right to form perceptions which lie at the core of the functioning of a democratic system…"

DECENCY OR MORALITY:

There is no written meaning for the terms decency or morality and it keeps on varying from time to time and society to society based on the "standards of morals" existing in the modern society. The word "indecency" as found under the Constitution of India is similar to that of the word "obscenity" under English law.

In Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte[83], the Supreme Court has given somewhat wider meaning to the term decency and morality. The court maintained that 'decency' or 'morality' is not confined to sexual morality alone. Decency indicates that the action must be in conformity with the current standards of behavior or propriety.

CONTEMPT OF COURT:

Contempt of court is one of the grounds on which reasonable restriction can be imposed on the freedom of speech. This Act defines contempt by identifying it as civil and criminal. Criminal contempt has further been divided into three types: Scandalizing or prejudicing trial and hindering the administration of justice. The provision of contempt has its origin to the principle of natural justice i.e. every accused has a right to a fair trial along with the principle that justice

[83]AIR 1996 SC 1113

should not be done only but it must also appear to have been done. If it is allowed, a person may be held guilty of an offence, which he has not actually committed. No publication, which is calculated to affect the mind of a Judge, a witness or a party or create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt. No editor has the right to assume the role of an investigator so as to prejudice the court against any person. But law of contempt can only be attracted to prevent comments when the case is sub-judice. If the case is not pending in the court, it is of no avail.

In M.P. Lohia vs. State of West Bengal[84], the Supreme Court has strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the courts.

Pointing out that the article was a one-sided version of the case, N. Santosh Hedge Justice said that the facts narrated therein are materials that may be used in the forthcoming trial in this case and that this type of article appearing in the media would certainly interfere with the administration of justice. He remarked-

"We deprecate this practice and caution the Publisher, Editor and the journalist who are responsible for the said articles against indulging in such trial by media when the issue is sub-judice. Others concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice."

DEFAMATION:

The manner in which every person possesses the "right to freedom of speech and expression", in the same manner, those persons also possesses a "right to reputation" which is regarded as a property. Therefore, no one can use his freedom to injure the reputation of another. Section 499 of the IPC deals with "defamation" and it states as follows, "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person."

[84] (2005) 2 SCC 686

INCITEMENT TO AN OFFENCE:

Incitement to an offence' was added as a ground of restriction by the Constitutional (First Amendment) Act, 1951. This ground permits legislation not only to punish or prevent incitement to commit serious offences like murder which lead to breach of public order, but also to commit any offence, which according to the General Clause Act, means 'any act or omission made punishable by any law for the time being in force.' Hence, it is not permissible to instigate another to do any act which is prohibited and penalized by any law.

CONTEMPT OF COURT ACT, 1971

The contempt of court law is one of the most important ethics of media. It is a piece of law which should be kept in mind by the media as a whole. The Contempt of Court Act, 1971, which was amended in 2006, is still a great one for media.

The law as such has two distinct aspects: (a) civil contempt and (b) criminal contempt. But as for the media, it has mainly been concerned with criminal contempt. In the case of State of Maharashtra v. Rajendra Jaunmal Gandhi[85], it was held that a trial by press, electronic media or public agitation is an anti-thesis to the rule of law. It can lead to the miscarriage of justice.

Restriction on media trial is necessary so that the people may not have a wrong insight of the administration of Justice system. But the major concerned is, and which is the core issue of this work is the need to check prejudicial effect caused by a dramatic reporting of a sub-judice matter. So far as a criminal trial is concern media reporting has a more negative influence rather than a positive effect. The media has to be properly regulated. One way is the route to the Law of Contempt. But, in the interest of democracy, it is better to have a self-regulated and self-disciplined media in comparison to a media regulated by the court and the state.

Article 19(1)(a) of the Constitution of India guarantees the "right to freedom of speech and expression", but 19(2) deals with various grounds on which this right can be restricted, including the law of contempt, provided that the restrictions are reasonable. Under Articles 129 and 215 of the Constitution of India, the Supreme Court of India and the High Courts of States respectively are empowered to punish people for their contempt.

Under the Contempt of Courts Act 1971, if a publication interferes or in any way tends to interfere with the administration of justice, then it may result in criminal contempt and can only

[85](1997) AIR SC 3986

be prevented by imposing "reasonable restrictions" on the "right to freedom of speech and expression".

But the Contempt of Court Act, 1971 is still harsh for the freedom of speech and expression guaranteed by the Constitution to the citizen. An infringement on the liberty of press in certain cases is observed because of this law. The liberty guaranteed is not to be conferred with license to make groundless, unwarranted and irresponsible slanders against the judges or the courts in relation to judicial matters. The law protects against offensive and malicious attack on the judges by way of allegations of corruption of judicial officers or authorities. The important point is that press reporters and publishers of newspapers do not have any vulnerable right to put their own gloss on the statement in the court by selecting stray passages out of context which might have a tendency to convey to the reader to the prejudice of a party to the proceeding of a cause different from what would appear when the statement is read in its own context.

This piece of legislation does not tend to immune the court by keeping it above the law but to protect the "administration of justice" from being injured. Under the law of contempt, the punishment is imposed not with the object of protecting the Courts or the judges but to protect the "administration of justice".

Section 2(c) of the said Act is as follows: "Criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) Scandalizes or tends to scandalize, 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."

However, Section 3 of the Act exempts innocent publication and distribution of matter. As it is stated, a person shall not be guilty of contempt of court on the ground that he has published (whether by words spoken or written or by signs or by visible representations or otherwise) any matter which interferes or tends to interfere with or obstructs or tends to obstruct the court of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

Similarly, Section 4 of the Act exempts fair and accurate reporting pending in the court. In other words, it is safe to report a judicial proceeding in a fair and honest manner. Section 5 of the Act very clearly specifies a fair criticism of judgment as long as it does not attribute motives or slandering the judge does not amount to contempt.

The Act immunizes the media from prejudicial publications before a trial has been started. In a way, this gives media the freedom to publish and broadcast on such matters which may later turn out to be prejudicial to the trial that has not yet started. So, in the pre-trial stage, the publications made in the media affect the "right to fair trial" of an accused. It is evident in many cases where the media goes berserk and the media further speculates and point fingers even before a trial has been started. Such kind of publications often goes unchecked and therefore some form of legislative intervention is required to modify the word "pending" so that it also includes "arrest" as the time from when "pendency" of criminal proceeding begins.

THE LAW COMMISSION OF INDIA- 200TH REPORT

The Law Commission of India in its 200th report, released in August 2006, under the title "Trial by Media: Free Speech and Fair Trial Under Criminal Procedure Code, 1973" elaborately deals with several aspects of the rights relating to freedom of speech, freedom of the press, and freedom of fair trial.

The Law Commission's report expresses concern over the fact that there is very little restraint in the media insofar as the administration of criminal justice is concerned. It reminds the media that while freedom of speech and expression is an important right, it is not absolute inasmuch as the Constitution itself has placed "reasonable restrictions" on it, with the restrictions encompassing the fair administration of justice as protected by the Contempt of Courts Act, 1971.

Commission has recommended prohibiting publication of anything that is prejudicial towards the accused — a restriction that shall operate from the time of arrest. It also reportedly recommends that the High Court be empowered to direct postponement of publication or telecast in criminal cases. The report noted that at present, under Section 3 (2) of the Contempt of Court Act, such publications would be contempt only if a charge sheet had been filed in a criminal case. The Commission has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In

the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case. Another controversial recommendation suggested was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast. The 17th Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

The Law Commission of India, in Chapter IX of its above-mentioned report has stated various forms of conduct by the press which constitutes interference in the due course of administration of justice. These include, (1) Publications concerning the character of accused or previous conclusions; (2) Publication of Confessions :(3) Publications which comment or reflect upon the merits of the case; (4) Photographs related to the case which may interfere with the identification of the accused; (5) direct imputations of the accused‘s innocence; (6) Creating an atmosphere of prejudice; (7) Criticism of witnesses: (8) Premature publication of evidence: (9) Publication of interviews with witnesses. It is pertinent to mention that most of these ingredients have been culled out from Borrie and Lowe ‘s commentary on Contempt law and are not reflected either in statue or judicial pronouncements in India. Even though the Law Commission states, ―There are also a large number of decisions of the Indian Courts falling under these very headings.

FREEDOM OF PRESS:

It was Abraham Lincoln who had stated that "Democracy is a government of the people, by the people, for the people". Justice Hidayatu Ulah would however add "Democracy is also a way of life and it must maintain human dignity, equality and the rule of law. It requires strong public opinion, independence and fearlessness in the press and in educated men and woman who are not complaint to authority wrongly exercised." This is indeed so, as a watchful public opinion expressed in diverse way including through the Medium of the press is the sina qua non of a vibrant democratic society. For this it is essential that the press do enjoy full freedom in a democratic country.

According to the Jowitt's Dictionary of English Law, the concept of 'liberty of the Press' simply means that such a thing as an impersonator is now well known to the law, and that every man may print and publish what one pleases although, of course, one will be liable to a prosecution

if one prints everything which is a criminal libel, or which is obscene, blasphemous or seditions, and to civil proceedings of one prints defamatory matter.

Professor Bounard Schwarty described that the concept of 'Freedom of the Press' means at least two things: (i) A constitutional interdiction against any system of licensing, and (ii) Freedom from prior restraints upon publication (other than that included in licensing), particularly those imposed by systems of censorship.

The Supreme Court of United States of America interprets 'freedom of the press' to mean that no law shall be passed that interferes with the communication of ideas in the printed word.

The "freedom of the press" is more for the benefit of the general public than for the press itself because the public has a right to be furnished with information and the government has a "duty to educate" the people within the limits of its resources.

Imposition of censorship on a newspaper before publication of any news would lead to the violation of the "freedom of speech and expression".

In R. Rajagopal v. State of Tamil Nadu[86], the Court held that there is no authority of the government under the law to impose "prior restraint" on defamatory publications against its official but after the publication of such defamatory material if proved to be based on false facts can take action for damages.

In Express Newspapers v. Union of India[87], the Court held that pre-censorship imposed or circulation curtailed or newspaper prevented from starting under a law led to the violation of "freedom of speech and expression".

In India, the order of the day is that freedom of the press cannot be restricted unless such restriction is a reasonable one and not excessive. It is necessary to preserve and maintain the freedom of the press in a democratic country but at the same time, it is also necessary to put some restrictions which are permissible. These restrictions cannot be unreasonable and it can be imposed only on the grounds mentioned under the Article 19(2) of the Constitution, which are the grounds for imposing a limitation on the "freedom of speech and expression."

[86] (1994) 6 SCC 632
[87] AIR 1950 SC 124

The Hon'ble Supreme of India in the matter, Sahara India Real Estate Corporation Ltd. and Ors.Vs. Securities and Exchange Board of India and Ors.[88], constituted a five judge Constitution Bench when during the pendency of appeal. Despite the interim order of the Court, some of the newspapers published the proceedings of the judgment. The Court laid down appropriate guidelines with regard to reporting media of matters which is sub judice in Court including public disclosure of documents forming part of Court proceedings and also the manner and extent of publicity to be given by media of pleadings filed in proceeding in Court which are pending and not yet adjudicated upon and the court suggested following measures: -

1) Prior Restraint

"Open Justice" is the cornerstone of our judicial system. It instills faith in the judicial and legal system. However, the right to open justice is not absolute. It can be restricted by the court in its inherent jurisdiction if the necessities of administration of justice so demand. That, such orders prohibiting publication for a temporary period during the course of trial are permissible under the inherent powers of the court whenever the court is satisfied that interest of justice so requires. Such a temporary prohibition of publication of court proceedings in the media under the inherent powers of the court cannot be said to offend Article 19(1)(a).

2) Order of Postponement of publication

Right to freedom of expression under the First Amendment in US is absolute which is not so under Indian Constitution in view of such right getting restricted by the test of reasonableness and in view of the Heads of Restrictions under Article 19(2). Thus, the *clash model* is more suitable to American Constitution rather than Indian or Canadian jurisprudence, since First Amendment has no equivalent of Article 19(2) or Section 1 of the Canadian Charter. This has led the American Courts, in certain cases, to evolve techniques or methods to be applied in cases where on account of excessive prejudicial publicity, there is usurpation of court's functions. These are techniques such as retrials being ordered, change of venue, ordering acquittals even at the Appellate stage, etc. In our view, orders of postponement of publications/ publicity in appropriate cases, as indicated above, keeping in mind the timing (the stage at which it should be ordered), its duration and the right of appeal to challenge such orders is just a neutralizing device, when no other alternative such as change of venue or postponement of trial is available, evolved by courts as a preventive measure to protect the press from getting

[88] (2012)10SCC603

prosecuted for contempt and also to prevent administration of justice from getting perverted or prejudiced.

3) Right to approach the High Court/ Supreme Court

In the light of the law pronounced hereinabove, anyone, be an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/ her rights under Article 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate Writ Court and seek an order of postponement of the offending publication/broadcast or postponement of reporting of certain phases of the trial (including identity of the victim or the witness or the complainant), and that the Court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial.

MEDIA TRIAL:

Media trial means the pre-trial and in-trial reporting of the case, whether civil or criminal, which is likely to prejudice fair trial-the Constitutional right of every accused. Medial trial is a threat to the right of fair trial and a blow at the sanctity of the judicial system. Media by reporting frill details of the case, confession of the accused, presenting biased view points during the pendency of the judicial proceeding is not only transgressing its limits but also making the inkberry of court proceedings. When there is trial by Media, there is always a conflict between two constitutional rights i.e. fair trial and freedom of the Press.

Media is expected to provide impartial and unbiased news. It is the primary duty of the media to put out the facts rather than coming to any conclusion about any matter. It is the power on the hands of the media to influence the general public, which makes it necessary that they understand and perceive the huge responsibility attached to them and they must not in any way misuse it. Media has evolved over the years and has become very active. In today's world, media has a far-reaching effect and its need cannot be undermined. But what matters is its proper utilization to bring the positive changes in the society and this is possible only when the media remain independent and impartial.

The Supreme Court of India has recorded on the consequence of media trial as under: —

"the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial impossible but means that regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny. Media trial is not appreciated in a democratic society and there is judiciary to conduct such trial, which is considered as the competent institution for the administration of justice."[89]

No newspaper has a right to assume the role of an investigator and to suggest that the accused person against whom a proceeding is pending was or was not guilty of the offence. The reason why 'trial by media' is not allowed is manifold:

(1) It may influence the persons who may appear as witness in the court.

(2) It may compel the parties to discontinue the litigation.

(3) It may prejudice the public as whole, by evoking adverse reaction and thereby impair the public confidence in the administration of justice.

(4) It may inhibit other potential litigants from restarting to the law of court.

Article 6 of the UN Basic Principles on the Independence of the Judiciary states that the judiciary is entitled and required "to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected." The freedom of speech and expression and subsequently the freedom of press finds a place in International Charters like Article 19 of ICCPR and Article 10 of the European Convention on Human Rights. In India the 'Right to fair trial' of the accused is granted under Article 20 and 21 of the Constitution while Freedom of Press which, though not separately and specifically guaranteed, has been covered under 'Freedom of speech and expression' which is a fundamental right under Article 19(1) (a) of the Constitution and the basic structure. Also, Article 38 of the Indian Constitution clearly advocates the 'right to impart and receive communication'. Likewise, International Covenant on Civil and Political Rights (ICCPR), also provides that "everyone shall be entitled to a fair

[89] R.K. Anand v. Delhi High Court (2009) 8 SCC 106

and public hearing by a competent, independent and impartial tribunal" in the determination of any criminal charge or in a suit at law

It is important to protect a citizen from being victimized by the media, even though it adds burden to the criminal courts. It is the function of judiciary to examine a case and to adjudicate if an accused if guilty or not. So, the "trial by media" affects the judgment of the Court and at the same time also harms the accused because the accused should be generally presumed as innocent until he is proven guilty.

ANALYSIS OF THE EFFECT OF MEDIA TRIAL ON SOME IMPORTANT CASES:

1. SUNANDA PUSHKAR DEATH CASE:

Indian media is often critical about its own practices and it is vigilant here in this case. Much prior to Pushkar's death, when the news channel NDTV got Pushkar on the phone for an interview. They didn't ask her about the "crimes of this man". At one point during the live phone conversation, when Pushkar said she regretted choosing silence during the cricket controversy, the interviewer changed the subject, "Ma'am, you do realize you're live on NDTV? Also, aren't you worried the BJP [the party in opposition] will take up this issue?" The channel's concern for the minister's career, not the details of Pushkar's revelation was dismaying.

In the minutes after Pushkar's death became public knowledge, Barkha Dutt, NDTV's group editor, said that Pushkar had spoken with her on 1/15 about issues including Tarar and the cricket league.

A couple of Pakistani journalists were lined up to comment on the "character" of Tarar. One male anchor gleefully distanced himself from her saying she had come on his channel as a guest speaker only a couple of times, "but yes, she was connected to very high-profile people".

While his answers were welcomed and he was given substantial air time, the other woman journalist, who dared to say that the Indian media was full of speculative reporting with no consideration for the reputation of the woman, who was also a mother, on the other side of the border, was shouted down and dismissed in no time.

Shashi Tharoor is a public person and it was well known that there were some serious differences between him and his late wife.

But even before her body was found, our TV channels were gloating about how she had sent their anchors text messages and wanted to relate her side of the story.

This might sound harsh, but the entire tragedy and the way it was exploited by a good section of the Indian media, particularly the electronic media, raised the stink of vultures feeding on dead flesh and even prior to the death, swooping down upon a potential "newsmaker".

2. PRASHANT BHUSHAN CASE:

The senior lawyer was held guilty in contempt of court on August 14. The case pertains to two tweets posted by Bhushan on June 27 and June 29. In one tweet, he made a remark about an undeclared emergency and the role of the Supreme Court and last four chief justices of India. The second tweet was about Chief Justice SA Bobde trying a Harley Davidson superbike in his hometown Nagpur during the coronavirus outbreak.

The bench of Justices Arun Mishra, BR Gavai and Krishna Murari fined senior advocate Prashant Bhushan Re 1 in the contempt case for his tweets on the judiciary. On August 25, the court had reserved its ruling after numerous arguments as Bhushan refused to apologize.

The bench said that the senior lawyer will be imprisoned for three months and will be debarred from practicing for three years if he defaults on the payment of the penalty. Bhushan was instructed to pay the fine by September 15.

The top court said that Bhushan's statement, in which he said that offering an apology for his constructive criticism of the judiciary would amount to the "contempt of his conscience", was made to "influence independent judicial function". The court noted that freedom of speech was important but rights of others must also be respected.

Attorney General K.K. Venugopal had asked the bench not to punish Bhushan and instead be "compassionate" in their treatment of him.

The June 29 tweet included a photo of CJI S.A. Bobde riding a Harley Davidson motorcycle, and said, "CJI rides a 50-lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access Justice!"

The second tweet dated June 27 said, "When historians in the future look back at the last six years to see how democracy has been destroyed in India even without a formal emergency,

they will particularly mark the role of the Supreme Court in this destruction and more particularly the role of the last 4 CJIs."

The bench argued that these tweets were “serious contempt of the court”.

He urged that the tweets should only be seen as "constructive criticism so that the court can arrest any drift away from its long-standing role as a guardian of the Constitution and custodian of peoples’ rights."

SC said the tweets brought the administration of justice into disrepute and undermined the dignity and authority of the institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of the public at large.”

Prashant Bhushan said that the power of contempt of court is sometimes it is abused or misused by the judiciary in an attempt to stifle free speech or free discussion about the judiciary.

It is surprising how the judiciary continues to employ the weapon of contempt to silence free speech, even when Britain, the country from where we have adopted the present law, abolished ‘criminal contempt’ back in 2012. A series of judgments of the Supreme Court have shown that the grounds for holding contempt under the Act of 1971 are vague.

CONCLUSION AND SUGGESTIONS:

Though Media is the fourth pillar of Indian Democracy and under Article 19(1)(a) of the Constitution it has a fundamental right, but at the same time it cannot be allowed to transgress its domain under the garb of freedom of speech and expression to the extent as to prejudice the trial itself and the time has come to legislate to control the unfettered power of media. Media being the means of communication helps in disseminating information and plays an important role in a democracy by keeping the public informed about the social, political and economic activities surrounding them. They are expected to deliver unbiased news and to put out facts rather than making any judgment. But at times media try to distort facts and give its judgment even before the court. It is the fundamental principle in the Indian criminal justice system to presume that a person brought before a court as an accused is innocent unless the person is declared guilty by the competent criminal court. But during media trial, this notion is not being followed and they tend to give judgments affecting this basic principle of the criminal justice

system. Certain procedures are established by law for the purpose of conducting a trial in court, but no such criteria are adopted in the media trial.

In short, media trial is a serious issue which needs to be properly addressed and if the circumstances demand strict restrains should be imposed on media to prevent them from indulging in such activities of media trial.

There should be a prescribed minimum standard to enter into the media profession. The media persons should be made known about the media laws and also about the restrictions on media.

The Press Council Act, 1978 only deals with the print media and the need for including the electronic media within its scope has also increased. The electronic media should be made more responsible.

The starting point of the "pendency of a criminal proceeding" should be made from the time of "arrest"; this will restrict the media from making prejudicial publications from the time of "arrest" under Contempt of Court Act, 1971.

Thus, while balancing between the two fundamental rights on account of excessive coverage in an appropriate case mode of prior restraint and self-regulation should be effectively invoked and those who violate the basic code of conduct must be punished under Contempt of Court Act, 1971.

BIBLIOGRAPHY:

(i) BOOKS:

a) M. P. Jain, INDIAN CONSTITUTIONAL LAW, 6th ed. 2010, Lexis Nexis, Haryana.
b) D. D. Basu, SHORTER CONSTITUTION OF INDIA, Vol. 1, 14th ed. 2009, Lexis Nexis, Haryana.
c) Juhi P. Pathak, INTRODUCTION TO MEDIA LAWS AND ETHICS, 1st ed. 2014, Shipra Publications, New Delhi.

(ii) ONLINE SOURCES:

a) www.manupatra.in
b) https://www.lawctopus.com/

c) https://www.mondaq.com/
d) https://lawcirca.com/
e) http://www.iosrjournals.org/
f) https://www.firstpost.com/
g) http://historycooperative.org
h) http://www.thehoot.org
i) www.thehindu.com
j) https://timesofindia.indiatimes.com
k) http://www.livelaw.in