

Media Trial: Freedom of Speech VS. Fair Trail

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Abstract: “Fair is foul and foul is fair” recollecting the lines enshrined in Shakespeare’s play Macbeth, one could indisputably perceive what is contemplated acceptable today may conceivably be malevolent and vice versa perchance deplorable now and adequate in future. To understand the antagonism of free trial and free media one has to reflect on the evolutions of court and media and its present scenario. The judiciary and the media share a common bond and play a complimentary role to each other: man is the centre of their universe. Both the judiciary and the media are engaged in the same task: to discover the truth, to uphold the democratic values and to deal with social, political and economic problems. Media, as referred to by many as the “eyes and ears of the general public”. This actually calls for the existence of a responsible media. Louis XVI, while in the Temple prison saw books by Voltaire and Rousseau said that these two persons have destroyed France; rather they destroyed feudal order and not France. Freedom comes with responsibilities and our media instead of showcasing superstitions and tagging lawyers as “defend the indefensible” should concentrate on horrible conditions in jails, schools, orphanages, courts, etc as criticized by Dickens in his works, Raja Ram Mohan Roy wrote about sati in his newspaper “Miratul Akhbar”, Nikhil Chakraborty about horrors of Bengal Famine 1943 etc. The essay encompasses in its international prospective, current scenario, influences, challenges and solutions.

Keywords: Freedom of speech, Madrid Principles, Media, Judiciary.

I. Introduction

“The press is commercialized to a large extent. In this business, profits and social responsibility need to be balanced and if that does not happen, society will not accept the media for long. As an independent and statutory body, the PCI shall ensure that a balance is struck between profit-making and social responsibility, profit-making tendency of some media owners and contractual-basis hiring of journalists are hampering quality of journalism.”

-Justice Markandey Katju, (former Judge, Supreme Court of India), Chairman, Press Council of India

The first prime minister of Independent India Pandit Jawaharlal Nehru remarked, “I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press”. Notwithstanding that liberty is not the power of doing what we like, but the right of being able to do what we ought. Every being likes to get as much power as circumstances allow, and nobody will vote for a self-denying ordinance. Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority, still more when you super add the tendency or the certainty of corruption by authority^[1]. There is worse heresy than that the office sanctifies the holder. What lord Atkin thus relates with power is also a well placed notion of liberty.

As lord Atkin quoted:-

“I know only one authority which might justify the suggested method of construction. ‘When I use a word’, Humpty said, in rather a scornful tone, ‘it means just what I choose it to mean, neither more nor less’. The question is, said Alice, ‘whether you can make words mean so many different things’. The question is ‘said Humpty Dumpty, ‘which is to be the master that’s all’. After all this long discussion, the question is whether the words ‘if a man has’ can mean ‘if a man thinks he has’. I have an opinion that they cannot and the case should be decided accordingly.”

As a result, it would be within the courts preview to determine the reasonableness of the action^[2]. The freedom of speech and expression is not absolute, unlimited or unfettered and in all circumstances, as giving on an unrestricted freedom of the speech and expression, would amount to uncontrolled license.

II. International Prospective

The media has been called the handmaiden of justice, the watchdog of society; the judiciary, the dispenser of justice and the catalyst for social reforms. Thus, both are essential for the progress of a civil society. In 1807, in the United States of America with the case of Aron Burr United States v. Burr^[3],

subsequently, it erupted in England; it has finally reached the shores of India. The Indian judiciary finds itself at a crossroad to balance the competing fundamental rights of the media and of the accused. The United States of America, England and India are the torchbearers of democracy. We are progenies of the common law. We, thus, share a common political ideology, a common legal heritage. Our Constitutions, whether written or unwritten, proclaim, protect and promote the same set of fundamental rights.

One of the most important functions of an independent judiciary is to ensure the right to a fair trial. This obligation is enshrined in the 1985 UN Basic Principles on the Independence of the Judiciary, in Article 6, which states the judiciary is entitled and required “to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”⁴The principles enunciated in this Article are also stated in similar language as in the International Covenant on Civil and Political Rights (ICCPR)^[5], which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal” in the determination of any criminal charge or in a suit at law^[6]. The ICCPR acknowledges that the right to a public trial is not absolute and that certain limitations on public access are necessary.

In 1994, a group of 39 distinguished legal experts and media representatives met and lead to the development of the Madrid Principles^[7],

The objectives of the meeting were, to examine the relationship between the media and judicial independence, to formulate principles to help the media and the judiciary and develop a relationship that serves both freedom of the expression and the judicial independence.

Section 10 of the Madrid Principles outlines permissible limits on the freedom of expression:

10. Laws may restrict the Basic Principle [of a free press] in relation to criminal proceedings in the interest of the administration of justice to the extent necessary in a democratic society

- a) for the prevention of serious prejudice to a defendant;
- b) for the prevention of serious harm to or improper pressure being placed upon a witness, a member of a jury, or a victim.

Article 19 of ICCPR confirms that freedom of expression is also a fundamental part of a democratic society. It elaborates that freedom of expression includes the freedom of the press and states that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Under Article 10 of the European Convention on Human Rights, to which the UK and its other signatories are morally committed, the freedom of the press is paramount. Exceptions to that freedom may be made only such as are “necessary in a democratic society”, permissible only to the extent that they correspond to “a pressing social need”, and are proportionate to the end to be achieved^[8]. These international and multinational standards consistently place media freedom at the core of a democratic and free society. They do not make it secondary to an accused’s right to a fair trial or to the requirement of an independent judiciary.

III. Freedom Of Speech Vs. Fair Trial

“The tension between the courts and the media revolves around two general concerns. The first is that there should be no ‘trial by media’; and the second is that it is not for the press or anyone else to ‘prejudge’ a case. Justice demands that people should be tried by courts of law and not be pilloried by the press.”^[9]

The freedom of the press stems from the right of the public in a democracy to be involved on the issues of the day, which affects them. Media has now reincarnated itself into a ‘public court’ (Janta Adalat) and has started interfering in to court proceeding. When the media divulges on the legal process, freedoms and privileges collide. Media sort off attains formal prerogative powers to decide the cases and make them look true in the eyes of public. The media being the mainstay of the news industry, a piece of and all probable information whichever comes to hand that the general receives regarding an incident is looked under the media’s spectacles and then conveyed through the mouth piece that is the media itself, proclaiming its prospect as just trials. Authenticity of such information is a sort after quest and to what extent should the public get convinced by it lands the public in a rather muddle plight. An accused’s right to a fair trial and the media’s right to freedom of expression are in frequent tension. The principle agents of these rights, the media and the judiciary are interdependent proponents of constitutional rights, often in conflict as to where the priority and emphases should be placed in the free press v. fair trial dichotomy; the tension between the two is an inevitable and perhaps necessary one^[10].

The Hon'ble Supreme Court of India has observed that the freedom of press is regarded as “the mother of all liberties in a democratic society”^[11]. But the question of worry is what happens when the news provided to the public through media and subsequently through judicial process is incompatible?

Public naturally would believe what they are sold by an upper hand authority like the media. According to criminal jurisprudence, a suspect is entitled to a fair trial and is presumed to be innocent till proven guilty by

a Court of law. None can be allowed to prejudice or prejudice his case till the completion of trial. However, media on account of excessive coverage goes beyond its domain and publishes and covers interviews of witness or relative of a victim and prejudices the issue of conviction of the accused while the matter is pending adjudication in a court of law. This has a tendency to prejudice the mind of Court, prosecutor and general public at large. But thereby there lies a minimal expectation from media to conform to their jurisdiction of affairs and ensure that what they convey is free of bias. Lately, the media has not only dared to operate outside its bounds but also reach a point where they assume the role of the judiciary in being decisive for the cases^[12]. Art. 19(1)(a) of the Constitution of India guarantees, freedom of speech and expression and Art. 19(2) permits reasonable restrictions to be imposed. However Article 19(2) does not refer to 'administration of justice' but interference of administration of justice is clearly referred to in the definition of 'criminal contempt' in Sec. 2 of the Contempt of Courts Act, 1971 and in Sec. 3 thereof as amounting to contempt. Therefore, publications/coverage which interfere or tend to interfere with the administration of justice amount to criminal contempt under the Contempt of Court Act and if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

Public appraising media for its well accomplishment of justice, through its own looked on to facts and not on to legality of the matter and quashing the basic principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. The effect of media interference is such that even if he is acquitted after the trial, it does not change the public's opinion based on what was conveyed by media creating a prejudice in the eyes of the public against the accused even before he is extended a fair trial and this in turn affects his trial. It's an unquestionable case that amounts to double victimisation of the accused; by the media as well as the judiciary.

Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. As liberty is the question of morals more than politics and harmony between the will and state^[13]. No editor has the right to assume the role of an investigator to try to prejudice the court against any person. The law as to interference with the due course of justice has been well stated by the chief justice Gopal Rao Ekkbote of Andhra Pradesh High Court in the case of Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr. , where in it was observed by the learned judge that:

“..... When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings. To this general rule of fair trial one may add a further rule and that is that none shall, by misrepresentation or otherwise, bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint or defense. It is always regarded as of the first importance that the law which we have just stated should be maintained in its full integrity. But in so stating the law we must bear in mind that there must appear to be a real and substantial danger of prejudice.”

In Maxwell^[14], the Court prescribed certain methods for controlling the pre-trial publicity:

- (i) Control the presence of the press at the judicial proceedings.
- (ii) The court should have insulated the witnesses. This implies protecting and isolating the witnesses during the trial.
- (iii) The court should make efforts to control the release of leads, information, and gossip to the press by police officers, witnesses, and the counsel for both sides. More specifically, the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matter.
- (iv) Reporters who wrote or broadcast prejudicial stories could have been warned as to the impropriety of publishing material not introduced in the proceedings.
- (v) Where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity.
- (vi) If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered.

The objective of civil society is justice, not truth, virtue, wealth, knowledge, glory or power. Justice is followed by equality and liberty. Freedom of Press is not particularly stated in Part III of Indian Constitution, however the Hon'ble Supreme Court in a number of judgments has recognized that freedom of speech and expression also includes freedom of press^[15]. In rapidly changing socio-economic conditions of a country like India, the role of media has gained prominence and hence it is often quoted that "Media" is the fourth pillar of Indian Democracy. Cases which are driven by the media in the general run of things counted in apogee notoriety

coupled with well staged drama and targets at cases that could be sensational on account of their horrendous nature or due to the entanglement of an authoritative significant person.

Media substitutes the role of the judiciary by indulging in concepts of “breaking news”, carrying on investigation of crimes, interfering in police investigation and partial reporting^[16]. In the recent past, few media driven cases include the Arushi murder case, Jessica Lal murder case, BMW accident case, Nirbhaya rape case, Nira Radia case. Apart from this there were scams like the 2G scam, Bofors scam, Commonwealth Games scam and Harshad Mehta stock market scam. All these cases pertain to various diverse fields but do share a common ground of being driven by the media. This takes us back to the question raised in the very beginning; how much interference may be passed off as the work of a healthy regulator and when does it start to interfere with the process of the court. However, it needs to be appreciated that Media also plays a good role while divulging corruption in government exchequer and in bringing out the government's inaction on many occasion to the lime light and eventually action is taken. But at the same time, conflicts arise when media transgresses its domain and tries to usurp the power of judiciary and make judgmental comments on pending trials.

But balancing between the rights of people to know and presumption of the accused to be innocent till he is found guilty by a competent court, has become inevitable but neck to neck competition regarding publication and coverage among various media houses having a tendency to interfere with administration of justice has become matter of concern for legislature as well as judiciary^[17]. 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 suspect and under trial and the Civil litigant have Fundamental Right to have a free and fair trial^[18]. Thereby balancing between the two fundamental rights has become inevitable and the time has come that Courts should give appropriate directions with regard to reporting of matters, in electronic and print Media, which are sub judice. 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.^[19]

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 Anr (2012)10SCC603, constituted a five judge Constitution Bench when during the pendency of appeal. Despite the interim order of the Court, some of the news papers 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 as done in Mirajkar's ^[20] case 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. Contempt of Court Act, 1971

The media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. Sometimes, fair and accurate reporting of the trial would nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trial. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trial. The inaccuracy of reporting of court proceedings will be contempt only if it can be said on the facts of a particular case, to amount to substantial interference with the administration of justice. The reason behind Section 4 is to grant a privilege in favor of the person who makes the publication provided it is fair and accurate. This is based on the presumption of "open justice" in courts.

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

4. Right to approach the High Court/ Supreme Court

In the light of the law enunciated herein above, 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 above mentioned 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. There are various aspects of the right to a fair trial. These include an adversarial trial system, presumption of innocence, independent judges, and knowledge of the accusation, trail and evidence in the presence of the accused, adequate legal representation to respond to the charges. The right to fair trial has been interpreted to be one of the implicit rights contained within the Right to life under Article 21 of the Constitution of India^[21]. There are various facets to the right to a fair trial. The Hon'ble Supreme Court in the case of *Zahira Habibullah Sheikh & Anr vs. State of Gujarat*^[22] has held that,

“The principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices.... fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.” Most of these safeguards to ensure a fair trial are contained under the Code of Criminal Procedure, 1973 which contains and defines the procedure which has to be followed in criminal cases. The concept of a fair trial cannot be limited to a statute and the Courts have gradually expanded it to include various aspects of criminal procedure. For instance the Supreme Court has also in the past transferred cases from one state to another when it is reasonably anticipated that the accused will not be afforded a fair trial or the court process may be interfered with by extraneous considerations.

IV. Influence Of Media On Accused

If the media projects a suspect or an accused as if he has already been adjudged guilty well before the trial in courts, there can be serious prejudice to the accused. Even if ultimately the person is acquitted after the due process in the courts, such an acquittal may not help the accused to rebuilt his lost image in society. Excessive publicity in the media characterizing him as a person who indeed committed the crime, it amounts to undue interference with the “administration of justice”, calling for proceeding for contempt of court against the media.

V. Influence Of Media On Witness

If the identity of witnesses is published, there is danger of the witnesses coming under pressure both from the accused or his associates as well as from the police. At the early stage, the witnesses want to retract and get out of the muddle. Witness protection is then a serious casualty. This leads to the question about the admissibility of hostile witness evidence and whether the law should be amended to prevent witnesses changing their statements.

VI. Influence Of Media On Judges And Court

Judges are not immune from criticism either in respect of their judicial conduct or their conduct in a purely private capacity. But it is for concern when criticisms of them are ill-informed or entirely without foundation, and may have a tendency to undermine public confidence in judicial institutions. A Judge is to guard himself against such pressures. A media publication can ‘unconsciously’ influence Judges or Juries and whether Judges, as human beings are not susceptible to such indirect influences. Thus, Lord Denning stated in the Court of Appeal that Judges will not be influenced by the media publicity^[23], a view which was not accepted in the House of Lords.^[24]

Cardozo, one of the greatest Judges of the American Supreme Court, referring to the “forces which enter into the conclusions of Judges” observed that “the great tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judges by”.^[25] The Supreme Court has held that a trial by media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice.

VII. Law Commission Report

The most reckoning research on the positive and negative aspects of media trial has been elaborated in 200th report of the Law Commission entitled Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971) submitted on 31st August 2006 recommended various amendments to address the damaging effect of sensationalized news reports, and accused victimization by media, on the administration of justice and measures of postponement of proceedings and further said that such powers cannot be vested in the subordinate courts where the criminal proceedings are 'active'. This is because under the Contempt of Court 1971 Act, the subordinate courts have no power to take action for contempt. Under Section 15(2), they can only make a 'reference' to the High Court.

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 statute 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.”

VIII. Justification By Media

We have a rich tradition of fiercely independent journalism. In fact, all the big scams were busted by the press. The law enforcers merely followed them up. The poorly paid journalist must be credited for extracting that information which looked inaccessible for the top vigilance teams of the country. That is how HDW (Howaldswerske) marine case and Bofors hit the headlines. The media did us proud at every juncture of our political juncture. There is increasing and intense public focus on Courts and the cases filed therein. Whether reported in daily newspaper or in electronic media, Indians avidly devour this information, since they are curious about what happens in Court. Now that the Courts have come under the media's microscope, they are likely to remain there forever. As with most changes both positive and negative consequences have flowed from this. A Positive by-product of changes spurred by the media and addressed by the Courts is that more Indians are aware of their constitutional rights than ever before. The media strongly resents this sub judice rule and complains that Courts during the course of a hearing tend to interpret the sub judice rule quite strictly to prohibit any discussion of the issues before the Court even if they are engaging public attention. In their opinion such a restriction could be applied more legitimately to situations where a jury of lay people is involved. After the abolition of the jury system, when decisions are made by professional judges who are trained not to be influenced by happenings outside the Court, there is less of a justification for a strict application of the rule. There is, therefore, an urgent need to liberalize the sub judice rule, invoking it only in cases of an obvious intent to influence the trial and not to any act that might have the remote possibility of influencing it.^[26]

IX. Conclusion

Media has wide reach and a more effective and a more direct approach to the people. That is why it is called as a fourth pillar of the society. The judicial system should not dismiss, without reflection, complaints that it is uncreative, close-minded and technophobic concerning the free press/fair trial issue. Nor should it decline any opportunity to reach out to communicate to the media and the public, merely because it resents criticism or is critical of press performance. The media often act and should act as the alter ego of the society and should therefore faithfully reflect its mood, its thinking and its problems and report events which affect public interest. While presenting facts it must give their context and discuss their pros and cons to enable people to grasp properly their significance and to form their informed views to them.

The courts are obliged to respect the freedom of the press because of the essential societal interests this principle serves: the enhancement of democracy, the vigor of the marketplace of ideas, self-expression and the public scrutiny of the administration of justice. However, by doing so, the courts do not endorse those aspects of the media which tend towards the commercial, the sensational, the shallow or the prurient. The right to a fair trial does not per se supersede the press' right to free speech. The right to fair trial though read under Article 21 of the Constitution of India is more concerned with the conduct of the State in affording a fair trial to the accused rather than a private publisher or a journalist. The issue is yet to be decided by the courts - ultimately any such conflict is likely to come down to a determination of where the greater public interest is deemed to lie in the particular facts of the matter. The judicial system is not entitled to freedom from criticism nor to uniformly positive assessments, they are entitled to no more than a fair hearing. The media must also understand that although the courts support it out of respect for the societal interests it promotes, just as the courts must accept all manner of fair criticism, the media must accept and act on criticism, and also acknowledge that the nature of its institution is such that it has considerable potential to interfere with the proper administration of justice. A fair trial is one of the tenets of a jurisprudential system based on the rule of law and when in conflict with the freedom of speech, it is likely that the former will prevail unless adequate grounds can be shown that justify the expression or the need for the same. It is pertinent to mention that, the right of the press is drawn from the right to speech and expression which is limited by the reasonable restrictions as enumerated under Article 19(2). Article 19(2), expressly contains, "contempt of court" as a ground under which the Contempt of Courts Act, 1971 falls. This law expressly limits the right of the Press to free speech. This reasoning has even been adopted by the Law Commission of India, in its 200th Report titled as, "Trial by Media: Free Speech and Fair Trial under the Code of Criminal Procedure, 1973". It is therefore in the interests of both sides of the issue to seek to develop greater mutual understanding and respect.

Reference

- [1]. Selected essay Lord Acton by John Dalberg-Acton.
- [2]. *Liversidge v Anderson* [1942] AC 206.
- [3]. 25F Cas 55 (D Va 1807)
- [4]. UN Basic Principles on the Independence of the Judiciary, G.A. Res.146, U.N. GAOR, 40th Sess.(1985)art.6.
- [5]. Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 23 March 1976 in accordance with article 49.4
- [6]. Art. 14(1), ICCPR, (1966) 999 UNTS 171, 1976 Can. T.S. No. 47, in force, including Canada, 1976
- [7]. The Madrid Principles on the Relationship between the Media and Judicial Independence, established by a group convened by the International Commission of Jurists, its Centre for the Independence of Judges and Lawyers, and the Spanish Committee of UNICEF,
- [8]. *Sunday Times v. United Kingdom* (1979) 2 EHRR 245 (Sometimes referred to as "the Thalidomide case")
- [9]. Rajeev Dhavan in his "Publish and be damned – Censorship and Intolerance in India"
- [10]. Effect of trial by media before courts, <http://www.lawteacher.net/commercial-law/essays/effect-of-trial-by-media-before-courts-law-essay.php>
- [11]. *Harijai Singh and re: Vijayakumar*, AIR 1997 SC 73
- [12]. Enact law to regulate trial by media: Law Commission, *The Hindu*, Sept 3, 2006
- [13]. Selected writing of Lord Acton by John Dalberg-Acton
- [14]. 16 L Ed 2d 600: 384 US 333 (1965)
- [15]. *Indian Express Newspapers V Union of India* 1985 SCR (2) 287
- [16]. S.L Rao, Trial by Media-Television should have no role when criminal cases are in court, *The Telegraph*, July 25, 2011, available at http://www.telegraphindia.com/1110725/jsp/opinion/story_14234123.jsp
- [17]. *The Blanket*, *Journal of Protest and Dissent*, November 2000
- [18]. *Maneka Gandhi Vs Union Of India* 1978 SCR (2) 621
- [19]. *Tony Rogers, The First Amendment and Press Freedom*, available at <http://journalism.about.com/od/ethicsprofessionalism/a/firstamen.htm>
- [20]. *Naresh Shridhar Mirajkar V. State of Maharashtra* AIR 1967 SC 1
- [21]. Freedom of press, available at, <http://thehoot.org/web/FreedomofthePress/2729-1-1-40-true.html>(2004) 4 SCC 158
- [22]. *Attorney General v. BBC: 1981 AC 303 (CA)*, p. 315.
- [23]. *Supra* note 3.
- [24]. 'Nature of the Judicial Process', Lecture IV, Adherence to Precedent. *The Subconscious Element in the Judicial Process*, 1921, Yale University Press
- [25]. American Bar Association (Legal Advisory Committee on Fair Trial and Free Press), *The Rights of Free Trial and Free Press*, (Chicago, Ill.:1969)