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## **A Critical Analysis of Right to Freedom of Speech with respect to Media Trial.**

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*Mukti Heliwal<sup>1</sup>*

### **INTRODUCTION**

The strength and importance of media in democracy is well recognized. Article 19(1)(a) of the Indian Constitution, which gives freedom of speech and expression includes within its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India. Media is not only a medium to express one's feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions. The criminal justice system in this country has many lacunae which are used by the rich and powerful to go scot-free. Figures speak for themselves in this case as does the conviction rate in our country which is abysmally low at 4 percent. In such circumstances the media plays a crucial role in not only mobilizing public opinion but bringing to light injustices which most likely would have gone unnoticed otherwise.

Today, our 'Media Studios' have literally turned to be a courtroom for all purposes. The facts of the particular case in all their lurid details, full particulars – correct or otherwise – the various steps and stages of police investigation, freely embroidered with subjective comments and observations are presented, evidence discussed, expert opinion sought, even the public is given an opportunity to participate in this process. They can send in their views by sms or by logging on to the channel's website. The conclusion tending either to pronounce on the guilt of certain persons or on the motives of the investigators are being splashed in the mass media. What role is the media playing here? Today, one will be forced to admit, though reluctantly and with regret, that there exists a system of parallel justice administration in the country. Isn't this plain megalomania, which feels nobody can question their actions? One wonders.

It is true that the media forms the backbone of a democratic society. It subjects the functioning of all public institutions to public scrutiny, and makes them answerable and accountable to the

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<sup>1</sup> Student, BVP (Pune)

public to whom they have to serve. It also plays an important role in assisting in administration of justice. However, it cannot be ignored that at times the media fails to exercise the freedom of press conferred upon it by the Constitution in ‘public interest’ as pointed out above. It neglects the real and core issues which the society is facing. It forgets its social responsibility towards the people. It is for this reason that a need arises to regulate this freedom of press.

A responsible media is the handmaiden of effective judicial administration. Free and robust reporting, criticism and debate should be there which contributes to public understanding of rule of law and a better comprehension of the entire justice system.

### **FREEDOM OF PRESS AS A FUNDAMENTAL RIGHT**

Even though Freedom of Press has not been specifically mentioned in Part III of the Indian Constitution, it has however been recognized as a part and parcel of Freedom of Speech and Expression by the Apex Court in a number of judgments.<sup>2</sup> It is often quoted that media is the fourth pillar of Democracy. In a country like India where the socio-economic conditions are rapidly changing, media’s role has gained prominence. In *Maneka Gandhi v. Union of India*<sup>3</sup>, it has been rightly held that under Art. 19(1) (a)<sup>4</sup> of the Constitution, the Rights of Freedom of Press has been recognized as Fundamental Rights.

Media houses have started acting as “public court” and also interfere with the proceedings of the court. Though it has been helpful in deliverance of justice for some of the victims who had been chained due to external pressure and the case being sub judice, on the other hand it has also turned into media trials where the vital gap between ‘accused’ and a ‘convict’ has been completely overlooked. This way the accused is deprived of his rights and his liberty is unaddressed. The very first condition of liberty in free speech or simply the liberty to say what one feels like. It is acquired by every person in its natural form. In liberal democracy, protecting this free speech is essential and these rights are backed by law so that no person is deprived of it.

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<sup>2</sup> *Indian Express Newspapers v. Union of India*, 1985 SCR(2)287.

<sup>3</sup> *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

<sup>4</sup> Constitution of India, 1950, Article 19.

Though the importance of media cannot be denied, since it keeps the public informed, educated and vigilant, on the other hand, it also tries to sensationalize news and distort facts, grabbing people’s attention,. It at times goes beyond its limit and instead of stating facts, it acts as an interrogation authority, sub judicing the case, evidences, and witnesses. It results in blatant ignorance of the golden principle of “presumption of innocence”. “right to free trial” is curtailed. This difficulty reaches its peak when there is extensive media coverage, which prejudices the interest of the party in a case which is pending before the Court. Judiciary is capable of conducting fair trials independently without interference. Media should be responsible in its conduct and thus, its freedom, like any other freedom, cannot be absolute.

#### **EVOLUTION OF FREEDOM OF PRESS-**

- **Bill of Rights, 1689, Article 9.**

It guarantees “the Freedom of Speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”

- **The Declaration of the Rights of Man and Citizen, 1789.**

It was a document of France Revolution, which guarantees “The free communication of ideas and opinions is one of the precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for abuses of this freedom as shall be defined by law. “

- **First Amendment to the Constitution of USA.**

It runs as follows, “Congress shall make no law respecting and establishment of religion, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

- **Constitution of India, 1950. Article 19.**

“Freedom of Speech and Expression” it runs as follows- “all citizens shall have the right to freedom of speech and expression.” Art. 19 of ICCPR states that- “everyone shall have the right to hold opinions without interference” and “everyone shall have the right to

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freedom of expression; the 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.”

- **Constitution of India,1950 Article 19(2).**

The right under Art.19 is not unbridled and the State can impose “reasonable restrictions” based on several grounds such as ‘security of State’, ‘public order’, ‘contempt of court’, ‘defamation’ etc. as provided under Art. 19(2) of the Constitution. Like the need for maintaining and preserving “freedom of speech and expression” in a democracy is important, it is also essential to put some restrictions on that freedom for the purpose of maintaining the social order. There cannot be any freedom that is completely unrestricted or absolute.

### **IMPORTANCE OF FREE SPEECH IN DEMOCRACY**

The right to expression is essential for our autonomy and free will, to an individual's right to self-development, and to truth seeking. If citizens are to be able to rule as democracy requires, it's after all the rule of the people by the people. If citizens are to be able to rule, they must be able to communicate freely, including with those that they elect and who govern them. They must be free to criticize, question challenge, all of which requires full access to information and ideas. Freedom of expression teaches tolerance and build tolerant societies.<sup>5</sup>

Media is regarded as one of the pillars of democracy. Freedom of media is the freedom of people to be informed of public matters. Free and healthy press is indispensable to functioning of the democracy. Democracy means making of the government by the people and to have active participation in the community decision. <sup>6</sup>It is, therefore, needed that the people be informed about current and burning affairs of society. Duty of the press and media is to make the people enlightened over issues relating to public importance. It is why freedom of speech and expression has been extended to include freedom of press and media. The right to freedom of expression is contained in Art.19 of the Indian Constitution. But this freedom is not absolute.

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<sup>5</sup> Freedom of expression, Legal Services India.

<sup>6</sup> Dr. Shashi Srivastava, Trial by Media v. Fair Trial.

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Reasonable restrictions are permitted by sub-clause (2) of the same article. Freedom of expression does not mean the freedom to commit contempt of court.

### **WHY RESTRICTION IS IMPOSED?**

In India, freedom of press is implied from the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. But this right is subject to reasonable restrictions imposed on the expression of this right for certain purposes under Article 19(2).

Keeping this view in mind Venkataramiah, J. of the Supreme Court of India in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>9</sup> has stated: s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.<sup>7</sup>

In *Papnasam Labour Union v. Madura Coats Ltd.*<sup>8</sup> the Hon’ble Supreme Court has laid down some principles and guidelines to be kept in view while considering the constitutionality of a statutory provision imposing restriction on fundamental rights guaranteed by Articles 19(1)(a) to (g) when challenged on the grounds of unreasonableness of the restriction imposed by it. It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some restrictions on this freedom for the maintenance of social order, because no freedom can be absolute or completely unrestricted. Accordingly, under Article 19(2) of the Constitution of India, the State may make a law imposing reasonable restrictions on the

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<sup>7</sup> Freedom of press in India : Constitutional Perspectives, Supreme Court Cases.

<sup>8</sup> *Papnasam Labour Union v. Madura Coats Ltd*, 1995 AIR 2200.

exercise of the right to freedom of speech and expression in the interest of the public on the following grounds.

### **MEDIA TRIAL VS. FAIR TRIAL**

Media plays a vital role in democracy. It maintains transparency by disseminating information to the general public regarding Legislative, Executive & Judiciary. It is necessary that they put out facts rather than conclusions; they should perceive this huge responsibility and not misuse it. It is essential for them to remain independent and impartial. But when media houses start giving out conclusions widely, making people fall for it, on any ongoing matter put before the Courts, then it turns into open trials or media trials.

It is of a colloquial origin indicating the role taken by media, virtually acting as a judicial forum. Prejudiced and false information is sensationalized in the name of ‘news’ creating biased opinions. It not only distorts the reputation of the person who is a victim of media trials, but it also affects the course of trial proceeding before the court of law. Every Criminal Administration System should provide the right to free and fair trial to every accused irrespective of their status or any other factor. Respecting ‘rule of law’ is considering ‘right to free trial’. This right is enshrined under “Art. 21- Right to Life” of Indian Constitution.

Some of the factors of free trial are-independent judges, fair hearing, presumption of innocence, right to counsel etc. It is a cardinal principle that an accused is presumed innocent until proven guilty. Public hearing is also an important concept of fair trial. But, the press and the public may be excluded from the same for reasons of morals, public order, national security or when interest of private lives of the party so require. It is in the opinion of the Court in special circumstances. A poor who cannot afford defense, should also get a free hearing and representation.

### **MEDIA AND FREEDOM OF SPEECH AND EXPRESSION**

- B.R. Ambedkar in one of his Constituent Assembly Debates mentioned that- “Press has no special rights which are not to be given or which are not to be exercised by the citizens in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press.”
- Press does not have license to publish/ broadcast anything unrestricted. Art. 19((2) sets out the grounds which imposes limit on speech and expression. The limits flow from the ‘right to privacy’, ‘contempt of court’, ‘right to reputation’ etc.
- Media Trials have moved to Media verdict. This clearly indicates the misuse of freedom of speech and expression.
- Coverage of serious crimes by media, ignoring the real issues in question creates an issue. It is mockery of the right to justice which an accused faces due to media trial. It is more evident when an ordinary criminal is made equivalent to a seasoned criminal.
- Natural Justice Principle is blatantly harmed. Distorted reputation because of the media trials is beyond retrieval. Due to increase in TRP, the pressure on journalists and media has increased. Media has started turning ruthless in most of the cases. Due to this issue there have been certain guidelines introduced by the Press Council of India as well.

#### **EFFECT OF MEDIA TRIALS ON PROMINENT CASE LAWS-**

- **JESSICA LAL MURDER CASE**

On 29th April, 1999, a model named Jessica Lal was murdered. On a Thursday night when Jessica Lal was working as a “bartender” at the “Tamarind Court” restaurant situated in Delhi, she was shot by point blank by a gun which resulted in her death. She was working with one of her friend named ‘Shayan Munshi’ who was an actor. There were hundreds of people in that restaurant on that night including Manu Sharma, who is the son of Venod Sharma( Minister at that time) and the accused in this case. Manu Sharma ordered a drink, to which Jessica Lal refused, and when he tried offering her extra money, to which she refused, he took out his gun and shot her. She was then rushed

to the hospital but died after some hours. Manu Sharma got out of that restaurant instantly.

Many witnesses pointed. Police could not arrest Manu Sharma immediately because his friends helped him to hide and also destroyed the weapon. When he was finally arrested, he confessed the commission of murder during interrogation by police but was dismissed as due to lack of evidence. The trial finally began in the month of August, 1999 and the prime witnesses became hostile. He claimed that he had signed a statement which was in Hindi and he does not understand Hindi. Then in the year 2006, after many witnesses turning hostile, Manu Sharma was released by the trial court due to the failure on the part of the police to recover the weapon and also lacked evidence to establish that the cartridges which were found in the crime scene were fired from the same weapon.

Due to such a ruling, there was a huge public outcry and several protests had started taking place. The media had participated actively and had started publishing and broadcasting the issue. They also claimed that power was misused by Manu Sharma’s father to influence the outcome of the case. On March, 2006, the police appealed before Delhi High Court in the present case which was then admitted by the Court and on December, 2006, Sharma was declared guilty by the High Court. A magazine named “Tehelka” carried out sting operations which revealed that Shayan Munshi could understand Hindi and that Manu Sharma’s father bribed the witnesses to keep them away from the case. These operations were later broadcasted on different news channels. The channels also persuaded the public to send texts and mails concerning their views about the trial.

Manu Sharma’s defense lawyer ‘Ram Jethmalani’ argued in the Supreme Court that his client was maligned and targeted by the media “before and during the proceedings”, which proclaimed him guilty even after the trial court acquitted Manu Sharma. But the SC rejected this argument and was of the opinion that some news items and articles that appeared in the press soon after the occurrence of the crime created some form of confusion within the minds of the people with respect to the “description and number of the actual assailants/suspects”.



The Court further admitted that the accused was affected by the “trial by media” regardless of the fact that the impact was to a very limited extent, but believed that it had no effect on the High Court’s decision. The Court also held on the role of the media that if the freedom of the media is unregulated and unrestricted then it may lead to a serious risk of prejudice by publishing “photographs” of the accused or the suspects even before the identity parades are started or by publishing statements which may completely hold the accused or the suspect as guilty even before the Court has passed any order.

- **NOIDA DOUBLE MURDER CASE (Talwar Murder Case)**

‘Aarushi Talwar’, a 14 year old girl and ‘Hemraj Baanjade’, 45 years old, was murdered. The case remains unsolved till today. Aarushi was the only child of Dr. Rajesh Talwar and Dr. Nupur Talwar and Hemraj was their domestic worker who lived with them. On 16th May 2008, Aarushi’s dead body was discovered and at that time main accused was the servant Hemraj who was missing. However, on 17th May, Hemraj was found dead on the terrace. Failure in securing the crime scene brought heavy criticism to the police. When Hemraj was found dead, the police considered Rajesh Talwar as the prime suspect and claimed that after found out Aarushi and Hemraj in an “objectionable” position, he murdered them or because Rajesh's alleged extra-marital affair had led to Hemraj blackmailing him and Aarushi confronting him.

Later the case was transferred to CBI, which initially declared the parents innocent and suspected ‘Krishna Thadarai’ (compounder in Rajesh Talwar’s Clinic), ‘Rajkumar’ (domestic helper for Talwar’s friend) and ‘Vijay Mandal’ (domestic helper of Talwar’s neighbor. The suspicions were based on a Narco Test but all the three men were released due to lack of solid evidence.

In 2009, the investigation was handed over to a new CBI team. But they recommended closing the case because of critical gaps in the evidence. Rajesh Talwar was considered as the sole suspect based on circumstantial evidence but because of lack of solid evidence, they refused to charge Rajesh Talwar. They called the suspicion baseless and

also opposed the closure. CBI Court also rejected the claim by CBI about lack of evidence and proceedings were ordered against the parents. In the year 2013, the parents were declared guilty and were sentenced to life imprisonment. In 2017, they were acquitted by the Allahabad High Court, calling the evidence against ‘Talwars’ as not satisfactory and they were given the benefit of doubt.

There was huge media coverage in this case. Both the print and electronic media was overloaded with the news of Aarushi Talwar’s murder in 2008. It was very shocking to see media’s insensitivity while reporting about the incident. They began simulating objectionable scenes of Aarushi and Hemraj together and Rajesh coming with a golf bat and hitting them.

They were trying to portray Rajesh as the murderer without any Court verdict. Many spoke about the character of the minor girl, who already died. Even some of the media houses stooped so low that they kept talking about wife swapping and how it lead to Aarushi’s death because she came to know about the dark secrets of her parents. All of these severely affected the reputation of the minor girl, the family and also the people who were mentioned by the media involved in such wrongdoings.

A PIL was filed by Dr. Surat Singh, an Advocate, disappointed by the role played by the press in the case. The SC expressed its serious concern regarding the coverage of the Arushi Talwar’s murder case by media. The Court said that the media, both print and electronic, while publishing any news relating to the case in question should be cautious because it may prejudice the “defence of the accused” or may damage the reputation of every person associated.

- **SUNANDA PUSHKAR DEATH CASE**

Sunanda Pushkar, wife of renowned politician Shashi Tharoor, was found dead in a hotel in Delhi on January 17, 2014. Shashi Tharoor informed the Delhi Police about the same. The body was recovered by the police and was sent for postmortem. Initial reports claimed that it was a suicide but later reports mentioned that the reason of death was not natural and injury marks on the body were revealed in the preliminary autopsy report given by AIIMS. Drug overdose was indicated as the reason of death in the autopsy

report. Finally, an investigation was ordered by Sub-Divisional Magistrate to scrutinize the reason of poisoning and to find out whether it was a suicide or murder. By October 2014, the medical team examining Pushkar’s death came to a conclusion that the death was due to poisoning.

Then the police on January, 2015 filed an FIR and a murder case was registered against an unknown person. On the very same day of her death, without any delay, media reached crime scene and since then we have been witnessing the story of mysterious murder case dominated by the media. When the Delhi Police Commissioner was asked by the media houses about labeling Tharoor as the prime suspect, then he refused to label Tharoor and said that they were in no hurry to question Tharoor. But as the media always does, started with their media trial and declared Shashi Tharoor as the murderer.

Instead of putting up actual facts, media focused more on politicizing the case, disclosing half-truths, cherry-picking the facts and twisting the statements was more preferable. Some of the media houses were continuously showing a statement of some distant cousin of Pushkar claiming that it was a clear case of murder and Tharoor was the murderer.

The Court was of the view that after the commencement of the criminal investigation, media reporting needs to be sensitive to the uncertainty relating to the questions that arose in the proceedings. The “press” cannot declare anyone convict or insinuate anyone guilty or make any kind of unsubstantiated claims. Care and caution must be taken by the press while reporting on pending trial or matter under investigation. Media is not restrained from informing about the facts of a case but is restrained from making any prior judgment because it is not competent to conduct a trial.

In the year 2017, Shashi Tharoor filed a defamation suit in Delhi High Court against a well-known media house. The Court observed that the “right to silence” of Shashi Tharoor must be respected by the Journalist and his channel during the pendency of the investigation in his wife’s death case. The Court further said that the Journalist and his channel are free to state facts in relation to the investigation but cannot announce Shashi Tharoor to be the murderer. The ground on which the suit was filed was that by incriminating Shashi Tharoor in the death of Sunanda Pushkar it risked prejudicing the investigation and any subsequent trial. The suit also raised the concern for a balance

between free speech and media trial.

The media was blatantly putting out personal conversations maligning people, confidential medical reports etc. They were trying to play an autopsy surgeon, cop, scientist, investigator, forensic expert and most significantly trying to role play a judge, which affects the proper administration of justice. This trial by media on Sunanda Pushkar’s death case creates the necessity to have a formal entity to set out some norms and responsibilities to be taken up by media about media ethics because they have miserably failed in their promise of self-regulation.

- **TARUN TEJPAL SEXUAL ASSAULT CASE**

There was an accusation of rape against the chief editor of “Tehelka” Mr. Tarun Tejpal on his colleague. The accusation was brought by a women journalist who worked with Tejpal and accused him of sexually assaulting her in an elevator in a 5 star hotel in Goa during the conference- ‘Think Fest’ which was organized by

“Tehelka”. In June 2017, a trial court in Goa passed an order by restricting the publications of court proceedings. It held that the proceedings will take place in-camera. It was meant for preserving the dignity, privacy and respect for both the parties involved in the case. On 28 May 2018, a renowned news channel showed a videotape depicting two persons whom the channel claimed to be Tarun Tejpal and his colleague. It was CCTV footage and it was shown repeatedly in the channel’s prime time show. The channel did not show any kind of respect for the “rights of the accused” or the “privacy of the complainant”. Both the parties to the case were relying on that video and other evidence to support their contentions.

During a trial, a witness is discredited based on the statements and evidence given to the court and by the cross-examination of the witness. In this case, cross-examination did not take place when the channel improperly presented views which discredited the victim. This parallel trial by media based on the video footage could change the public perception with respect to the case, which eventually could act as an “unwarranted external force” on the judicial process.

SC lawyer ‘Rebecca Mammen’ responded to such violations committed by the Channel- “Section 327 (2) and (3) of The Code of Criminal Procedure makes it clear that Rape trials shall be conducted in camera. It further states that it shall not be lawful for any person to print or publish any matter in relation to such proceedings, except with the previous permission of the court. The footage that was aired yesterday is an exhibited document in the trial. In an ongoing trial, you cannot play any footage on your night show without the permission of the court. The court had not granted any such permission. On the contrary, it has prohibited public viewing of the footage.”

Such debates and discussions by media has the potential to manipulate the viewer’s mind. It also becomes difficult to protect the judiciary from being influenced by the public pressure which is created by media. After the controversy, all the information and online videos of that debate was deleted from the website of the channel, perhaps because of fear of legal consequences. But this does not correct the wrong done by the channel which has affected the reputation of the parties involved in the case, also how it affected the trial.

### **ILL EFFECTS OF MEDIA TRIALS-**

There have been instances where the media has played a vital role in bringing justice to the accused in a heinous crime, but the question arises that to what extent this principle of “free speech” can be expanded to subvert “fair trial”? Trial by media not only encourages the people to rely more on immediate media justice rather than waiting for the Court of law to give its verdict on any particular case, but also, lets people at large believe that sensationalizing the case and gaining public sympathy would lead a person to win a case.

In our country, the media has transformed into a “Populace Court” or “Janta ki Adalat”, trying to hold “media trials” not only to represent a biased opinion before the declaration of a verdict but also generating a pressure on the courts to settle in accordance with their opinion. Now days, “public interest” is not important but “what the public is interested in” is more important.

## **HISTORICAL BACKGROUND OF FREEDOM OF SPEECH AND EXPRESSION (COMPARING DIFFERENT COUNTRIES)-**

- **FREEDOM OF SPEECH AND EXPRESSION IN ENGLAND**

It is in the 17th century when the actual progress started. The Petition of Right, 1628 is an important document which indicated at least in theory that a person cannot be detained simply because he disagreed with the government. Through this document, certain rights and liberties were set out for the ordinary man as against the prerogatives of the Crown.

Seditious libel was widely restricted in England, where truth was not considered as a defense and King was protected from any form of criticism. Censorship was considered as King's Star Chamber product and got abolished in the year 1641. During the 1520s, the clergy was believed to introduce licensing which was then formalized in the year 1538 by King Henry VIII of England.<sup>9</sup>

With the guarantee of free speech comes the guarantee of the free press and this freedom is also not unrestricted. Article 6 of ECHR provides that “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.” Since the United Kingdom joined the ECHR, the provisions dealing with the fair trial also applies in England and the freedom of the press can be curbed if it harms the interests of justice.

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<sup>9</sup> 3 Richard Allsop, The Difficult History of Free Speech, LVI (1-2)| Quadrant| (2012)

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- **FREEDOM OF SPEECH AND EXPRESSION IN UNITED STATES OF AMERICA**

In the colonial period, the regulations of English speech were very restrictive. The government was protected from being criticized and the criticism was protected by the English common law relating to seditious libel. A good opinion by the people about the government was very necessary and this was the reason behind such prohibition as explained by Chief Justice John Holt. There was this detailed licensing system in England till 1694.

“The First Amendment serves not only the needs of the polity but also those of the human spirit – a spirit that demands self-expression.”<sup>10</sup> It is the right to speak one’s mind defiantly, irreverently and robustly because it is one’s mind. What is presumed is that freedom of speech is always protected, unless a particular exception applies. “Freedom of speech” is extremely important in U.S.A., but it is not absolute. There may be certain limitations or restrictions on the First Amendment. And any conflicts relating to it are to be resolved by the courts. These exceptions to the “right of freedom of speech and expression”, which makes the right limited, are recognized by the Supreme Court of the U.S.A. which required a government-granted license for any publication.

Restraint can be put on the broadcasters by the government on a “content-neutral” basis, i.e. “time, place and manner restrictions”. In *Federal Communications Commission v. Pacifica Foundation*<sup>11</sup>, the Supreme Court validates the FCC’s power to control “indecent” materials broadcast over the air. It is allowed because the “broadcast media” are a “uniquely pervasive presence” and easily reachable to children. But simultaneously the Court makes it clear that there cannot be an absolute ban on such speech.

## **SUGGESTIONS**

Trial by media can be reduced by certain changes and addition of laws in the existing laws. These are some of the suggestions which can be taken into consideration.

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<sup>10</sup> *Procunier v Martinez*, 416 U.S. 396 (1974).

<sup>11</sup> 438 U.S. 726 (1978).

- To prevent the media from making any prejudicial publications and affecting the administration of justice, there is a need to make changes in the Contempt of Courts Act, 1971. The time of the ‘arrest’ should be made the initial point of “pendency of a criminal proceeding. This will help in restricting the media from making prejudicial publications from the time of ‘arrest’. This suggestion of changing the initial point does not mean that all kind of media publications are not permitted after ‘arrest’, but it means that it would restrict prejudicial publications. The same has also been recommended by the 200<sup>th</sup> Law Commission Report. This recommendation has not yet been implemented. But its implementation would help bring a change.
- The Press Council of India<sup>12</sup> (PCI), which is a statutory body who has also been concerned about this issue. They have been trying to improve and maintain the standards of print media. But the issue is that they have been endowed with limited power under the Press Council of India Act, 1978. Under this Act, in Sec.14, the Press Council can only have the power to “warn, admonish or censure the newspaper, the news agency, the editor or the journalist or to disapprove the conduct of the editor or the journalist” if the standards of “journalistic ethics” or public taste have been committed by the editor or a working journalist. Therefore, a mere warning is not sufficient. There has to be some kind of fine imposed on the media houses so that the harm can be prevented. Amendment in this Act would make PCI more powerful and accountable.
- The Press Council Act, 1978 only deals with the print media. There is a need to include electronic media within its broad ambit. The electronic media should also be made responsible for the news they are disseminating to the public. Self- regulation of the broadcasting media cannot be an answer to the problem of media trials. When there is no fear of punishment, there is no control over media trials. But if the broadcasting media is inserted into the said act then there will be some form of external regulation.
- There should be a prescribed minimum standard to enter into the profession of media. The media persons should be made aware about the media laws and also about the restrictions on media. Journalism syllabus should also include ethics and media laws. Not only this, but it should also deal with important laws from the point of view of media, for

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<sup>12</sup> Press Council of India, 1966.



example- the laws relating to contempt of court or defamation. It will help them to be aware of their boundaries from the beginning of their professional life.

In addition to the above suggestions, what is majorly required is for the media as an institution to be more careful while expressing their views and opinions over an issue, since media trials should never be appreciated. It is important for them to understand that “freedom of speech and expression” does not empower them to express whatever they want.

### **A WAY FORWARD-**

With ever so fast growing advances in the electronic press and media as a whole, there have been serious issues and concerns with the quality of information that is put out before the public at large. In a democratic country like India, where there are different religious group different political ideologies, then it becomes very essential to ensure that each individual has their basic right to freedom of speech and expression. Amongst the same freedom, comes the freedom of Press as well. They act as safeguards and disseminate news and information regarding the social, political, economic, technological and legal news happening around the world. It keeps people informed. The problem arises when people are misinformed. This is the case of media trials. Media trials has gained popularity since a few years more because of the fact that people tend to believe what is presented to them with more spice and controversies. TRP’s have become more vital than the quality of news being transmitted.

There is no doubt on the fact that without an active media there would be no essence of democracy. But the same cannot be compromised by conducting media trials in the name of freedom of speech. Though freedom of speech gives a person to express whatever they feel or believe, but again no freedom is absolute and unrestricted, especially when it comes to freedom of speech and expression. There has to be certain check points when one is given the authority to speak, broadcast or publish any form of information. The reason behind the same is simple- since it reaches a very large chunk of people and is for the public at large to consume.

Not only do they have an ill effect on the accused in any particular case, it does harm the image and reputation of the victim, their family, people associated to the case and so on. Majorly it

makes people lose trust in the judicial system and the process in which the judiciary function. Because when there is a media trial, there is a judgment by the media house over a case which is already pending before the court of law and is under trial. But because of media trials, the accused is already considered as a convicted and guilty person. Such sensationalisation somehow sub judices the case, makes it difficult for the witnesses to be authentic and for the evidence to not be tampered. Though judicial body needs to function in accordance to law and deliver the judgment on the basis of the evidence presented before them. Due to media trials, there is external pressure on the judicial body as well before it delivers their judgment.

Media has a lot of power. There are numerous instances where the media coverage has actually aided in speedy justice, but in those situations as well, the court has taken note that the same shouldn't turn into media trials. Media's role isn't to investigate and declare someone a suspect into a convict. Its role is to inform the people about the facts, about the advancements in the proceedings, about the probabilities and public opinion. They forget while reporting that every person has right to privacy and right to be silent. While reporting about the offence, they forget that not all the personal information about a person's life is open for public scrutiny and cannot be put to public domain. This needs to be kept in mind more because before there is any judgment from the court regarding the conviction of the accused, people already convict the person due to media trials. This isn't good for the democracy and is also in violation with the basic freedom rights of the accused.

Recently CBI probe in the Sushant Singh's case, where the death of the victim is still a mystery and the court hasn't given out the verdict as to whether it is Rhea Chakraborty behind the suicide or not. The public has already considered Rhea as a convicted person and there has been immense media interference in the case. Even though the investigation and trial is still going on, media has presented the case, the witnesses and evidences in their own manner, making a public opinion. They pounced at her every time she was asked to come for interrogation, her private space was infringed, her family had to suffer lot and there has been defamation. It has happened in Talwar's case, Tharoor's case and so many other cases as well.

There needs to be strict regulations regarding the issue of media trials. Freedom of speech and expression is for a person to freely express what they feel, or what they are contended. It

shouldn't be exploited or misused in some other manner. Media acts as the voice of the public and should be the same; it shouldn't create hindrance with the judicial processes.

## **CONCLUSION**

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. Media trial has potential effects on the subconscious of judges which will further affect the proper administration of justice. Though judiciary has not clearly accepted that the judges are influenced by media trial but has shown concern about its potential effects on the judge's subconscious.

And a powerful independent media helps in bringing positive changes in the society. To achieve all of these purposes freedom of the press is very important. But at the same time, it is also expected from the media that it does not derail from its path and get involved in sensationalizing news, distorting facts, damaging reputation, making judgments etc. So, the freedom cannot be unbridled because it may affect the administration of justice and harm any individual and society at large.

The SC and the HC have the powers to punish for their contempt under Articles 129 and 215 of the Constitution of India. On this ground, the freedom of media can be restricted if it obstructs the “due course of justice” or lessens the prestige or authority of the court. Media trial is a serious issue which needs to be properly addressed and if the circumstances demand strict restraints, they should be imposed on media to prevent them from indulging in such activities of media trial.