

TRIAL BY MEDIA – A DISCORD OF RIGHTS

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INTRODUCTION

One of the pillars of any democratic nation is the freedom to free speech and expression. It is a core freedom without which a democracy cannot survive. The fact that people can voice their opinions without any fear forms one of the very important characteristics of any democracy. In India, this right can be found deeply embedded under Article 19(a) of the Constitution. This right, by judicial interpretation also includes *inter alia* the freedom of press.

The importance of freedom of press has been recognized world-wide, because of the crucial role it plays in the political development and social upliftment. The issue was discussed at lengths at the Dakar Conference on World Press Freedom in 2005 wherein it was stated that “*An independent, free and pluralistic media have a crucial role to play in the good governance of democratic societies, by ensuring transparency and accountability, promoting participation and the rule of law, and contributing to the fight against poverty.*”

The importance of this right despite being widely recognized the chances of unlimited right being misused cannot be ignored. To curb such misuse, certain restrictions have been put on the same by Article 19(2) of the Constitution. The need to reasonably restrict the freedom of press has also been reiterated time and again by various Indian courts.⁴²³

TRIAL BY MEDIA: THE PHENOMENA

The idea that popular media can have a strong influence on the legal processes is well known and goes back as early as the advent of the printing press. . The Supreme Court has described trial by media as “*the impact of television and newspaper coverage on a person’s reputation by creating*

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⁴²³ Romesh Thaper v. State of Madras SC AIR 1950, CPI (M) v. Bharat Kumar AIR 1998 SC, Hamdard Dawakhana v. Union of India AIR 1960 SC

a widespread perception of guilt regardless of any verdict in a court of law."⁴²⁴ While, it is important that media scrutiny of cases be done to make the public aware, but the degree to which media can be let to interfere in a particular case has to be put under careful scrutiny. A biased report can mould the mindset of the people and the public sentiment aroused thereby can seriously affect the trial of the accused. . Television reporters, often start acting as a separate judicial body while conducting debates, demonizing an accused and building a strong public opinion against him. Members of the judicial system have come down heavily on the media houses, criticizing the practice of trial by media time and again, as unethical. Mr. Dhananjay Mahapatra remarks: "*Over the years...a large number of trials have been hijacked...the accused have succeeded in manipulating the witnesses...judges and lawyers have remained handicapped.*"⁴²⁵

WHAT IS FAIR TRIAL?

"A fair trial is one in which the rules of evidence are honored, the accused has competent counsel, and the judge enforces the proper courtroom procedures - a trial in which every assumption can be challenged."-

Harry Browne

The Right to fair trial of an accused forms the corner stone of a just society. This is a very basic principle of criminal jurisprudence and has been accepted by the judiciaries worldwide. Article 10 of the Universal Declaration of Human Rights explicitly proclaims the Right to fair trial of an accused, while in the United States, the Sixth Amendment to the United States Constitution, and in Europe, Article 6 of the European Convention of Human Rights, as well as numerous other constitutions and declarations throughout the world emphasize on the right to fair trial of an accused. Judicial impartiality was recognized as a vital right along with the right to fair trial in the Bangalore Principles of Judicial Conduct, 2002. These principles were later presented in the UN Commission on Human Rights in 2003 and were approved by the member nations and

⁴²⁴ Anand v. Registrar, (2009) 8 S.C.C. 106 (Del.)

⁴²⁵ Dhananjay Mahapatra, Criminal Justice System Has Collapsed: SC, Times Of India, Feb. 6 2009

accepted as Universal Principles⁴²⁶. This right has also been recognized under Right to Life guaranteed by Article 21 of the Indian constitution.⁴²⁷

There are various aspects of the right to a fair trial : An adversarial trial system, independent judges, presumption of innocence, and knowledge of the accusation, trial and evidence in the presence of the accused, prohibition of arbitrary arrest and detention, right to legal counsel to respond to the charges etc. all form a part of a Fair Trial. The concept cannot be limited to a statute and the Courts in India have gradually expanded its ambit to include various aspects of criminal procedure. 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. In *Zahira*⁴²⁸, the apex court observed that:

There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted.... 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.

In order to make sure that the trial is conducted in consonance with the principles of Fair Trial, there must be no bias for or against the accused. The convict must be given a fair chance to be heard and this is where the law comes into conflict with the concept of media reporting, giving rise to the term ‘Media Trial.’

FREEDOM OF SPEECH V. FAIR TRIAL : A DISCORD OF RIGHTS

⁴²⁶ ECOSOC 2006/23, reference to the principles by the Commission on Human Rights of the United Nations General Assembly in 2006 A/HRC/4/25, Paragraph 19.

⁴²⁷ Citation required

⁴²⁸ *Zahira Habibullah Sheikh & Anr vs State Of Gujarat ((2004) 4 SCC 158)*

Transparency is the key to the successful functioning of a democracy and the media serves as a key facilitator in bringing about transparency in the functioning of a state.. The media is considered to be relatively free from an overall controller, and as such serves an important role in maintaining freedom and different opinions throughout society. It plays a significant role by highlighting several wrongdoings and serving the needs for justice. The courts also usually respect this right of the media and it is only in exceptional circumstances that they go to the extent of imposing control over it. The Supreme Court in the case of *Naresh Shridhar Mirajkar* observed⁴²⁹:

A Court of justice is a public forum. It is through publicity that the citizens are convinced that the Court renders evenhanded justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the Court proceedings. The publicity generates public confidence in the administration of justice. In rare and exceptional cases only, the Court may hold the trial behind closed doors, or may forbid the publication of the report of its proceedings during the pendency of the litigation.

Broadcasting was a monopoly of the State till 1990, with a government owned and controlled channel as India's only source of news.⁴³⁰ However since 1990 private players were allowed to enter the market and since then the sector has played an invaluable role in bringing certain issues of public importance to light. Time and again, media has evolved as one of the most powerful machineries to bring issues related to a particular case to public knowledge, initiating discussions and deliberations on the nuances of the cases, often building a public opinion on the matter and thereby influencing judicial decisions on such cases, for or against. A thorough discussion of a few of these cases has been highlighted below:

Jessica Lal Murder Case⁴³¹

⁴²⁹ *Naresh Shridhar Mirajkar And Ors vs State Of Maharashtra AIR (1967) SC 1*

⁴³⁰ Khozem Merchant, *The Television Revolution: India's New Information Order (Reuter Foundation Paper 42, University of Oxford)*.

⁴³¹ *State vs Siddarth Vashisth & Manu Sharma, 2001 IIIAD Delhi 829*

This is perhaps the best example of how media investigation, if done correctly and in the right spirit can work wonders to serve the interests of justice. Jessica Lal, an upcoming model was working as a celebrity bar tender at a party lauded with high profile socialites and guests when she was shot in the head by one, Siddharth Vashisht aka Manu Sharma for serving him alcohol when he asked for it after closing hours. It is important to note here that Manu Sharma is the son of a prominent Congress leader. The seemingly long trial continued for a good seven years and ended with the acquittal of the accused in 2006. This was mostly owing to the fact that almost all the witnesses had turned hostile and claimed, in some way or the other, to not know anything about the accused. The acquittal led to a huge public outcry against the injustice being done to Jessica and her family. It was believed that his acquittal was a result of his father's powerful position and was highly condemned. Pressure mounted on the judiciary and the Delhi High Court admitted an appeal against the previous order. A magazine called "Tehelka" played its part in solving the mystery behind the hostile witnesses and embarked on a mission to unravel the truth. It conducted a sting operation on many of the hostile turned witnesses and caught them on camera accepting that Manu Sharma's father had bribed them. Based on all the evidence collected, Manu Sharma was finally brought to justice and was given life sentence.⁴³²

Priyadarshini Mattoo case⁴³³

Santosh Kumar, son of a soon to be Additional Commissioner of Police, Delhi, harassed a law student. However even after regular police complaints, he was let off after warnings owing to the influential position his father held. Santosh Kumar then raped and murdered the girl at her residence. The CBI, after taking sufficient evidence arrested Santosh, who later was acquitted by the Additional Session Judge due to lack of evidence and benefit of doubt. Public emotion and unrest against such cases was already at its peak due to recently concluded Jessica Lal case and the media decided to intervene again and got into investigation mode again. It was found that vital evidence had been overlooked and on appeal by the CBI the earlier judgment was reversed within

⁴³² Alvarez, Lisette, "Justice for Jessica: A Human Rights Case Study on Media Influence, Rule of Law, and Civic Action in India" (2011). *Honors Theses. Paper 49*. <http://diginole.lib.fsu.edu/uhm/49>

⁴³³ *S.K. Singh v. State through CBI*, Criminal Appeal No. 87 OF 2007, SC

a span of a meager 42 days and Santosh Kumar was convicted under Section 302 and 376 of the Indian Penal Code.

Nitish Katara Murder Case⁴³⁴

Nitish Katara, an IIT'ian and son of an IAS officer and a businessman himself, had been in a four year relation with one of his classmates, Bharti Yadav, whose father was an influential criminal turned politician. The family being against their relationship, her brother brutally hammered Nitish to death and later burnt his body and disposed it off at a highway. Initially the Bharti conceded to her relationship with Nitish, but two weeks later, due to pressure from her father and family, she refused to have ever shared any relation with Nitish other than that of a usual classmate. The media pressure however was surmounting and she conceded. The media also brought the fact into light that the accused had already confessed to his crime, which was not brought before the court by the investigating officer, as he was a business associate of Bharati's father.

There have been several other such cases such as the Nirbhaya rape case, commonly referred to as the Delhi gang rape case, Bijal Joshi rape case etc. wherein the media brought the true facts in the public arena which amounted to a strong public pressure on the police as well as courts to bring fast justice to these cases. Not only in India, but all over the world the media has been like a god's hand even for families and friends of either the victim or the accused who has been wrongfully convicted. Such was the celebrated case of Stephen Downing⁴³⁵ of Derbyshire where a campaign by a local newspaper editor resulted in a successful appeal and his release after twenty-seven years in prison.

Relentless reporting by the media in such cases have time and again brought about speedier justice for the victims, and the immense role it has played in ensuring the same cannot be overlooked.

However, unbound freedom can more often than not has negative consequences. . There have indeed been several occasions where the media has tried to unduly interfere with the judicial process, and at the same time interfering with the of fair trial of an accused.

An observation made in *Shaji v. State Of Kerala* reads thus:

⁴³⁴ State v. Vikas Yadav & Vishal Yadav, SC No. 78/2002

⁴³⁵ R. v. Stephen Downing [2002] EWCA Crim 263

the media has always unfairly conducted a trial against accused and has tarnished them black. This Court may steer clear of any such impressions, which may be left behind by such unfair media trial... These are days of fierce competitive journalism and in the search for attractive headlines, no holds appear to be barred. There is long queue of obliging jurists, lawmen, opinion makers, cultural leaders etc., (not to speak of busy bodies) of the genuine and pseudo varieties making a beeline for the head lines in the media.⁴³⁶

In 2005, there were accusations all around by the media of a religious leader, Holiness Shri Jayendra Saraswathi Swamigal, of being guilty of a murder. However, the Madras High Court and the Supreme Court both found no credible material against him at all. They in fact came down upon the media for such blatant misuse of their power.

Another example can be seen in almost a century old case of Roscoe Arbuckle an American silent film actor, comedian and director. He was accused on grounds of manslaughter and arrested. After successive trials he was absolved of all charges and set free, his career however had taken a toll of all the coverage the media had given to his case and maligned his image in the film fraternity and in the eyes of his viewers. So much so that he was cited as an example of the poor morals in Hollywood by Will H. Hays, head of Hollywood censor board.⁴³⁷ He was also banned him from working in American movies again. His career was torn into pieces even though he was found 'not guilty'; such was the effect of media in this case.

During the aftermath of the celebrated case of *O.J. Simpson*⁴³⁸ it was observed by Laura Alber, a commentator that: "if O. J. Simpson was guilty, the media was responsible for his acquittal".⁴³⁹

She was referring to the public opinion built by the media in favor of a 'not guilty' verdict. More often than not, the press is said to reflect to views of the common man. More credibility is generally

⁴³⁶ Shaji v. State Of Kerala, 2005 (4) KLT 995

⁴³⁷ http://www.crimelibrary.com/notorious_murders/classics/fatty_arbuckle/8.html

⁴³⁸ People of the State of California v. Orenthal James Simpson *Case No. BA097211*

⁴³⁹ <http://www.unilawbooks.com/jan/lawyersupdate-01.htm>

accorded to printed material rather than flying word of mouth gossip and rumors. This must be understood by the media and must be used with care.

Further, in the case of *Saibal Kumar v. B.K. Sen*⁴⁴⁰, the Supreme Court tried to discourage the tendency of media trial and observed ,

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.

Though role of the media cannot be ignored, the right of an accused to a fair trial, a cornerstone of the justice delivery system, should be ensured with resolution. . The Delhi High Court while ruling in support of the right to fair trial of the accused commented upon the role of media as herein stated:

It is said and to great extent correctly that through media publicity those who know about the incident may come forward with information, reduces crime through public expression of disapproval of the crime and last but not the least it promotes the public discussion of important issues. All this is done in the interest of freedom of communication and right of information little realizing that right to a fair trial is equally valuable. The European Court of Human Rights has emphatically recognized such a right.

Trial by media can cause irreparable and irreversible harm to the reputation of a person and he might be ostracized, humiliated and convicted without a fair hearing. All this puts a grave risk on administration of justice.

⁴⁴⁰ 1961 AIR 633

This misuse of power by the media has revealed the negative sides of media trial, making it necessary to strike a balance preventing to act as a deterrent to fair trial of cases.

CONTEMPT OF COURTS ACT, 1971

Perhaps the most important of the judicial safeguards to keep a check on the media is the Criminal Contempt of Media under Contempt of Courts Act, 1971. The act splits the offence of contempt of court into civil and criminal. Civil contempt refers to non-compliance of court orders, criminal on the other hand deals with publication of any matter that prejudices the judicial process and obstructs with the delivery of justice.⁴⁴¹ It constitutes scandalizing court or judge, undermining people's confidence in administration of justice and tending to bring the court into disrespect by a scurrilous attack on a Judge questioning his authority.⁴⁴² It is well settled that it is inappropriate for comments to be made publicly (in the Media or otherwise) on cases, which are sub-judice.⁴⁴³ However, keeping in view the fact that the public has a right to be kept informed about court proceedings, a few exceptions to the general rule has been provided for.

- Sec 3- Innocent publication and distribution of matter not contempt
- Sec 4- Fair and accurate report of judicial proceeding not contempt.
- Sec 5- Fair criticism of judicial act no contempt
- Section 7 mentions when publication of information relating to proceeding in chambers or in camera is not contempt.

The media has an important role to gather what is happening in courts and to disseminate the information to the public, which in turn enhances the public confidence in the transparency of court proceedings. Fair and accurate reporting of a case would still give rise to substantial risk of prejudice for cases. 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 rationale behind Section 4 is to grant a privilege in favor of the

⁴⁴¹ Section 2(b) and 2(c), *The Contempt of Courts Act 1971*.

⁴⁴² *Dr. D.C. Saxena v. Hon'ble The C.J.I., J.T. 1996(6) S.C. 529*

⁴⁴³ *Sahara India Real Estate Corp. Ltd. & Ors. v. Securities & Exchange Board of India & anr, C.A. No. 9813 of 2011 and C.A. No. 9833 of 2011*

person who makes the publication provided it is fair and accurate. This is based on the presumption of "open justice" in courts.

At present, under sec. 3(2) of the Contempt of Courts Act, 1971 read with the explanation given therein, full immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case. However this was done only if, by the date of publication, a charge sheet or challan is not filed or if summon or warrant is not issued. Therefore, all publications made after arrest but before filing of a charge sheet or challan, are immune. This once became a hot topic of debate and it was before the law commission to recommend whether this should be allowed to stay or publications must be regulated from the time of arrest.

The commission observed that before 1971, the common law principles were applied to treat prejudicial publications made even before the 'arrest' of a person as contempt. Some courts even treated prejudicial publications made after filing of an FIR as "criminal contempt". A Bill was prepared by the Sanyal Committee in 1963 for this very purpose, which put forth a proposal that for criminal matters, the date of "arrest" is crucial, and just be held to be the starting point of pendency of a trial. This however was dropped by the Joint Committee of the Parliament (Bhargava Committee). The Joint Committee decision however turned out to be flawed as the Supreme Court⁴⁴⁴ in 1969 held that a prejudicial publication made after "arrest" could be contempt and agreed with the Sanyal Committee. In that case, the editor of the newspaper, responsible for a prejudicial publication after arrest was held liable for contempt; however a prejudicial statement made by Mr. A.K. Gopalan after lodging of FIR but before arrest was not held to be contempt.

Hence, citing contempt laws in several other countries which held prejudicial publications made before "arrest" as contempt, the Law Commission, in its 200th report⁴⁴⁵ suggested that this has to be rectified by adding a clause 'arrest' in the Explanation below sec. 3 as being the starting point to reckon 'pendency' of a criminal proceeding.⁴⁴⁶

The Contempt of Courts (Amendment) Act, 2006 made an important addition to the Contempt of Courts Act, 1971, to provide for "truth...in public interest" as a valid defense in contempt

⁴⁴⁴ A.K. Gopalan v. Noordeen 1969 (2) SCC 734

⁴⁴⁵ <http://lawcommissionofindia.nic.in/reports/rep200>

⁴⁴⁶ Sec 4(d)(iii), Contempt of Court (Amendment) Bill, 2006.

proceedings. This amendment was recommended by the National Commission to Review the Working of the Constitution (NCRWC)⁴⁴⁷, recognizing the common law “Doctrine of Truth” as a defense in criminal matters.

IMPACT OF TRIAL BY MEDIA ON COURT PROCEEDINGS

When substantial publicity has been received by a case, which ultimately leads to building of an adverse public opinion about the accused, do the court proceedings become invalid? Does the accused have a right to ask for shifting of trial location? This question was posed and was given serious consideration in the case of *R. Balakrishna Pillai vs State Of Kerala*⁴⁴⁸. The petitioner in this case had contended a transfer of his case from the Kerala High Court to the Karnataka High Court on the ground that adverse publicity had been given to his case, involving corruption charges with regards to a Hydro Electric Project, by the media in Kerala and hence he would not be allowed his Right to Fair trial in such circumstances. He also contended that Mr. Justice P.K. Balasubramanian, a member of the bench hearing his case, had already worked against him as part of an enquiry commission set to inquire into the mal-practices of the rectification work in the Hydro Electric Project, which would lead to prejudice against him. His transfer petition was however rejected.

It would be difficult to presume or to draw an inference that the learned Judge, because of assisting the Commission of Inquiry as an Advocate in different matter, would have bias or prejudice against the petitioner and would not render justice in accordance with law. Acceptance of such contention would seriously undermine the independence and stern stuff of the Judges.

Similar contentions were placed before the courts in the Jessica Lal and the Parliament Attack case.⁴⁴⁹ Ram Jethmalani, counsel for the accused, raised a “trial by media” defense. He cited Cardozo; one of the great Judges of American Supreme Court in his "Nature of the Judicial Process" observed that the judges are subconsciously influenced by several forces. A similar view

⁴⁴⁷ Report of The National Commission to Review The Working of The Constitution, para. 7.4.1(2002)

⁴⁴⁸ (2000) 7 S.C.C. 129

⁴⁴⁹ *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru*, (2005) 11 SCC 600

had also been expressed in the cases of *P.C. Sen In Re*:⁴⁵⁰ and *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express*⁴⁵¹. The court, though did not let this argument affect their decision, they were vigilant enough to make the following observation:

“Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. “

In the Parliament Attack case, some argued that the primes accused, Afzal Guru was denied his right to fair trial due to excessive coverage given to his case by the media. This was also one of the contentions raised by his legal representative, Colin Gonsalves, on the basis of which he sought a re-trial before the Delhi High Court. He argued that because of the frizzy media reports and accusations, “serious prejudice was caused to the accused persons” in the mind of the trial court judge. Mr. Gonzalves relied upon the European Court of Human Rights judgments in the cases of *Alenet De Ribemont v. France*⁴⁵², *Wayne Carl Coleman v. Ralph KEMP*⁴⁵³, *Samual H. Sheppard v. E.L. Maxwell*⁴⁵⁴ and *Wilbert Rideau V. State of Louisiana*⁴⁵⁵ and argued that

Pre-trial publicity prejudicially pervades and saturates the community and renders virtually impossible a fair trial. It was argued that so insidious is bias that a person believing that he was actually acting impartially, in his unconscious mind, is affected by the bias and the decision is therefore, the result of a biased mind.

In all the above cases there were unfair and prejudicial news comments. There was a repeated telecast of the confessions. In *Rideau*, a video showing the accused confessing to the police about his alleged crimes was broadcast on local channels. An appeal to change trial venue was denied and accordingly the trial court, and on appeal, the Supreme Court of Louisiana sentenced him to

⁴⁵⁰ AIR 1970 SC 1821

⁴⁵¹ 1988 (4) SCC 592. 147

⁴⁵² 3/1994/450/529

⁴⁵³ 778 F.2d 1487 (54 US LW 2367)

⁴⁵⁴ 384 U.S. 333

⁴⁵⁵ 373 U.S. 723

death. However on appeal, the Supreme Court of the United States reversed the decision observing that there was a prejudice against the accused. In Coleman also it was observed by the Court that public had been “overwhelmed...with prejudicial and inflammatory publicity.

The Delhi High Court however was did not consider these arguments to be good enough to vitiate the trial and order a re-trial. It was observed that trials in India are conducted by judges and by juries. Further, the time lag between the publicity and the conduct of the trial is also a factor to be borne in mind. The court also cited *R. Balakrishna Pillai v. State Of Kerala*⁴⁵⁶, wherein the Hon’ble Supreme Court observed, “Judges do not get influenced by propaganda or adverse publicity” and further *Zee News v. Navjot Sandhu*⁴⁵⁷, wherein it was held that media interviews do not and cannot prejudice judges. They ended by holding that judges are trained and experienced enough to shut their minds to such hearsay evidence by the media. The Court was however quick to comment on this condemn and shun this practice wherein, after remand by a magistrate, the media is allowed to parade the accused in a sub-judice matter with interviews and questions, which then are given bizarre interpretations and telecasted worldwide.

The above examples and excerpts have thus succeeded in establishing that media trial cannot be allowed to vitiate a trial. However, there also have been a few comments from within the legal fraternity, which might lead to establishment of a contradictory viewpoint. The Chief Justice of India, Yogesh Kumar Sabharwal, in November 2006, made a public speech said that “Judges are confused because the media has already given a verdict”⁴⁵⁸, extra emphasis to be given to the choice of words. Similar comments were made by the Delhi High Court⁴⁵⁹ which said that media trial tends not only to influence the general public, but also increases pressure upon judges and that they are human beings too. For now however, it must be assumed that judges are not vulnerable to such acts and situations created by outside world actions.

EPILOGUE:

The discussion above clearly leads to the conclusion that Media trial has negative as well as positive outcomes. If on one hand it has led to harassment of the innocent, it has also led to

⁴⁵⁶ *Supra*, 11

⁴⁵⁷ Appeal (Crl.) 373-375 of 2004

⁴⁵⁸ The Hindu, Sunday, Nov. 12, 2006

⁴⁵⁹ Indian Council of Legal Aid v. State (Govt. Of NCT Of Delhi), WP © No. 17595/2006

conviction of the accused, which would not have been possible without its intervention. The question however is whether such harassment of the innocent is a cost worthy of getting a few guilty to justice? The answer probably lies in a famous statement made by a legendary English jurist way back in the 1760's:- "*It is better that ten guilty persons escape than that one innocent suffer*"⁴⁶⁰

This common law maxim has also been accepted in India, on the basis of which the Supreme Court of India observed that there must be a fact of prejudice being caused. A mere possibility of prejudice being caused is not enough to occasion a failure of justice.⁴⁶¹ However, a balancing approach is the need of the hour. If on one hand there is a need to respect the freedom of speech and expression, a right guaranteed under Article 19, which is also available to the media, it also has to be ensured that on the other hand that it does not converge and violate the right to a fair trial recognized under Article 21.

Much ink has been spilled world-wide about the values served by an unrestrained exercise of freedom of the press. As has been pointed out by several critics, reporting has become a part of an ever growing industry which is commonly driven by commercialization and other business concerns.⁴⁶² It must hence be regulated and kept under check. A journalist cannot and must not be given, at any cost, the right to openly declare a person as guilty or innocent. The 200th report of the Law Commission on "Trial by Media" has been a welcome step in this regard. Media should acknowledge the fact that whatever they publish has a great impact over the spectator and hence, a right balance should be struck by courts while interpretation of cases, between the right to free press and principles of natural justice guiding fair trial of cases.

⁴⁶⁰ Sir William Blackstone, *Commentaries on the Laws of England*

⁴⁶¹ *State v. Mathew*, AIR (1956) SC 536

⁴⁶² Vincenzo Zeno-Zencovich, *Media Liability in the Information Society*, in *The Protection of Personality Rights Against Invasions by Mass Media*