

Freedom of Press and Contempt of Court

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Abstract

Freedom of press, though not expressly mentioned under the Constitution of India but it has been duly recognised through various judicial pronouncements¹. Freedom of Press is, consequently, guaranteed under the Article 19(1)(a) of the Constitution of India which provides for Freedom of Speech and Expression, subjected to restriction. One such restriction is ‘contempt of court’. It was mentioned as a restriction in order not to hamper the administration of justice and the faith of public in the judiciary must be upheld.

With the advent of the ‘information age’, the dimension of free press under free speech and expression has also widened its scope. Media has a freedom of criticising the judicial authorities but in the recent time the same has reach to the extent of tampering with the administration of justice and adopting the role of ‘public courts.’

In a recent judgement², the Bombay High Court has laid down certain guidelines as to what information published by media will attract the liability under the contempt law.

This paper attempts to study the freedom of press with reasonable restriction, contempt of court, imposed on it, and further how it will attract the liability under the contempt law vis-à-vis sub judice rule.

Keywords: Freedom of Press, Constitution of India, Contempt of Court

1. Introduction

Article 19 of the Constitution provides ‘freedom’, meaning thereby an absence of control by state. The rights are exercised but they are not absolute in nature and are subjected to restrictions mentioned in Article 19(2) to (6).³

¹ *Printers (Mysore) Limited v. Assistant Commercial Tax Officer* ((1994) 2 SCC 434), *Romesh Thapar v. State of Madras* (AIR 1950 SC 124), *Brij Bhushan v. Delhi* (AIR 1950 SC 129), *Sakal Papers v. UOI* (AIR 1962 SC 305), *Bennett Coleman & Company v. UOI* (AIR 1973 SC 106), *Indian Express Newspaper (Bombay) Private Limited v. UOI* (AIR 1986 SC 515), etc.

² *Nilesh Navlakha v. UOI* (Public Interest Litigation (ST) no. 92252 of 2020).

³ *State of Karnataka v. Associated Management of (Government Recognised- Unaided- English- Medium) Primary and Secondary Schools* (AIR 2014 SC 2094); *Subramanian Swamy v. Union of India* ((2016) 7 SCC 221), Available at:

<https://www.casemine.com/judgement/in/581180e72713e179479dd9f3>

Clauses (2) to (6) of Article 19 lay down the grounds and the purposes for which legislature can impose 'reasonable restrictions' on the rights guaranteed by Articles 19(1)(a) to (g).

It has been duly established through various judgments that freedom guaranteed under the article 19 can be regulated only under the contours of clauses (2) to (6). The Judiciary is not concerned with the necessity of an impugned legislation, but can interfere only when any law is not made under the restrictions and whether the law has overstepped the constitutional limitations.⁴

Exercise of the Judicial review of the actions or steps taken by the state can be held, but within a limited ambit.⁵

It has been upheld through judicial pronouncement that Judiciary is not immune to the public scrutiny and criticism. Fair criticism is an essence of democracy. Further, public scrutiny and criticism paves way for growth and development.

Media is regarded as one of the four pillars of democracy. Media plays a vital role in moulding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Especially, the advent of cable television, local radio networks and the internet has greatly enhanced the reach and impact of the mass media. The circulation of newspapers and magazines in English as well as the various vernacular languages has also been continuously growing in our country. This ever-expanding readership and viewership coupled with the use of modern technologies for newsgathering has given media organizations an unprecedented role in shaping popular opinions.

However, Freedom of Press under the Constitution⁶ is subjected to reasonable restriction⁷. 'Contempt of court' is one such 'reasonable restriction'. Contempt, can be defined as, 'disregard for something that should be considered'.

In an increasingly competitive market for grabbing the attention of viewers and readers, media reports often turn to distortion of facts and sensationalisation. The pursuit of commercial interests also motivates the use of intrusive newsgathering practices which tend to impede the privacy of the people who are the subject of such coverage. The problem finds its worst manifestation when the media extensively covers sub judice matters by publishing information.

BACKGROUND

A division bench of Bombay High Court, directed that no report/discussion/debate/ interview should be presented by the media that could harm the interests of the accused being investigated or a witness in the case or any such person who may be relevant for any investigation, with a view to stealing a

⁴ *Society for Un-aided Private Schools of Rajasthan v. UOI* (AIR 2012 SC 3445).

⁵ *NK Bajpai v. UOI* (AIR 2012 SC 1310).

⁶ The Constitution of India, 1950. art.19(1)(a).

⁷ The Constitution of India, 1950. art. 19(2).

march over competitors in reporting a story. The court laid down an exhaustive list and guidelines pertaining a restraint on media trials amounting to contempt of court.

A Sessions Court in Delhi, in *State v. Tahir Hussain*⁸ observed that:

Media reporting particularly on the social media remains charged up all the time. Media is free to cover the stories but they must also be conscious of remaining careful and objective in their approach. It is the fundamental right of every person accused of any offence, to be provided the opportunity to defend himself... There is also a disturbing trend about the reporting of exact content of the charge sheet before the cognizance is taken or counsels are even provided the copies of the same. It is one thing to report generally about the chargesheet but quite another to reproduce it as it is and thus, obviously the question of leakage would arise. This is grossly unfair and unjustified and the Court expects that this would not occur in future.

There have been a number of cases which were, in the past subjected to trial by media. Courts have consequently warned the media to not to publish or interfere in the domain of justice delivery system, but still there seems a lot of incidents where media encroaches upon the role of courts.

2. MEDIA TRIAL V. FAIR TRIAL

The word, 'trial' is not defined either in Criminal Procedure Code⁹ or in Civil Procedure Code¹⁰, which are the prime statutes in governing the procedure of trial of criminal and civil cases before the respective courts. However, Section 2(7) of the Bankers' Books Evidence Act¹¹ defines it as:

trial means any hearing before the court at which evidence is taken

Black's Law Dictionary¹², defines trial as:

a formal judicial examination of evidence and determination of legal claims in an adversary proceeding

Thus, the word ordinarily refers to a proceeding before a court for the administration of justice.

Right to a fair trial is absolute right of every individual within the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution. Needless to say, right to a fair trial is more important as it is an absolute right which flows from Article 21 of the constitution to be read with Article 14. The right to freedom of speech and expression is contained in article 19 of the constitution. Article 19(1) (a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression. In accordance with Article 19(2), this right can be restricted by law only in the "interests of the sovereignty and integrity of India, the security of the State, friendly

⁸ CNR No. DLSH01-005147-2020

⁹ The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹⁰ The Code of Civil Procedure, 1908 (Act 5 of 1908)

¹¹ The Bankers' Books Evidence Act, 1891 (Act 18 of 1891)

¹² Bryan A. Garner and Henry Campbell Black (eds.), *Black's Law Dictionary* (St. Paul MN: West 9th edition, 2009)

relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

In *Zahira Habibullah Sheikh v. State of Gujarat*¹³, it was held that:

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.

The Indian media has gradually developed as the primary source of information over the past decades with innumerable newspapers, magazines and other forms of newsgathering available in vernacular languages. News channels, infotainment apps, and the internet nexus have augmented the reach of media. Media has now transformed itself into a ‘public court’ and has started interfering into court proceedings. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’. Now, what we observe is ‘media trial’ or ‘trial by media’ where the media itself does a separate investigation, builds a public opinion against the accused even before the court takes cognizance of the case. By this way, it influences the public and sometimes even judges and as a result the accused, that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty unrepressed.¹⁴

The basic role of the media is to inform, educate and guide the society. Media is the most potent organ of communication which can keep the society well informed about violations of law and court proceedings on important matters in order to expose the breaches of law whenever and wherever that occurs and to ensure fair and just treatment to all. All of us have witnessed how media exposures have made even the mighty and powerful personalities stand before the law of the land and public awareness created by the media has quite often ensured just and fair treatment to seekers of justice who perhaps could not properly ventilate their grievances had there been no appropriate support from the media.¹⁵

The fact that media plays a good role while criticising and bringing out in lime light the ‘other side’ of the democracy by raising their voices against it, yet there has to be a balanced maintained between the two aspects. One cannot be neglected while fulfilling the another.

Interference with the administration of justice is not permissible freedom nor an unreasonable restriction. In a case relating to suicide by wife due to her harassment for dowry, an application for grant of anticipatory bail was rejected by Courts below. When special leave petition from such rejection was pending before Supreme Court, an article appeared in a magazine based on an interview of the family of the deceased, giving their version of the tragedy and extensively quoting

¹³ (2005) 2 SCC (Jour) 75

¹⁴ Mohd. Aquib, Utkarsh Dwivedi, Judiciary and Media Trial: A Need for Balance 5(2) *Indian Journal of Law and Human Behaviour* 155 (2019)

¹⁵ Law Lecture by G.N. Ray, Chairman, Press Council of India on “Reasonableness of restrictions on reporting on matters sub judiced” on August 31, 2008

the father of deceased as to his version of the case which could all be materials that may be used in the forthcoming trial. The Supreme Court took the view that such articles appearing in the media would certainly interfere with the administration of justice and deprecated such practice and cautioned the publisher, editor, and the journalist who were responsible for the said article against indulging in such trial by media when the issue was sub judice.¹⁶

In *Saibal Kumar v. B.K. Sen*¹⁷, the Supreme Court discouraged the tendency of media trial and held that:

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.

The Supreme Court has said that before placing criticism of a judgment in public, all concerned in its publication have to see whether any such criticism of a judgment in public, all concerned in its publication have to see whether any such criticism has crossed limits of fair criticism. Right to freedom of media has to be exercised responsibly and internal mechanism should be devised to prevent publications that would bring judiciary into disrepute and interfere with administration of justice, especially since judiciary has no way of replying thereto by the very nature of its office. Proclivity to sensationalism is to be curbed in every case and it would be no answer to plead that publisher, editor, or others concerned did not know of the contemptuous nature of publication or that it was done in haste. For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both, have to be, therefore, protected. While the media can, in the public interest, resort to reasonable criticism of a judicial act or the judgment of a Court for public good or report any such statements, it should refrain from causing scurrilous aspersions on, or impute improper motives or personal bias to the judge. Nor should they scandalize the Court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge. The judgments of courts are public documents and can be commented upon, analysed and criticised, but it has to be in a dignified manner without attributing motives.¹⁸

3. CONTEMPT OF COURT AS REASONABLE RESTRICTION

(a) CONTEMPT JURISDICTION AND STATUTORY RECOGNITION

The Framers of the Constitution of India, were diligent to recognise the maintenance of dignity of judicial system is essential in a democratic set up. Thereby, empowering judiciary with the justice system, it has been recognised that it has the power to punish itself for its contempt, with contempt jurisdiction. With

¹⁶ *MP Lohia v. State of West Bengal* ((2005) 2 SCC 686)

¹⁷ (1961) 3 SCR 460

¹⁸ *Rajendra Sail v. MP High Court Bar Association* (AIR 2005 SC 2473)

contempt jurisdiction, the judicial authorities have the power to punish the contemnor if defies the order of the court.

As most of the Indian Laws replicate the common law jurisprudence, the law of contempt is no exception to it. The law of contempt, in India, received statutory recognition in the form of Contempt of Court Act¹⁹, 1926 (the 1926 Act). The 1926 Act, not being a comprehensive piece of legislation was repealed and replaced by the Contempt of Court Act²⁰, 1952 (the 1952 Act). However, the scope of the 1952 Act was not wide enough to define as to what constitutes contempt of the court with many other flaws in the enactment. Consequently, the 1952 Act was repealed and replaced by the Contempt of Court Act²¹, 1971.

Under Section 2, of the Contempt of Court Act²², is the definition clause, which prescribes the definition of, ‘contempt of court’, ‘civil contempt’ and ‘criminal contempt’.

(b) CONTEMPT OF COURT UNDER ARTICLE 19(2)

In a democratic society, freedom of speech and expression is a prized privilege and a salutary right of the people. But, at the same time, no less importance is the maintenance of independence and integrity of the judiciary and public confidence in the administration of justice. It thus becomes necessary to draw a balance between the two values.

Power has been specifically conferred to supreme court (Article 129) as well as each High court (Article 215) to punish its contempt. The freedom of speech and expression guaranteed by Article 19(1)(a) is thus subject to Article 19(2), 129 and 215.

On October 17, 1949, T.T. Krishnamachari, a member of the Drafting Committee, moved an amendment to Draft Article 13 (which became Article 19 of the Constitution of India, 1950) and proposed the addition of ‘contempt of court’ as a restriction on freedom of speech. There has been debate on the whether the same should be added or not. Pandit Thakur Das Bhargava, resorted the addition of ‘contempt of court’ as a restriction.

He argued that:

¹⁹ The Contempt of Courts Act, 1926 (INDIA Act XII of 1926).

²⁰ The Contempt of Court Act, 1952 (Act 32 of 1952)

²¹ The Contempt of Court Act, 1971 (Act 70 of 1971)

²² *Ibid.* s. 2

(a) “contempt of court” means civil contempt or criminal contempt;

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding;...

...as a matter-of-fact contempt of law as we understand it consists of a certain piece of conduct not necessarily with freedom of speech, because when you read the law relating to contempt of court, you will find in section 480 of the Criminal Procedure Code that usually the contempt of the ordinary courts of law consists in the infringement of sections 175, 178 and 179 and sections 180 and 288 of the Indian Penal Code. All these sections relate to certain pieces of conduct of the individual.

R.K. Sidhva, in support of not adding the word, 'contempt of court', draws attention on the fact that if the words are so added then, it is only judiciary which will be ultimately which will be hearing the contempt proceedings and delves on to the fact that judges are human beings, which are bound to make mistakes and so it will cause grave injustice to restrict one freedom, freedom of free speech and expression with so many restrictions on it.

...After all, Judges have not got two horns; they are also human beings. They are, liable to commit mistakes. Why should we show so much leniency to them? We must safeguard the interest of the public. If a citizen by way of making a speech condemns the action of a third-class magistrate or a fourth-class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it? It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting "contempt of court".

Naziruddin Ahmad, supporting the amendment deliberates on the fact that if such a restriction is made then there will be newspaper trials of a pending case before the court. He further holds that contempt proceedings should be disposed off through a summary trial.

...If there is no power to proceed for Contempt of Court, any one may start a newspaper trial of a case pending in a Court or it may be that he indulges in public harangues about the merits of a case and thereby seriously prejudice the fair and impartial trial of a case. It is for this reason that contempt of Court has found a place in our statute book. There is an act of 1926 namely the Contempt of Courts Act. There are some contempts which can be punished by even the smallest magistrates. Mr. Sidhva described him as the Fourth-Class Magistrate; there is no such thing at all. If there is a man who interrupts the proceedings of a Court, he should be punished summarily by any Court. There are many other serious kinds of contempt which could be punished only the High Court.

B.R. Ambedkar, in his response to the debate, argued that if slander, defamation, contempt of court etc. are not inserted as constraints into Article 19, then existing laws related to these would become void in light of Draft Article 8. This was the primary rationale behind the inclusion of contempt of court as a restriction into Draft Article 13.

The Constituent Assembly adopted the proposed amendment and contempt of court was added to the list of restrictions in what would become Article 19 of the Constitution, followed with the inclusion of Entry 15A in concurrent list, 'contempt of court'.

Further, Entry 77, List I, states:

Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such court), and fees taken therein; persons entitled to practice before the Court

Explaining the power of Parliament to enact a law with regard to contempt of the Supreme Court under entry 77, the Court has observed that such law may prescribe the procedure to be followed and it may also prescribe the maximum punishment which could be awarded and it may provide for appeal and for other matters. But Parliament has no legislative competence “to abridge or extinguish the jurisdiction or power conferred on this court under Article 129 of the Constitution”. Parliament’s power to legislate in relation to law of contempt relating to Supreme Court is limited.²³

The Court has further observed in this connection²⁴:

...the power to punish for contempt being inherent in a court of record it follows that no Act of Parliament can take away that inherent jurisdiction of the Court of /record to punish for contempt and Parliament’s power of legislation on the subject cannot, therefore, be so exercised as to stultify and dignity of the Supreme Court and/or the High Court...

While the Constitution guarantees freedom of speech and expression, it also lays down that in exercising that right, contempt of Court may not be committed. The underlying idea is that authority of courts be preserved and obstructions to the due administration of justice removed.

Charging the judiciary as “an instrument of oppression”, and the judges as guided and dominated by class hatred” instinctively favouring the rich against the poor” has been held to constitute contempt of court as these words weaken the authority of law and law courts, and have the effect of lowering the prestige of judges and courts in the eyes of the people.²⁵

The Supreme Court has held on the question of contempt of court as:

We wish to emphasize that under the cover of freedom of speech and expression no party can be given license to misrepresent the proceedings and orders of the court and deliberately paint an absolute wrong and incomplete picture which has the tendency to scandalize the Court and bring it into dispute or ridicule... Indeed, freedom of speech and expression is “life blood of democracy” but this freedom is subject to certain qualifications. An offence of scandalizing the Court per se is one such qualification.²⁶

4. MEDIA AND CONTEMPT OF COURT: SUB JUDICE RULE

The latin expression, ‘sub judice’, literally means, ‘under a judge’. Thus, a case which is still under the judicial scrutiny will be held as ‘sub judice’. Thus, the rule restrains the publication of matters which under consideration of court so as to avoid any adverse impact or undue influence on an ongoing case. The rule can be invoked by the court under its contempt jurisdiction as such publication would result in tantamount to the fair trial leading to miscarriage of justice.

²³ *Delhi Judicial Service Association, Tis Hazari Courts v. State of Gujarat* (AIR 1991 SC 2716)

²⁴ *Supreme Court Bar Association v. UOI* (AIR 1998 SC 1895)

²⁵ *EMS Namboodiripad v. TN Nambiar* (AIR 1970 SC 2015)

²⁶ *Narmada Bachao Andolan v. UOI* (AIR 1999 SC 3345)

Explanation of Section 3 of the Contempt of court Act²⁷,1971, prescribes as to what will amount to pending proceedings:

Explanation. —For the purposes of this section, a judicial proceeding—

(a) is said to be pending—

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law—

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

In *Perspective Publications v. State of Maharashtra*²⁸, the Supreme Court held that it is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because ‘justice is not cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.’

However, an article in a daily, criticising a Supreme Court decision, attributing improper motives to the Judges and seeking to create an impression in the public mind that Supreme Court Judges act on extraneous considerations in deciding cases has been held to constitute Court’s contempt. The Court has stated that if an impression were created in the public mind that the Judges in the highest court act on extraneously consideration in deciding cases, public confidence in the administration of justice would be undermined and no greater mischief than that could possibly be imagined.²⁹

In *PN Duda v. P Shiv Shankar*³⁰ the court has observed that:

Any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A scurrilous attack on a judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence

²⁷ *Supra* note 23.

²⁸ (AIR 1971 SC 221, 230)

²⁹ *In the matter of the Editor, Printer and Publisher, Times of India (Daily) Bombay, Delhi* (AIR 1953 SC 75)

³⁰ AIR 1988 SC 1208

of the public in the judiciary; and if confidence in judiciary goes administration of justice definitely suffers.

In *Hiralal Dixit v. State of Uttar Pradesh*³¹,

the supreme court observed that it is not necessary that there should be an actual interference with the course of administration of justice. It is enough if the offending act or publication tends in any way to so interfere. If there are insinuations made which are derogatory to the dignity of court and are calculated to undermine the confidence of the people in the integrity of the judges, the conduct would amount to contempt.

There is no escape from acceptance, obedience or compliance with orders passed by Supreme Court, which is the final and highest court of India. Non-compliance/disobedience of orders of Supreme Court would dislodge the cornerstone maintaining the equilibrium and equanimity in India's governance. Hence, Supreme Court has unlimited powers, in fact sacred obligation to compel obedience and observance of its orders, and may thus direct detention of contemnor to ensure compliance.³²

In *Y.V. Hanumantha Rao v. K.R. Pattabhiram*³³, it was observed 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.

In *Sushil Sharma v. The State (Delhi Administration)*³⁴, it was held by the Delhi High Court that:

Conviction, if any, would be based not on media's report but what facts are placed on record. Judge dealing with the case is supposed to be neutral. Now if what petitioner contends regarding denial of fair trial because of these news items is accepted it would cause aspiration on the Judge being not neutral. Press report or no reports, the charge to be framed has to be based on the basis of the material available on record... The Trial Court has rightly observed that after the charge sheet has been filed, if the Press revealed the contents of the charge sheet it by itself by no stretch of imagination amounts to interference in the administration of justice.

In a recent case³⁵, whilst neglecting the contention of the news channels arguing that the Sushant Singh Rajput case was not sub judice as the matter is still under investigation by the police and no chargesheet had been filed in the court, the division bench of the Bombay High Court held that a person accused of committing a criminal offence cannot be dehumanised, defamed, vilified, or

³¹ (1955) 1 SCR 677

³² *Subarata Roy Sahara v. UOI* ((2014) 8SCC 470)

³³ AIR 1975 AP 30

³⁴ 1996 CriLJ 3944

³⁵ *Supra* note 2.

maligned at the hands of the media even if the case is still under investigation. In other words, interfering with “the administration of justice” is contempt of court and this can occur even if the case is merely being investigated by the police. The court took note of the fact that there were several cases (like the Jessica Lal, Priyadarshini Mattoo, Nitish Katara, and Bilal Joshi cases) in which investigative journalism had played an important role in securing the conviction of the accused. However, investigative journalism, said the court, should not morph into “overzealous” journalism in cases which are sensitive.³⁶

Accordingly, the court passed guidelines and an exhaustive list on which media should have due diligence and exercise a note of caution:³⁷

- a. In relation to death by suicide, depicting the deceased as one having a weak character or intruding in any manner on the privacy of the deceased;
- b. That causes prejudice to an ongoing inquiry/investigation by:
 - (i) Referring to the character of the accused/victim and creating an atmosphere of prejudice for both;
 - (ii) Holding interviews with the victim, the witnesses and/or any of their family members and displaying it on screen;
 - (iii) Analyzing versions of witnesses, whose evidence could be vital at the stage of trial;

5. CONCLUSION

Article 19(1)(a) which lays down freedom of speech and expression is available to public at large and Freedom of press is just another right held under the Article. Further, the three Articles- 14,19 and 21 has to be read together. And consequently, the rights enumerated by the judiciary under Article 21 cannot be neglected in order to hold freedom of press.

Media although permitted to criticize the judiciary, does not inherit the right to encroach upon the role of court.

Whenever there is any sensitive case that comes to be tried before the court, then among the people there is an anticipated upsurge in curiosity. Always looking forward to sensational news, Media including newspapers, television channels, news websites, etc. start publishing their own interpretation of facts. It is called investigative journalism and is not prohibited in India. The influence of media coverage via newspapers and television on an individual by creating a perception of innocence or guilt even before the Court of law announces its judgment, it is termed as “Media Trial” or “Trial by Media”. Although, the term itself is a misnomer.

³⁶ <https://www.bloombergquint.com/opinion/indian-medias-coverage-of-crime-sub-judice-or-sub-police>

³⁷ *Supra* note 2. Available at: https://www.livelaw.in/pdf_upload/bombay-high-court-judgement-in-ssr-media-trial-387625.pdf

In *R. K. Anand v. Delhi High Court*³⁸, the apex court highlighted the consequences of ‘trial by media’ as:

The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial impossible but means that regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.

Judiciary has been diligent to recognise the right to fair trial and in *Naresh Shridhar Mirajkar v. State of Maharashtra*³⁹, a nine-judge bench has emphasised about the efficacy of open trials for upholding the legitimacy and effectiveness of the Courts and for enhancement of public confidence and support, and consequently observed that:

..... It is well-settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in open Court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court room.

Recently, in *Swapnil Tripathi v. Supreme Court of India*⁴⁰, Supreme Court accepting the importance of technology and need for live streaming observed that:

...live streaming of Court proceedings has the potential of throwing up an option to the public to witness live court proceedings which they otherwise could not have due to logistical issues and infrastructural restrictions of Courts; and would also provide them with a more direct sense of what has transpired. Thus, technological solutions can be a tool to facilitate actualization of the right of access to justice bestowed on all and the litigants in particular, to provide them virtual entry in the Court precincts and more particularly in Court rooms... Live streaming of Court proceedings, in one sense, with the use of technology is to “virtually” expand the Court room area beyond the physical four walls of the Court rooms. Technology is evolving with increasing swiftness whereas the law and the courts are evolving at a much more measured pace. This Court cannot be oblivious to the reality that technology has the potential to usher in tangible and intangible benefits which can consummate the aspirations of the stakeholders and litigants in particular. It can epitomize

³⁸ (2009) 8 SCC 106

³⁹ (1966) 3 SCR 744

⁴⁰ (2018) 10 SCC 628

transparency, good governance and accountability, and more importantly, open the vista of the court rooms, transcending the four walls of the rooms to accommodate a large number of viewers to witness the live Court proceedings. Introducing and integrating such technology into the courtrooms would give the viewing public a virtual presence in the courtroom and also educate them about the working of the court.

Hence, a due recognition has been attributed to the changing needs and surrounding developments. However, one of the problems that beset an open democratic society is how to strike a correct balance between, on the one hand, the right to disseminate and receive a free flow of information and, on the other, the right of those who seek justice in the courts to have essential fairness of curial procedures kept free from corruption or distortion by extrinsic influences.⁴¹

The principal way in which the common law has come to protect the integrity of the administration of justice from unwarranted attacks on it has been by the evolution of contempt of court, both as a civil remedy and as a crime. Contempt of court as a legal institution has existed since the twelfth century, so it is almost coeval with the common law itself. Contempt of court, whether civil or criminal, whether committed in the face of the court or out of court, whether committed in relation to imminent, to pending, or to past proceedings, is a remedy aimed primarily, not at upholding the dignity of a court or a judge, but at enabling the administration of justice to operate without undue obstruction or interference.⁴²

The Supreme court has emphasized upon the need for the contempt of court in the following words in, *Om Prakash Jaiswal v. DK Mittal*⁴³:

Availability of an independent judiciary and an atmosphere wherein judges may act independently and fearlessly is the source of existence of civilisation of society. The writ issued by the court must be obeyed. It is binding efficacy attaching with the commands of the court and respect for the orders of the court which deter the aggrieved persons from taking law in their own hands because they are assured of an efficacious civilised method of settlement of disputes being available to them wherein, they shall be heard and their legitimate grievances redeemed. Any act or omission which undermines the dignity of the court is therefore viewed with concern by the society and the court treats it as an obligation to zealously guard against any onslaught on its dignity.

Sub judice rule is an inherent rule which in the garb of restraining the media from inferring the administration of justice, protects other fundamental rights such as, right to privacy, right to fair trial, right to dignity, right to freedom of speech and expression. Hence, although media platforms retorts to the rule and demand for a liberal approach while interpreting the rule and holding contempt proceedings, the fact which has to be taken into account is that the rule actually protects the core fundamental rights of an individual when that particular individual is subjected to due process of law. The rule comes into picture only when there is an ongoing trial in a court of justice, and not before. In that way, it does not hamper

⁴¹ Seamus Henchy, Contempt of Court and Freedom of Expression, 33 *Northern Ireland Legal Quarterly* 326 (1982).

⁴² *Ibid.*

⁴³ AIR 2000 SC 1136

the freedom of press to publish, print, or disseminates information but it only regulates the information which might cause prejudice.

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