

**TRIAL BY MEDIA: LEGAL RAMIFICATIONS AND JUDICIAL SAFEGUARDS**- Suraj Kumar<sup>1</sup>**Abstract**

*In an age where the information travels faster than justice, the courtroom is no longer confined to its four walls. Media Platforms which is celebrated as vigilant guardians of democracy, are increasingly shaping narratives that blur the line between reporting and adjudication. The growing phenomenon of “Trial by Media” raises a fundamental question whether justice can remain impartial if public opinion gets manipulated. The tension between freedom of speech and the right to a fair trial remains at the heart of this debate. While a free press is indispensable to democratic accountability, its unchecked exercise often transforms into a parallel system of judgment that thrives on speculation and sensationalism rather than evidence and due process. In such an environment, the presumption of innocence becomes a mere legal formality, overshadowed by media-driven perceptions of guilt or innocence. Recent high-profile cases demonstrate how relentless coverage, unverified claims and dramatized reporting can irreversibly damage reputations, influence investigative processes and exert pressure on judicial institutions. At the same time, the absence of robust regulatory frameworks, particularly in respect of electronic and digital media intensify the risks of abuse. This discourse navigates the difficult coexistence of two essential democratic values: the right of the public to be informed and the right of an individual to be judged fairly. It interrogates whether the media’s expanding influence strengthens democracy or quietly erodes its foundational principles. By situating the issue within constitutional, legal and ethical lens, it invites a deeper reflection on the urgent need to maintain the balance before the justices are irreversibly impacted.*

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<sup>1</sup> Research Scholar at Chanakya National Law University, Patna

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## I. INTRODUCTION

*“The only freedom which deserves the name is that of pursuing our own good in our own way so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it.”*

*J.S. Mill.*

It is a well-established fact that the freedom of speech and expression is most sacrosanct right for the citizens of the India as different from the United States and United Kingdom where it is available to the non-citizens as well. The latter two countries seem to be more concerned about this right. Internationally, first amendment of the U.S. Constitution, art.19<sup>2</sup> of UDHR, art.10 (1) and (2)<sup>3</sup> of ECHR, and many other countries of the world also recognize the right to free expression. In the United Kingdom also, after the adoption of ECHR in domestic law through the Human Rights Act, 1998, everyone has been given the right to freedom of expression irrespective of the citizenship. In India, art.19 (1) (a) says “all citizens shall have the right to freedom of speech and expression.”<sup>4</sup> Although the freedom of the press is not explicitly mentioned here but is implicit under the same as was emphasized by justice patanjali shastri in *Romesh Thappar case*. Moreover, it has also been said “Freedom of speech is an individual right from which stems freedom of press. Press comes in between the ruler and the ruled or the government and the governed. It is a vehicle through which free speech finds expression, if not entertainment.”<sup>5</sup> According to Hohfield, liberty has a correlative no-right i.e. in one’s liberty, the other has no right to interfere. But no right can be absolute in nature thereby justifying the restrictions imposed by the Constitution under art.19 (2). The freedom of the press has two aspects, the right to publish any news items and the right to circulate it among the people.<sup>6</sup> The media is considered fourth pillar in our democratic system where the task of the media is to promote transparency, ensure accountability and keep the public informed. Yet, this freedom has its limits especially when it clashes with the right to a fair trial, which is a core principle of criminal law. “Trial by media” describes a scenario where, in the process of reporting or seeking

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<sup>2</sup> The Universal Declaration of Human Rights, 1948.

<sup>3</sup> The European Convention on Human Rights, 1950.

<sup>4</sup> The Constitution of India, 1950 art.19 (1) (a).

<sup>5</sup> Prof. S. Sivakumar, *Press Law and Journalists: Watchdog to Guidedog*, 17 Universal Law publishing, lexis Nexis, Gurgaon 1<sup>st</sup> edn., 2015.

<sup>6</sup> *Sakal Papers pvt. Ltd v. Union of India* AIR 1962 SC 305.

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sensationalism, media platforms shape public perception and potentially interfere with judicial proceedings by forming opinions about the accused before a court has rendered its judgment.

First of all, it is necessary to understand the meaning of media. The term media encompasses a broader concept than press and refers to all means of mass communication that disseminate information to the public. Legal scholars typically define media as including traditional broadcast platforms (like television or radio), print publications (for example magazines, newspapers and books), digital platforms (news websites or social media networks), and streaming services any technological means through which information is communicated to the public at large. On the other hand, the press generally refers to the printing materials because of its historical significance like the Hindu, the Indian Express e.t.c. After having a light upon the regulatory part, it can be seen that the Press Council of India especially regulates the printed matters. But on the other hand, especially the electronic media, there seems lack of governance. In this case, the News Broadcasting and Digital Standards Authority set up by the News Broadcasters and Digital Association has been entrusted with the task of adjudicating the complaints about broadcasts. But here, it is important to know that NBDA previously known as NBA is a private organization comprising different news broadcasters and has been designed to deal with the ethical, legal and other issues affecting news channels.

In today's media-driven world, sensationalism often overshadows ethics. Media houses prioritize TRPs over responsible reporting, frequently violating the privacy of victims and accused during ongoing cases. In sensitive matters like rape or murder, media trials based on unverified facts are common. The *Khurshid Anwar case*,<sup>7</sup> where he was branded a rapist without due process, tragically led to his suicide—raising serious concerns about unchecked media conduct. Moreover, in *Aarushi talwar case*<sup>8</sup> also, media has extensively covered the issue. In this reference, there are mainly two aspects “in public interest” and “in the interest of the public” and the media only considers the latter for its own interest which means only that information are

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<sup>7</sup>available at<<https://www.indiatoday.in/india/north/story/ngo-boss-khurshid-anwar-suicide-rape-chargeby-23-year-old-221246-2013-12-18>> (last visited on 21st April, 2025).

<sup>8</sup>*Dr.Mrs.NupurTalwar v. State of U.P. and Anr.* 2017, available at<<https://indiankanoon.org/doc/16210461/>> (last visited on 21<sup>st</sup> Apr. 2025).

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shown which seems interesting for the public.<sup>9</sup>In this case also, the media has declared Aarushi's father and some other suspects guilty without any official information while investigation was in going on. Because of the extensive media coverage, the pressure reached to such a level that the CBI had to approach the SC to seek an order restraining the media from giving any sensational report on the case. As the verdict came in 2017, Rajesh Talwar who was declared guilty by the media and later considered such by the public also, was acquitted. The question was still about the lost reputation of him. Besides the above, there are plethora of examples like *Sushant Singh Rajput case*,<sup>10</sup> or *Tarun Tejpal case*<sup>11</sup> e.t.c. where the severe consequences of unbiased reporting of the media can be witnessed. In this regard, the court said "both the institutions (judiciary and media) are responsible for ensuring that material is only obtained and shared with the public after it has undergone thorough investigation, evaluation and examination."<sup>12</sup>

The issue becomes particularly contentious when the presumption of innocence a cornerstone of criminal law is undermined by media narratives. As stated in *Anukul Chandra case*,<sup>13</sup> the Supreme Court emphasized "presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial. "This principle also finds its place in article 21 of the Indian Constitution which guarantees the right to life and personal liberty including the right to a fair trial. In India also, on 13 sep, 2013, the Supreme Court of India ordered the ministry of home affairs to make SoP within the period of three months for the information given by the police to the media regarding ongoing investigations while hearing a public interest litigations.<sup>14</sup>It also said "it should be ensured that the disclosure does not result in media trial so as to allow pre-determination of the guilt of the accused." Highlighting the importance of the freedom of speech and expression, the court went on to say that not only the media have a right to disseminate but the consumers of news also have the right to receive fair and unbiased information. On the other hand, the accused also deserves fair or

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<sup>9</sup> Ashmita Kaur, "Analyzing the effect of media trials on the psyche of the masses" 6 *Journal of Emerging Technologies and Innovative Research*, 2 (2019).

<sup>10</sup> Sonam Saigal, "Sushant Case: Media Trial Impacts Investigation" 2021, available at <<https://www.thehindu.com/news/cities/mumbai/sushant-case-media-trial-can-affect-probe-says-hc/article33600567.ece>> (last visited on 21st Apr, 2025).

<sup>11</sup> *Tarun Jit Tejpal v. The State of Goa* AIR ONLINE 2019 SC 926.

<sup>12</sup> *Mother Dairy Foods & Processing Ltd v. Zee Telefilms Ltd.* AIR 2005 Del 195.

<sup>13</sup> *Anukul Chandra Pradhan v. Union of India* 1997 Supp. (1) S.CR. 641.

<sup>14</sup> *Public Union for Civil Liberties v. State of Maharashtra* 2023 SCC OnLine SC 1166.

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unbiased investigation by the police and biased reporting of the media has a potential to undermine the fundamental principle of criminal jurisprudence i.e. “presumption of Innocence.”

## II. MEDIA TRIAL: A CONCEPTUAL FRAMEWORK

The concept of “Media Trial” or “Trial by Media” originated in the United States during the 19th century and gained recognition in the Indian legal context through the well-known though controversial case of *K.M. Nanavati*.<sup>15</sup> While it has become a widely discussed issue, the term itself is not legally defined in any statute or official legal glossary. Over time, various legal scholars and experts have attempted to articulate and interpret its meaning. The suitable words or definition in this regard is of R. Surette who said “Media Trials are defined as certain regional or national news events in which the criminal justice system is co-opted by the media as a source of high drama and entertainment.”<sup>16</sup> In India, the Supreme Court has briefly described media trial as an informal process where a perception of guilt is created, which can seriously compromise the fairness of legal proceedings and affect the accused's right to an unbiased and just trial. Such trials have the power to portray an innocent person as guilty or a guilty one as innocent in the public's view. In *R.K. Anand case*<sup>17</sup> the Apex court conferred “a concurrent trial by the media has no legal standing in our judicial system as it creates a conflict between the right to a fair trial and right to free speech and expression.” Moreover, in *Nilesh Navalakha case*<sup>18</sup> while prescribing the methods the media should report a legal proceeding, the court said “the privacy and dignity of the victim must always be respected, the sensitive information related to the case should never be made public, the confession made in front of an investigator cannot be published the interviews of anyone who is connected to the case may not be undertaken when the matter is subjudice.”

Although the freedom of speech is widely exercised by the media but the restrictions should be made when the interest of the society is violated. With the passage of time, there has been a significant growth in the number of newspapers which may be because of the increasing business competitiveness supplement by the low restrictions and regulations in this area. Because of the

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<sup>15</sup>*K.M. Nanavati v. State of Maharashtra* AIR 1962 SC 605.

<sup>16</sup>R. Surette, “Media Trials” 17 *Journal of Criminal Justice* 293 (1989).

<sup>17</sup>*R.K. Anand v. Registrar, Delhi High Court* (2009) 8 SCC 106.

<sup>18</sup>*Nilesh Navalakha v. Union of India* 2021 SCC Online Bom 56.

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large extent of reach, the role a media could play cannot be undermined. Even during the time of freedom struggle, the media served as an important factor to bring mass revolution as is evident from the history of Bal Gangadhar Tilak (Kesari), Sirish Kumar Ghosh and Motilal Ghosh (Amrit Bazar Patrika). Seeing the importance of the same, the freedom of the press was made a fundamental right under art.19(1)(a) of the Constitution of India. Moreover, it is well known that the media constitutes the fourth pillar of democracy apart from legislature, executive and judiciary. It plays a very significant role in a democratic society but the problem arises when it steps into the domain of the judiciary by running a parallel trial along with the court and even in some cases before the court by making ungrounded attacks. Most importantly, the media has taken the shape of a public court which does not take care of the basic principles of criminal law jurisprudence like presuming to be innocent until proven guilty, proving guilty beyond reasonable doubt. Here, the problem is that after the media trial, the public forms an opinion about the accused which in some way, prejudices the actual trial.

In this growing age of technology, it is actually very difficult to regulate the media which is actually posing a threat to the status of any potential individual. Actually, “the media has become the most potent part of mass communication due to this near to zero regulation and very frequently violates the basic media ethics to the dismay of everyone.”<sup>19</sup> If it is left unrestricted continuously, it will not only impact the minds of the people but also the persons involved in adjudicatory authority and thereby impacting the fair trial of the accused. In other words, it has very severe consequences on the society. Comparing with a very famous and well established principle, “*Law without Justice is like a ship without a rudder*” the author believes that the media without effective regulation is also like a horse without a bridle. Coming to the real examples of media trial, one of the important aspects is *OJ Simpson case*<sup>20</sup> in which large media coverage was made because of the publicity of the accused. In this case, many media channels showed him like a very menacing element in the society and racial bias was also made against him leading to distort his image in the society and the most important thing is that he was acquitted in criminal trials. In India, there are a variety of cases where media trials are evident,

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<sup>19</sup> Aditee Dash, “Media Trials: Misuse of Freedom of Speech and Deterrent in the Path of Justice, 2 July 2021” available at <https://articles.manupatra.com/article-details/Media-Trials-Misuse-of-Freedom-of-Speech-and-Deterrent-in-the-path-of-Justice>. (last visited on 20 Apr. 2025).

<sup>20</sup> *The People of the State of California v. Orenthal James Simpson* (1995) Cal. LEXIS 3382 (Super Ct. 1995).

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for example *Sanjay Dutt case*,<sup>21</sup> in this case, he was charged not for terrorist activities under TADA,<sup>22</sup> but under the Arms Act,<sup>23</sup> despite this fact, the media portrayed him like a terrorist which later created a lot of problems for him. At the same time, there is another case where media has played a positive role like in *Jessica Lal Murder case*<sup>24</sup> where firstly accused was acquitted by the trial court. After the acquittal in this case, both the public as well as media pressure compelled the justice system to reopen the case and finally he was sentenced to life imprisonment. The another instance of the positive role of the media is in *Nirbhaya rape case*<sup>25</sup> where the girl was brutally gangraped by six men in a moving bus, and in this case because of mass protests and widespread national as well as international coverage, the government was bound to bring reforms under the JJ Act,<sup>26</sup> and under Criminal Law Amendment Act, 2013.<sup>27</sup>

### III. CONSTITUTIONAL AND LEGAL FRAMEWORK

The whole essence of this research paper is to balance the fundamental right to freedom of speech and expression of media and the rights of the persons who are being tried by the media before being proved guilty. So, here it is important to under the constitutional or other legal foundations of the aforementioned issue. The freedom of speech and expression includes in itself the freedom of the press. In this regard, the author wants to refer the statement given by Durga Das Basu, (former Judge and eminent legal luminary) where he said “freedom of Press today means absence of interference by the State with the Press, except in so far as it is authorized by the Constitution of India and by laws which are constitutionally valid.” The freedom of speech and expression is not new but has its own history and significance. Here, John Milton (1608-1674) in his book ‘Areopagitica’ (1644) mentioned “let truth and falsehood grapple in an open arena and ultimately the truth shall prevail.” Moreover, John Stuart Mill (1806-1873) in his essay ‘On Liberty’ also emphasized upon the freedom of the press by saying “if all mankind minus one, were of one opinion and only one person were of contrary opinion, mankind would be no

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<sup>21</sup> *Sanjaay Dutt v. State of Maharashtra* 1995 SCC (6) 189.

<sup>22</sup> The Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987).

<sup>23</sup> The Arms Act, 1959 (Act 54 of 1959).

<sup>24</sup> *Manu Sharma v. State (Nct of Delhi)* (2010) 6 SCC 1.

<sup>25</sup> *Mukesh v. State (NCT of Delhi)* (2017) 6 SCC 1.

<sup>26</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016).

<sup>27</sup> The Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).

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more justified in silencing that one person than he, if he had the power, would be justified in silencing the mankind.” Seeing the importance of this right, it has been recognized as a basic human right in the Universal Declaration of Human Rights.

### 1. Under the Constitution of India

In India, the freedom of the press being implicit in the art.19 (1)(a), constitutes as a fundamental right. So, it includes all the writings, opinions, expressions, views e.t.c. The article expressly says “all citizens shall have the right to freedom of speech and expression.” But at the same time, the right is in itself not absolute in nature, but comes with many restrictions.

Art. 19(2)		
Against the State 1. Sovereignty and Integrity of India 2. Security of the State 3. Friendly relations with the foreign states	Against the Society or Institutions 1. Public Order 2. Decency or Morality 3. Contempt of Court	Against Individuals 1. Defamation 2. Incitement to an offence

So, on the basis of above restrictions, the freedom of press can be curtailed but these restrictions should also be reasonable. Here, which restriction will be considered reasonable and which unreasonable depends upon the case to case basis.

In *Sakal Paper case*,<sup>28</sup> the Supreme Court decided “the restrictions which would directly affect the volume of a newspaper’s circulation, or limit the number of its subscribers or reduce its size.” And, in another case,<sup>29</sup> the Supreme Court also said “reasonableness of the restrictions should be viewed from the right of viewers and listeners, not from the right of broadcasters.”

The other right relating to the freedom of the Press is under art.19 (1) (g) of the Constitution of India which says “all citizens shall have the right to practice any occupation, trade or business.”

<sup>28</sup>Supra note 5.

<sup>29</sup>*Ministry of Information and Broadcasting v. Cricket Association of Bengal* 1995 SCC (2) 161.

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This right is also not absolute in nature but can be reasonably restricted in the interest of the general public given under art.19(1) (g) of the Constitution of India.

## 2. *Law of Defamation*

In the name of exercising the right to freedom of speech and expression, one does not have the license to defame anyone. Generally, it can be observed that most of the political parties are having their own media channels which have a tendency to defame the leaders of the other parties. Moreover, the media goes beyond the extent some times to get the popularity among the masses especially the issues relating to the person having mass followers and the other sensitive issues like religion, sexually harassment or rape matters e.t.c. In this process, it constitutes a very important factor for the media. Here defamation generally means “a false attack on someone’s reputation that supports a claim of loss of someone’s good name leading to humiliation, disgrace, shame, ridicule, mental suffering, embarrassment or exposure to public hatred.” It can be verbal or written, the former is called slander and the latter libel. Besides the above, the defamation can also be categorized as civil or criminal defamation. The former has not been codified and only has damages in the form of remedy but the latter has been extensively dealt under the IPC<sup>30</sup> which is now BNS.<sup>31</sup> In case of civil defamation, the intention is not a prerequisite but that is not the case with criminal defamation where the malafide intention is very much required. Other than the above, the truth of the matter published constitute as a complete defence in the former but it is not so in the latter where the truth can be defence only in case falling under Exception 1 of S. 499<sup>32</sup> which is now S. 356<sup>33</sup> of the BNS. The essence of the section is that if a person through any means publishes any matter with the knowledge or the intention or the reason to believe that it will harm the reputation of that person, it becomes defamatory in nature. But at the same many exceptions has been well expressed which qualifies as a protection for the freedom of the press. These exceptions are-

- If it is a true imputation in public good

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<sup>30</sup> The Indian Penal Code, 1860 (Act 45 of 1860).

<sup>31</sup> The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

<sup>32</sup> *Supra* note 29.

<sup>33</sup> *Supra* note 30.

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- If there is an opinion made in good faith about the conduct of the public servant while discharging public functions
- If it is an opinion in good faith regarding any person touching any public question
- If there is publication of true report of court's proceedings or the result of the same
- If there is an opinion in good faith regarding the merits of the case decided by court or about the parties or witnesses of the same case
- If there is an opinion made in good faith regarding the merits of any performance which its author has submitted to the judgment of the public
- If a person having an authority over another person, passes a censure on the conduct of that person
- If there is an accusation made against any person in front of the person having lawful authority over that person
- If it is to convey a caution, in good faith, to a person against another person

So, in the light of the above mentioned circumstances, if a media channels violate, the same will be liable for the punishment prescribed under S. 500 of the IPC which is now S. 356 of the BNS according to which there can be simple imprisonment for a term which may extend to two years or fine or community service.

### 3. *The Official Secrets Act, 1923*

The Act<sup>34</sup> was brought with the objectives of protecting the interests of the official secrets, especially of the government officials. Here, S. 5 of the Act is very much relevant for journalists. It talks about punishment of those persons who voluntarily receives or communicates any official secrets. Although in this Act, the definition of official secret has not been given but it depends upon the case to case basis whether a matter comes under the purview of official secrets or not. The Act states that all citizens are obligated to share any information they possess regarding a violation of this Act. Furthermore, if a newspaper publishes an official secret such as a note, document, code, password, sketch, plan, or model, not only the reporter, editor, printer, and publisher can be held accountable, but also any director or officer of the company or corporation who was aware of and consented to the act will be considered guilty of the offence.

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<sup>34</sup> The Official Secrets Act., 1923 (Act 19 of 1923).

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#### 4. *The Right to Information Act, 2005*

After the coming of the Right to Information Act,<sup>35</sup> the Official Secrets Act has lost much of its importance. This new Act gave extensive right to get information under the control of the public authority so as to promote transparency and accountability in the public functions. Here the term information itself includes many things if it is relating to “any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”<sup>36</sup> Moreover, S. 2(j) of the Act also explains the meaning of the right to information.<sup>37</sup> Apart from the above, if the authorities responsible under this Act deny the right available here, the authority will also be liable for the penalties as prescribed under this Act.<sup>38</sup>

Although there are many other acts which are directly or indirectly relevant here like the Press Council Act, 1978 or The Working Journalists and Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 1955 (Act 45 of 1955) but all these acts are in relation to the mainly printing press but not with the electronic media where there seems to lack of governance.

### IV. LEGAL RAMIFICATIONS OF TRIAL BY MEDIA

Freedom of speech and expression is very much significant in relation to the rights of the media but at the same time, if it is violating the interests of the persons only by some ungrounded allegations getting aired against the same and because of political motivations involved therein, there comes the need for debate over the issue so as to protect the rights of those persons

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<sup>35</sup> The Right to Information Act, 2005 (Act 22 of 2005).

<sup>36</sup> *Ibid.*, s. 2(f).

<sup>37</sup> “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

<sup>38</sup> *Supra* note 34.

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vulnerable to media trial. Here, it is important to understand the ramifications that are going to be happened because of media trial. These are as follows-

### 1. *Violation of the Right to a Fair Trial*

The right to a fair trial is very important especially in our criminal justice system mainly because of the reason that any innocent person must not be sent behind the bars. Many democratic Constitutions in the world have well recognized this right like for example; the Sixth Amendment of the U.S. Constitution says that “the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District.....” Out the various principles of the natural justice principles, *audi alteram partem* advocates that everyone should be heard and avoiding this principle can weaken the case of the other party or even turn the outcome of the judgment. In other words, it can the impact the fair trial going on in the court if after hearing only one side, the media makes an opinion about that person. Here, it can even affect the impartiality of the judges involved in the hearing of the case. Every accused has the constitutional right to demand fair trial from the court.<sup>39</sup>

### 2. *The Defamation and Libel*

If the media makes false allegations against some person either because of political motivations or for any other reasons or considers him guilty even before the trial is concluded by the Court, they can be made liable for the defamation. Here, it does not mean that there is no remedy for the media personnel, they can even claim for the defence of truth, fair comment or the qualified privilege.

### 3. *The Contempt of Court*

One of the ramifications that could arise because of the media trial is the contempt of Court. It means that if the media reveals any information or material that has been protected by the court like the identity of the victims or in-camera proceedings, then also the media can be made liable for the contempt of court. Here, the publication of such material could vitiate the legal proceeding that is ongoing in the Court. Seeing the importance of this aspect, it can be found out that most of the common law countries like India, United Kingdom, or Australia have recognized

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<sup>39</sup> Carolyne Jaffe, “The Press and the Oppressed- A Study of Prejudicial News Reporting in Criminal Cases” 56 *Journal of Criminal Law and Criminology* 1 (1965).

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the law relating to the contempt of court. These laws are even justified in the light of the express restrictions provided under the art.19 (2) of the Constitution of India. The Act<sup>40</sup> itself, defines civil or criminal contempt. Here, the criminal contempt is relevant in order to make media liable for running a separate trial on its platform. S. 2 (c)<sup>41</sup> of the Act defines the situation where the culpability of the media can be determined.

#### *4. Influence on Law Enforcement and Prosecution*

Going further in determining the legal ramifications, one of the important aspects is that the trial by media can create the public pressure on police, prosecutors, or politicians. Sometimes, it can be seen that people are arrested by the police because of the massive public protests at a very premature stage of the trial and in some cases, even before the trial starts. Moreover, the prosecutors can even bring those charges against the person tried by media which he otherwise would not have made. In all these cases, the repercussions are because of the pressure created by the media.

#### *5. Potential Impact on Victims and Witnesses*

The trial by media not only impacts the rights of the accused but also of the victims as well as witnesses. In India, the importance of the witnesses have well been recognized under the criminal justice system and sometimes on the basis of the statements given by the witnesses, the trial is concluded but it also depends upon the facts and circumstances of different cases. Here, if any case is discussed carelessly on the public platforms or by the media, it can deter the witness from coming forward or can be intimidated by the real culprits. Moreover, the purpose of the justice delivery system is to ensure justice to the real victims or victims under the litigation but it also gets impacted because of the trial by media and the victims can even be more traumatized than before.

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<sup>40</sup> The Contempt of Courts Act, 1971 (Act 70 of 1971).

<sup>41</sup> “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) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

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## V. JUDICIAL SAFEGUARDS AGAINST MEDIA INFLUENCE

Although the liability of the press has well been established through the PCA, 1978<sup>42</sup> or the PRPA, 2023,<sup>43</sup> and also through many other laws, but in case of media there is not only a legislative gap but the pre-censorship can also not be imposed as of now. Here comes the role of the judiciary where it can not only protect the freedom of speech and expression of the media so as to promote robust debate but also safeguards the rights of the persons who have been tried by the media resulting into severe problems faced by that person. The researcher wants to refer some of the methods through which the interests of such persons can be protected. These are as follows-

### 1. *Initiation of Contempt of Court Proceedings*

It is considered as one of important tools to safeguard the interests of the persons tried by media. Here, if the media or any other individuals through their publications or broadcasts interfere with the administration of justice or in any other way prejudice the ongoing legal proceedings, the courts can initiate contempt proceedings against those media persons or other individuals. The important example in this regard is *Sahara India case*<sup>44</sup> where the Supreme Court has held that the courts can issue preventive orders like postponements orders to restrict media reporting if it is likely to prejudice a fair trial. The other example in this regard is *A.G. v. Times Newspaper limited*<sup>45</sup> where the power of the Court to prohibit reporting was highlighted when there seems to be a real risk of serious prejudice to legal proceedings. Both the above cases emphasized upon the need of “Gagging order/suppression order or Postponement of Publication” where the judges can direct the forbidding of public disclosure of information on a particular matter.

### 2. *Change of Venue*

The impact of media trial can't be avoided because it has the potential to disturb the impartial nature of the judges. Sometimes, the media coverage over a particular case goes to such an extent that the local judges get influenced thereby impacting the judgment they makes. Here, the

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<sup>42</sup> The Press Council Act, 1978 (Act 37 of 1978).

<sup>43</sup> The Press and Registration of Periodicals Act, 2023 (Act 51 of 2023).

<sup>44</sup> *Sahara India Real Estate Corp. Ltd. v. SEBI* (2012) 10 SCC 603.

<sup>45</sup> [1974] AC 273 (UK).

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reference can be given of a *U.S. Supreme Court case*<sup>46</sup> where a doctor was brought tried for murdering his wife and the media was very frenzied about the case that it was extensively covered and the doctor was even convicted but later the Supreme Court found that he was denied a fair trial and overturned his conviction. Although the remedy for the change of venue will not be sufficient in a case having widespread coverage in the nation, but it may be the only safeguard to bring impartiality. It will be considered on the application of the accused or by the court itself and it is a matter of total discretion of it.<sup>47</sup>

### 3. *In-Camera Proceedings*

In a society, the nature of the cases differs as the region, culture, and values of the person changes. In these diversity of cases, there arises some cases where the identity of the victims or privacy of the accused need to be protected. For example, the sexual assault or juvenile cases which should always be proceeded in camera so that the media exposure could be avoided and the privacy of the victim as well as accused could be protected.

### 4. *Protection of the Right to Reputation*

The right to reputation is very much significant as it comes under the ambit of the right to life and personal liberty under art. 21 of the Constitution of India recognized as a fundamental right therein. The good reputation leads towards a dignified life in the society which was recognized as a fundamental right in *Maneka Gandhi Case*.<sup>48</sup> In terms of media trial, the author advocates that the media trial can also destroy the reputations of the person tried and thereby violating the right to live with dignity. Whenever such a situation is observed by the Court, they should take a proactive role to protect the interests of the persons. One such example in this regard is of *R. Rajagopal case*<sup>49</sup> where the court held that the right to privacy extends to the protection from unauthorized media publications, especially when they prejudice ongoing legal matters.

### 5. *Control of Activities In or Near the Courtroom*

The court either by its own or at the request of the accused can also regulate the seating and conduct of news media representatives at the courtroom. Moreover, the photography and

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<sup>46</sup>*Sheppard v. Maxwell* 384 U.S. 333 (1966).

<sup>47</sup> James T. Ranney, "Remedies for Prejudicial Publicity" 21 *Villanova Law Review* 830 (1976).

<sup>48</sup>*Maneka Gandhi v. Union of India* (1978) 2 SCR 621.

<sup>49</sup>*R. Rajagopal v. State of Tamil Nadu* (1994) SCC (6) 632.

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broadcasting in the courtroom with regard to any judicial proceeding can also be prohibited. In order to ensure the fair trial, even the violation of these rules would be sufficient to constitute the liability despite the fact that it was not creating any prejudice.<sup>50</sup> Seeing the nature of the offences, the court can itself prohibit the reporting of any significant case demanding the need to do the same.<sup>51</sup>

Apart from the judicial safeguards, the police can themselves avoid the media trial by giving limited information to the media. The relevant case<sup>52</sup> in which such regulation was given by imposing negative duties which prohibits police or other members involved in the trial to give following informations-

- “ The existence or contents of any statement or confession given by the accused or his refusal to give a statement or to take tests
- Prior capital records of the accused including arrests and convictions
- Any inflammatory statements as to the merits of the case or the character of the accused
- The possibility of a plea of guilty
- Not to force the accused to give a photo on the scene of the crime”

## VI. MEDIA ETHICS AND SELF-REGULATION

Media ethics and self-regulation can also come forward as a protection for the persons subjected to trial by media. There are some methods though which the harms caused to those persons could be avoided.

### 1. *The Presumption of Innocence*

It is a fundamental principle of criminal justice system that a person is presumed innocent until proven guilty. This principle has to be respected by the media persons as well so as to avoid the disciplinary action. The media should avoid using the terms like criminal, rapists or murderer

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<sup>50</sup>*Estes v. Texas* 381 U.S. 532 (1965).

<sup>51</sup>*Supra* note 46, at 837.

<sup>52</sup>*Commonwealth v. Pierce*, 451 Pa. 190, 303 A. 2d 209 (1973).

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before conviction by the court. In *Aarushi talwar case*,<sup>53</sup> Indian media often implied guilt before the verdicts which led to severe ethical criticism.

### 2. *By avoiding sensationalism*

It is a common practice in Indian media that a news are made sensational by arousing the emotional sentiments of the people by making clickbait headlines, dramatic language e.t.c. it is very much important to prevent undue public outrage, or media fueled assassination of character. For example, in *Sushant Singh Rajput case*, the media platforms were criticized for sensationalism, conspiracy theories or abusing individuals like Rhea chakra borty. In order to come under the category of ethical journalism, the media should focus upon the facts rather than the speculative narratives.

### 3. *Respect for Privacy and Dignity*

In the above mentioned circumstances, the proactive role of the judiciary in safeguarding the interests of the individuals have been explained but here self-regulation can play a very important role to avoid litigations. The ethical guidelines not only favor the privacy of the accused but also the victims especially in sensitive cases. It helps in preventing social stigma, harassment and psychological trauma that may arise because of ungrounded allegations made upon that person especially in rape cases, cases of minors, suicide cases e.t.c. Although the identity of the rape victims are protected by the media but at the same time the identity of families should also be protected which may reveal the identity of the victims or any other indirect information in relation to the victims.

### 4. *Fact Checking and Verification*

The self-regulating and ethical principles also demands that the journalist should verify all the information before getting it revealed before the public. Here, the false or incomplete news can falsely implicate the people thereby violating their rights. In this process, the resources where the media is relying for, must be credible and facts without any basis or support, should not be brought before the public. One relevant reference can be taken from the BBC editorial guidelines which emphasizes that significant allegations must be put to the subject before publishing.

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<sup>53</sup>*Supra* note 7.

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### 5. *Use of Self-regulatory bodies*

In a democratic system, it is very much important that the media should act as a watchdog rather than becoming a lapdog of the political parties or other authorities. Here, just like “a man without a purpose is like a ship without a rudder” the media without a regulation become like an unruly horse. In this regard, the self-regulatory bodies should be there to see the conduct of the journalists. As in the case of the press, the Press Council of India has been established to oversee the functions of the press, the News Broadcasting and Digital Standards Authority accepts public complaints against TV Channels. In 2021, the NBDSA fined and even reprimanded several channels for biased reporting and hate-mongering related to the interfaith marriages showing the significance of self-regulation without the interventions of the court.

The ethical journalism and self-regulation are preventive shields against the harmful effects of trial by media. Although it lacks legislative support, but can act as a powerful tools to uphold justice.

## VII. COMPARATIVE ANALYSIS

The freedom of speech and expression especially in relation to the media has been internationally recognized. In view of determining or searching for the regulation over the media in different countries, the author wants to make a comparative analysis among India, United States and United Kingdom. In any democratic system, there must be co-existence of the right to free press and the right to fair trial. All of these countries have a common legal practice being under the common law countries.

### 1. *In United States*

The freedom of the press or the freedom of speech forms a very significant part in the United States. Here, no law can be made in violation of this right as has been explicitly recognized through the United States First Amendment. Moreover, in U.S.A. there does not seem any explicit restriction on the freedom of speech and expression like in India. The restrictions are imposed through the proactive role of the judiciary. Moreover, the Fifth Amendment of the U.S. Constitution also protects the ‘right to life, liberty and property.’ Additionally, the Sixth Amendment also ensures ‘the right to a speedy and public trial by an impartial jury ...’ The

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Country has also faced the confrontation between the freedom of speech and fair trial. In view of the above circumstances, the judiciary has taken cognizance of this situation. After analyzing the trend, it can be found out that the American Supreme Court first started protecting the rights of the accused but it started shifting to respect the rights of the media. In this process, certain tests were laid down by the Court to deal with the effects of publicity before the trial. For example, in *Rideau v. Louisiana*<sup>54</sup> the bank was robbed and three of the bank employees were kidnapped and one murdered as well. Here, the interview of Rideau (one of the accused) was telecasted for three days where he can be seen as confessing his guilt. In consequence of the above, the counsel for the accused requested to change the place of the trial on the ground that such conduct has violated the right to a fair trial. But the trial court denied the request and later the Supreme Court affirmed “Our Constitution’s guarantee of due process, a person accused of committing a crime is vouchsafed basic minimal rights. Among these are the right to counsel, the right to plead not guilty, and the right to be tried in a courtroom presided over by a Judge. Yet in this case the people of Calcasieu Parish saw and heard, not once but three times, a trial of Rideau in a jail, presided over by a sheriff, where there was no lawyer to advise Rideau of his right to stand mute.” In this case, the Supreme Court laid down the test of “presumed prejudice.”

In *Sheppard v. Maxwell*<sup>55</sup> the question before the Supreme Court was to decide whether the accused was provided the right to fair trial while getting convicted by the state’s court because of the failure of the trial judge to protect him from the massive publicity during his prosecution. The court came to the conclusion that he did not get the fair trial which is the basic requirement of the due process under 14<sup>th</sup> amendment resulting into the reversal of the judgment. In this case the court propounded the test of “reasonable likelihood” by taking a shift from “presumed prejudice” test and also said that if such a reasonable likelihood of prejudicial news exists which has the potential to prevent the fair trial then the conviction should be reversed. Other than the above, certain methods were also prescribed to control pre-trial publicity which is as follows-

- (i) “Control the presence of the press at the judicial proceedings.

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<sup>54</sup> 373 U.S. 723 (1962).

<sup>55</sup> *Supra* note 45.

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

In *Murphy v. Florida*<sup>56</sup> the Supreme Court considered whether his right to a fair trial had been compromised because jurors were exposed to media reports about his past criminal record or details of the current charges. Justice Marshall, while delivering the opinion, stated that a juror's awareness of a defendant's previous convictions or news coverage of the case does not automatically violate due process. Instead, such exposure must be assessed in light of all relevant factors or the “totality of circumstances” to determine if it rendered the trial fundamentally unfair.

In *Moyola v. Alabama*<sup>57</sup> the circuit court said that if an accused is demanding that his conviction to be nullified, he will have to first “demonstrate an actual, identifiable prejudice attributable to that publicity.”

In *Bridges v. California*<sup>58</sup> also the American Supreme Court said “legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.”<sup>59</sup>

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<sup>56</sup> 421 US 794 (1974).

<sup>57</sup> 623 F 2d 992(5<sup>th</sup> Cir 1980).

<sup>58</sup> 314 US 252 (1941).

<sup>59</sup>*Ibid.*

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Despite the proactive approach taken by the courts, in America, they are more concerned about the freedom of speech and expression and it has a say upon a right to fair trial.

## 2. *In United Kingdom*

Apart from the tradition in America where the press is favored over the accused, the United Kingdom preferred vice-versa. Here, the English Courts have well recognized the threat that may be caused to justice by the pre-trial publicity which is unrestrained. Some types of information particularly news about a defendant's confession or their previous criminal record are seen as naturally likely to cause bias or make prejudice so as to interfere with justice. It was also emphasized "If the rules of evidence preclude the production of particular facts during trial, and members of the jury are exposed to those same facts, British courts simply assume that justice has been compromised."<sup>60</sup> Moreover, in another case it was observed by Justice Law "Indeed the right to fair trial... is as near to an absolute right as any which I can envisage."<sup>61</sup>

The English Courts have followed the test of "presumed prejudice" in deciding whether the right to fair trial has been violated because of the pre-trial publicity.

In *Attorney-General v. Guardian Newspapers Ltd.*<sup>62</sup> Collins J said "in assessing whether there has been a violation, courts must determine whether the risk of prejudice from the publication is both immediate and serious. The courts must consider the nature of the published material and its presentation, the timing of the publication, the likelihood of its coming to the attention of jurors or potential jurors, the likely impact on the jury and the ability of the jury to abide by any judicial directions which seek to neutralize any prejudice."<sup>63</sup>

To safeguard the right to a fair trial, English law limits the dissemination of certain information. Under the Contempt of Court Act, 1981,<sup>64</sup> courts in England are empowered to restrain or penalize actions that may hinder, compromise, or undermine the proper administration of

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<sup>60</sup>*R v. Evening Standard Co. Ltd.* (1954) 1 QB 578.

<sup>61</sup>*R v. Lord Chancellor, ex p Witham* (1998) QB 575, 585.

<sup>62</sup> (1999) EMLR 904.

<sup>63</sup>*Ibid* at 914.

<sup>64</sup> The Contempt of Court Act, 1981 (1981 c. 49).

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justice. In order to make a responsible journalism, there are many other Acts and bodies<sup>65</sup> also governing this aspect.

### 3. In India

In India also, we can find that Indian courts have very cautiously addressed the issue of freedom of the press and adverse impact of trial by media.

In *State of Maharashtra v. Rajendra Janamwal Gandhi*<sup>66</sup> the Apex Court while addressing the issue of attempt to rape with a minor observed “His trial by press electronic media or public agitation is the very antithesis of the rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and he is to be guided strictly by the rules of law.”<sup>67</sup>

In another case<sup>68</sup> the Hon’ble Supreme Court addressed a case involving a dowry death trial that was still pending when a magazine called *Saga* published an article titled “Doomed by Dowry.” The piece was based on an interview with the deceased’s family and prominently featured the father’s account of the incident, presenting his perspective on the case. The Apex Court also observed “we have no hesitation that these types of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is sub judice.”<sup>69</sup>

In *Manu Sharma v. State (NCT of Delhi)*<sup>70</sup> the danger caused by the trial by media has been extensively addressed. Under para. 297, it has been said that allowing the media to operate without restrictions can lead to significant prejudice, especially if it publishes images of suspects before identification parades are conducted, or if it makes direct claims about their guilt before any court verdict has been given. Moreover, under para. 298, While print and electronic media play an important role today, it is essential at the very least that media persons ensure their

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<sup>65</sup> The Crime and Courts Act, 2013 (2013 c. 2013). The British Press Council 1953, or The General Council of the Press, 1963.

<sup>66</sup> 1997 8 SCC 386.

<sup>67</sup> *Ibid*, 403, para. 37.

<sup>68</sup> *M.P. Lohia v. State of West Bengal* (2005) 2 SCC 686.

<sup>69</sup> *Ibid*, 688-89. Para. 10.

<sup>70</sup> *Supra* note 23.

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reporting does not obstruct the investigative process or prejudice the accused's right to a fair defence. Any such interference would be a grave injustice and undermine the integrity of the legal system. Most importantly, under para 301, the legal presumption that an accused is innocent must not be compromised by media coverage, especially when the investigation is still ongoing. Doing so not only contradicts the foundational principles of the rule of law but also infringes on the accused's rights under Article 21 of the Constitution, as noted in *Anukul Chandra Pradhan v. Union of India*.<sup>71</sup> Upholding the dignity of the judiciary and maintaining public trust in a democratic society requires that media reporting particularly on sub judice matters be carefully regulated to avoid interfering with the course of justice.

Apart from the above, the Press Council of India has also prescribed "norms of journalist conduct" which if followed has the potential to sideline the controversy regarding the freedom of the press and the right to fair trial. However, they are not adhered to but breached continuously.

### VIII. CONCLUSIONS AND SUGGESTIONS

From the above analysis, it is very much clear that the freedom of the press is very much significant to bring promote robust debate in the public and even it is the in consonance of the fundamental right of the people to know. But if the media goes beyond the boundaries, and starts influencing public perceptions as well as the judicial verdicts, there needs to bring actions against them. The balance between media freedom and the fairness of the justice system is a major issue in democracies today. Media trials where news channels and social media report on court cases in a dramatic and biased way are happening more often. This can harm a person's right to a fair trial. While the media is important for keeping the public informed and holding powerful people accountable, it can also cause problems if it goes too far. Sometimes, media coverage can unfairly damage someone's reputation or influence how the public sees the case before a court has made its decision. Although, the judiciary has taken many steps to ensure the right to fair trial of the accused but there seems clear legislative gaps especially in context of electronic media to decide their liability in case harm occurs. Thus, it is important to balance the

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<sup>71</sup>*Supra* note 12.

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right of the media with the right of the accused. After making a thorough analysis of media trial, the author proposes the following suggestions-

- Seeing the lack of regulations in this regard, the author proposes that the conduct of the media at the time of the trial should be codified or regulated.
- The media regulatory authorities such as Press Council of India and News Broadcasters Association should be empowered to penalize media trials swiftly.
- On the part of the judiciary, using the gag orders or the postponement of publication can be the alternative.
- On the Part of the Police or other person involved in the trial, there must be regulation as to the disclosure of the facts of the case.
- The Public should be made aware so as to find out the difference between the news and opinions.
- The most important thing is that the media personnel should be trained in terms of realizing the ethics as well as understanding the implications of media trials.

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