Media Trial & Sentencing : Perspectives & Prescriptions

***(Gaurav Kamal, District & Additional Sessions Judge-II, Vaishali at Hajipur)**

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I. Introduction:

"…. What is trial by media? The expression "trial by media" is defined to mean:

"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 court 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 nearly 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…."

[*R.K. Anand v. Delhi High Court*, (2009) 8 SCC 106]

Without a free Media there cannot be a free society. The strength and importance of media in our country is well recognized. Article 19(1)(a) of the Indian Constitution, which gives freedom of speech and expression, includes freedom of the press and has been greatly influenced by the 1st Amendment of the United States' Constitution. Moreover, India is also a signatory to international instruments like the Universal Declaration of Human Rights, 1948

and the International Covenant on Civil and Political Rights, 1966 whose Article 19 obligates the Indian state to provide freedom of speech and expression to its citizens. Therefore, from its very inception, the existence of free, independent and powerful media has been the cornerstone of a liberal democratic country like ours. Media is not only a medium to express feelings, opinions, and observations and effectively utilise the freedom of speech and expression, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agendas and mobilising the thinking process of the millions. It is a great medium to understand and judge the people's voices and pulse of the nation. As a matter of fact, the press is a manifestation of collectivity: it reflects people's hopes and aspirations, and also their agonies and afflictions. A free press stands as one of the interpreters between the government and people.

In the new era of liberalisation policy, as the monopoly of the state-owned *Doordarshan* was diluted, electronic media gained much more strength as several private channels came into existence. Very soon, the Indian state witnessed the great media revolution in the information technology era. As exponentially expanding electronic media joined hands with the powerful press or print media, we were now witnessing the omnipresence of the powerful *fourth estate* in our nation. The technological innovation and birth of Social media platforms like Facebook, Twitter, X, You Tube, Whats app and so on and on, has already given exponential growth to this dimension.

It is indisputable that in many dimensions, the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has been benefited from ethical and fearless journalism and took *suo motu* cognisance of the matters in various cases after relying on media reports and documentaries highlighting the grave violations of human rights. It is the agreed position that the criminal justice system in this country has some lacunas which are often exploited by the rich and powerful to go scot-free, the conviction rate is abysmally low and there is an instant need to revamp the criminal justice system to restore people's dwindling faith. Similarly, corruption in public offices, other socio-economic offences and offences related to political motives are directly linked with the issues of transparency, accountability and responsibility of the government. Judicial interpretation of the right to life has been extended to incorporate the right to information and media is inculcating a great habit in people to be vociferous about the issues which are essentially related with issues such as good governance and are necessary for an active and participative citizenry. The need to have access to justice has essential ingredient of providing the information regarding the judicial process to all the concern. The Judiciary itself in Covid Pandemic era has taken extra ordinary steps like providing Video Conferencing facilities and Live streaming of the Court proceedings to strengthen the democracy.

However, in a civil society, no right to freedom, howsoever invaluable as it might be, can be considered absolute, unlimited, or unqualified in all circumstances. Of late, in all countries and particularly in India, the media, which include electronic, print as well as Social media - appears to be caught in ruthless competition leading to aggressive and profit driven journalism. Furthermore, the mixing of wealth and media has formed another powerful lobby

which has affected every dimension of life as has recently been observed by the Hon'ble Supreme Court of India in ***Anoop Baranwal v. Union of India (Election Commission Appointments),*** (2023) 6 SCC 161]that "***...With the accumulation of wealth and emergence of near monopolies or duopolies and the rise of certain sections in the Media, the propensity for the electoral process to be afflicted with the vice of wholly unfair means being overlooked by those who are the guardians of the rights of the citizenry as declared by this Court would spell disastrous consequences.***" *(Emphasis Supplied by me)*

The ***media trial***or ***trial by media*** is one problematic aspect of this aggressive journalism. These phrases, which gained popularity in 1920's when a noted comedian actor **R.C. Arbuckle's** career and personal life was ruined by publication of series of surreally vicious articles and editorials in the newspapers, are used to describe the impact of electronic and media coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a Court of law. The individual who is the subject of a press or television 'item' has his or her personality, reputation or career dashed to the ground, almost forever, after the media exposure. The hunger for sensational news has eclipsed the true spirit of journalism as sensation is often manufactured according to the needs of the market driven forces. Some of the television channels have even started a series of investigative attempts with hidden cameras and other espionage devices. Such media trials, investigative journalism and publicity of pre-mature, half-baked or even presumptive facets of investigation either by the media itself or at the instance of the investigating agency has almost become a daily occurrence. If the media repeatedly accuses people of crimes without producing any evidence against them, they create such certainty of their guilt in the minds of the public that, if those persons are even actually charged and tried, they have no hope of obtaining a fair trial. It is true that pro active role of media in cases like *Priyadarshini Mattoo case*, the *Jessica Lal case*, the *Nitish Katara case* and the *Bijal Joshi case* has helped the system to achieve its goal but it could not interfere with the administration of justice in garb of the freedom of speech and expression in all cases as vested groups are also involved.

II. *Trial by Media: Free Speech versus Fair Trial*

"...If media trial is a possibility, sentencing by media cannot be ruled out..."

[Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498]

The importance of the matter is also evident from the fact that 17th Law Commission has *suo moto* taken the issue in its 200th report titled as "***Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)***. The report stated that:

> ***"According to our law, a suspect/accused is entitled to a fair procedure and is presumed to be innocent till proved guilty in a court of law. None can be allowed to prejudge or prejudice his case by the time it goes to trial."***

The right of an accused person to a fair trial and access to justice is considered to be the cornerstone of criminal and constitutional jurisprudence. The Supreme Court in a number of cases like ***Hussainara Khatoon*** v. ***State of Bihar***, AIR 1979 SC 1360; ***Kartar Singh*** v. ***State of Punjab***, (1994) 3 SCC 569; ***K. Anbazhagan*** v. ***Superintendent of Police and Others*** (2004) 3 SCC 767 and ***Zahira Habibullah Sheikh (V)*** v. ***State of Gujarat***, (2006) 3 SCC 374 observed:

> ***"Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done it should be seemed to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner."***

Article 10 of the Universal Declaration of Human Rights and Article 14(1) of the International Covenant on Civil and Political Rights also recognise this valuable and unalienable right and is also considered as part of domestic law as India has been a signatory to these instruments. In this regard, the observations of the Hon'ble Delhi High Court in ***Bofors Case*** or ***Kartongen Kemi Och Forvaltning AB and Ors.*** v.***State through CBI***, 2004 (72) DRJ 693 are very much relevant, as the Court weighed in favour of the accused's right of fair trial while calculating the role of media in streamlining the criminal justice system:

> ***"10. It is said and to great extent correctly that through media publicity those who know about the incident may come forward with information, it prevents perjury by placing witnesses under public gaze and it reduces crime through the public expression of disapproval for crime and last but not the least it promotes the public discussion of important issues. All this is done in the interest of freedom of communication and right of information little realizing that right to a fair trial is equally valuable. Such a right has been emphatically recognized by the European Court of Human Right:***
>
> > ***"…Again it cannot be excluded that the public becoming accustomed to the regular spectacle of pseudo trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes."***
>
> ***11. There is nothing more incumbent upon courts of justice than to preserve their proceedings from being misrepresented than to prejudice the minds of***

> ***the public against persons concerned before the cause is finally heard. The streams of justice have to be kept clear and pure. The parties have to proceed with safety both to themselves and their character."***

This approach of highlighting the importance of fair trial over freedom of the press has also been recognised by Courts in the **United Kingdom** and **New Zealand**.

In a democratic society, every institution has a limited role and hence media must rest their ever-firing guns when the cases have been referred to the Courts. The ever-increasing tendency to use media as a weapon for political and other notorious gains while the trial of some person is *sub-judice* has been marked by the courts including the Supreme Court of India on several occasions. In ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra***, *(Supra)*, question of public opinion in capital sentencing was considered to observe that perception of public is extraneous to conviction as also sentencing. This nation has already seen on numerous occasions that public opinion may be against the concept of rule of law and constitutionism as in cases of ***Bhagalpur Blinding case***. In ***State of Maharashtra*** v. ***Rajendra Jawanmal Gandhi***, (1997) 8 SCC 386, the Hon'ble Supreme Court observed:

> ***"There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law."***

Even the House of Lords in the celebrated case of ***Attorney General*** v. ***British Broadcasting Corporation***, 1979 (3) ALL ER 45, has agreed that media trials affect the judges despite the claim of judicial superiority over human frailty and it was observed that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. The Courts and Tribunals have been specially set up to deal with the cases and they have expertise to decide the matters according to the procedure established by the law. A media trial is just like awarding a sentence before giving the verdict in the first instance. It is important to understand that any other authority cannot usurp the functions of the courts in a civilized society.

In its observations in ***Sidharta Vashist @ Manu Sharma V. State (NCT of Delhi) (2010) 6 SCC 1***, the Hon'ble Supreme Court emphasized that trial by media must not prejudice the accused's right to a fair defense or compromise the presumption of innocence, particularly during an ongoing investigation. Relying upon the decision of ***Anukul Chandra Pradhan V. Union of India, (1996) 6 SCC 354***, it has been reiterated that the presumption of innocence of an accused in a legal presumption and should not be destroyed at the very threshold

through the process of media trial and that too, when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in *sub judice* matters must be subjected to check and balances so as not to interfere with the administration of justice. It has been observed that it the present case, various articles in the print media had appeared even during the pendency of the matter before the High Court which again gave rise to unnecessary controversies and apparently, had an effect of interfering with the administration of criminal justice and it has cautioned all modes of media to extend their cooperation to ensure fair investigation, trial, defence of the accused and non-interference with the administration of justice in matters *sub judice*. The media should ensure a clear distinction between informative reporting and trial by media. In ***R.K. Anand V. Delhi High Court,****(Supra)*, the Hon'ble Supreme Court had already pointed out that it would be a sad day for the court to employ the media for setting its own house in order and the media too would not relish the role of being the snoopers for the Court.***Any attempt to control and regulate the media from outside is likely to cause more harm than good. The norms to regulate the media and to raise its professional standards must come from inside.*** Media should perform the acts of journalism and not as a special agency for the Court. One of the cardinal principles of rule of law in a free democratic country, that the criticism or even the reporting in sub-judice matters must be subjected to checks and balances so as not to interfere with the administration of justice.

Several Hon'ble High Courts have also opined that media must not indulge in subjective reporting and not publish the contents of the petitions while the matter is *sub-judice* before a Court.The High Court of *Kerela in* ***Shaji*** v. ***State of Kerala***, 2005 (4) KLT 995 discussed the perils of media trial in the following words:

> ***"12. Materials before Courts, and judicial errors which may be committed by the Courts in dealing with such materials, deserve to be discussed and corrected, at least, initially in the pleadings, memoranda of appeal or revision and across the Bar and not in public pulpits, streets or the media. The refined polity owes it to the judicial system and the system owes it to the functionaries that they are permitted to function without fear or favour… Judicial minds must be made of sterner stuff, capable of introspection all the time but having the fortitude to ignore or spurn attempts to indirectly influence the decision making by media campaigns. Statesmen and the sublime fourth estate must realize the dangers involved in such attempts… The lingering anxiety of the inductee that the media might influence the decision maker against him revolts against the fundamentals of the fair trial."***

In a case involving the institution of Lokayukt, the Hon'ble Madhya Pradesh High Court in ***B.K. Dubey***v.***Lokayukt and Others,*** 1999 (1) MPLJ 711 observed:

> ***"4. We warn that in future the Press should be more cautious while publishing any matter relating to litigations pending before this Court. It is understandable the decision has been given and that has been published by the Press. But before the matter is adjudicated only because process has been issued, there was no reason to highlight the allegations in bold print which was totally undesirable as it unnecessarily tarnishes the image of the esteemed institution. We are of the view that before the matter could be adjudicated the institution of Lokayukt stood condemned in the press wide publicity was given to the contents of the petition."***

While acquitting the accused persons who were convicted by the Trial Court in a sensational sex-scandal involving influential people, the Hon'ble High Court of Kerela in ***Joseph*** v. ***State of Kerela***, 2005 (2) KLT 269 expressed serious concern about the conduct of media as some contents of the judgment were published in the newspapers even before the final pronouncement of the whole judgment:

> ***" 192. …it is high time to caution the media, both print and electronic, that the proceedings in Court must be published with much care and restraint and only after ascertaining the truth and not from any truncated or partial version. The sublimity of the Court process must be imbibed by the reporter when he makes the report. No harm will occur in such circumstances, if the publication is delayed by a day. It will not affect anybody's right to information which means the right to receive correct and true information. Report on a document like the judgment shall be based on its complete contents. It cannot be reduced to the type of report on a public speech or address…We do not in any way mean to curb the free press in their activity. What is required is only a responsibility with some amount of restraint to deliver the true information to the public, so far as the Court proceedings, which the people of the country consider with high esteem, are concerned and not to cause embarrassment to Courts."***

In ***Sahara India Real Estate Corporation Ltd. V. SEBI (2012) 10 SCC 603***, the Apex court underlined that freedom of expression is not an absolute value under our constitution and may have to yield to other rights such as the right to a fair trial. It held that apart from Section 151 of the Code of Civil Procedure, the High Court had ***the inherent power*** to restrain the press from reporting where administration of justice so demanded. Such an order of a court passed to protect the interest of justice and the administration of justice could not be treated as violative of Article 19(1)(a). Referring also to the case of ***Dharam Dutt v. Union of India,*** *(2004) 1 SCC 712*, the Hon'ble Supreme Court held that rights not included in Article 19(1)(c) expressly but which are deduced from the express language of the Article are concomitant rights – balancing such rights or equal public interest by order of postponement of publication or publicity in cases in which there is real and substantial risk of prejudice to the proper

administration of justice or to the fairness of trial and within the parameters of necessity and proportionality would satisfy the test of reasonableness in Articles 14 and 19(2). In ***Asharam Bapu v. Union of India*****,** (2013) 10 SCC 37 **,**the Hon'ble Apex Court has observed that it has hope that media both print and electronic would follow the earlier guidelines of ***Manu Sharma Case*** etc. and therefore, Judiciary has also often relied upon the media's own wisdom as an responsible institution.

The recent order of the Hon'ble Calcutta High Court in ***Dr. Sandip Ghosh and Another V. Union of India and Others***,2024 SCC OnLine Cal 7734 shows the legal approach to be adopted in case of animated dramatization of the interrogation and related discussions during the recent events which happened in R.G. Kar Hospital.

> ***"The news should be objective and not the subjective opinion of the media The media must not take up the role of the investigating agency. The media houses and intermediaries should refrain from publishing animated dramatization of the interrogation. In the course of debates and discussions, the opinions or interviews of panelists and guests shall be broadcast with a disclaimer that such views, opinions and expressions are personal to them and not the opinion of the media.***
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> ***With regard to the personal liberty of the petitioners, police authorities have already granted them protection. If the petitioners have any particular allegation against any of the media houses, the petitioners have their remedy under the Press Council Act, 1978. With regard to the allegations against the intermediaries, the petitioners are at liberty to approach the authority under the Ethics Code of 2021. If the petitioners are aggrieved by the opinion of any individual that is broadcast by any of the media houses, i.e., be it print or electronic, the petitioners have the remedy to file a defamation suit..."***

The Hon'ble Apex Court of India being the final interpreter of the living document has evolved several mechanisms to balance the conflicting rights including that of Freedom of Speech and Expression and Fair Trial etc. which is evident from the observation in ***Assn. for Democratic Reforms (Electoral Bond Scheme) v. Union of India*****, (2024) 5 SCC 1:**

> ***"... 156. In 2012, a five-Judge Bench of this Court in Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603 , used a standard which resembled the structured proportionality standard used in K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1 to balance the conflict***

between two fundamental rights. This judgment marked the first departure from the series of cases in which this Court balanced two fundamental rights based on doctrinal predominance. In Sahara [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603] , the petitioner submitted a proposal for the repayment of OFCDs (optionally fully convertible bonds) to the investors. The details of the proposals were published by a news channel. Interlocutory applications were filed in the Court praying for the issuance of guidelines for reporting matters which are sub judice. This Court resolved the conflict between the freedom of press protected under Article 19(1)(a) and the right to free trial under Article 21 by evolving a neutralising device. This Court held that it has the power to evolve neutralising devices such as the postponement of trial, retrial, change of venue, and in appropriate cases, grant acquittal in case of excessive media prejudicial publicity to neutralise the conflicting rights. This Court followed the Canadian approach in evolving a two-prong standard to balance fundamental rights through neutralising devices which partly resembled the structured proportionality standard. The two-pronged test was as follows : [Id, paras 42, 22.]

(a) There is no other reasonable alternative measure available (necessity test); and

(b) The salutary effects of the measure must outweigh the deleterious effects on the fundamental rights (proportionality standard)."

Therefore, as mentioned earlier, the media has definitely a positive part to play in materializing the results of the right to information among the public. However, overzealous responses from the media points more towards commercial motives rather than indicating their role as an educator and a medium of social change. The Courts have to toil a lot to neutralise the ill effects of the media trial so that no infringement of fundamental rights could take place.

III. Right to Privacy vs. Freedom of Press : Clash of Rights.

Another problematic dimension of the media trial is with respect to the encroachment of the individual's right to privacy. The movement towards the recognition of the right to privacy in India started with ***Gobind*** v. ***State of Madhya Pradesh and Another***, AIR 1975 SC 1378 wherein the Hon'ble Apex court observed that it is true that our constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Today, we all are witnessing that over-inquisitive media, which is a product of over-commercialization and it is severely encroaching upon the individual's right to privacy by openly misusing its freedom. Yet another observation of the Court against the media trial, which touched this aspect of violation of right to privacy of the individuals, is found in judgment of the Hon'ble Andhra Pradesh High Court in ***Labour Liberation Front*** v. ***State of Andhra Pradesh***, 2005 (1) ALT 740. The Hon'ble Court observed as follows:

> ***"14. …Once an incident involving prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts to examine the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitment to the noble profession. The freedom of speech and expression, which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively."***

The following observations of the Hon'ble Supreme Court in ***R. Rajagopaland Another*** v. ***State of Tamil Nadu and Others*** (1994) 6 SCC 632 are true reminiscence of the limits of freedom of the press with respect to the right to privacy:

> ***"A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters***

without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy."

Again, while considering the relative scope of the right to privacy and freedom of speech and expression in ***Noise Pollution (V), In re***, (2005) 5 SCC 733, the Hon'ble Supreme Court has weighed in favour of the former. There are numerous instances where Hon'ble Apex Court has recognised the right to privacy as a part of right to life. The legislature has also come out with certain relevant provisions like S. 228-A of the Indian Penal Code, S. 74 of the Juvenile Justice Act and S. 23 of the POCSO Act to protect the identity of the victim or Child and it has tried to balance the conflicting rights. In ***Nipun Saxena v. Union of India,*** (2019) 2 SCC 703 **,** the Hon'ble Apex Court of India has referred about the aforesaid provisions and laid down certain guidelines to be followed by the all the concern across the country:

"….12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, we may make reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village, etc. is clearly visible. This also amounts to disclosing the identity of the victim. We, therefore, hold that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large. ...37. Sub-section (1) of Section 23 prohibits any person from filing any report or making any comments on any child in any form, be it written, photographic or graphic without first having complete and authentic information. No person or media can make any comments which may have the effect of lowering the reputation of the child or infringing upon the privacy of the child. Sub-section (2) of Section 23 clearly lays down that no report in any media shall disclose identity of a child including name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child. This clearly shows that the intention of the legislature was that the identity of the child should not be disclosed directly or indirectly. The phrase "any other

particulars" will have to be given the widest amplitude and cannot be read only ejusdem generis. The intention of the legislature is that the privacy and reputation of the child is not harmed. Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast upon the media to ensure that it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclos....38. No doubt, it is the duty of the media to report every crime which is committed. The media can do this without disclosing the name and identity of the victim in case of rape and sexual offences against children. The media not only has the right but an obligation to report all such cases. However, media should be cautious not to sensationalise the same. The media should refrain from talking to the victim because every time the victim repeats the tale of misery, the victim again undergoes the trauma which he/she has gone through. Reportage of such cases should be done sensitively keeping the best interest of the victims, both adult and children, in mind. Sensationalising such cases may garner television rating points (TRPs) but does no credit to the credibility of the media. 39. Where a child belongs to a small village, even the disclosure of the name of the village may contravene the provisions of Section 23(2), POCSO because it will just require a person to go to the village and find out who the child is. In larger cities and metropolis like Delhi the disclosure of the name of the city by itself may not lead to the disclosure of the identity of the child but any further details with regard to the colony and the area in which the child is living or the school in which the child is studying are enough (even though the house number may not be given) to easily discover the identity of the child. In our considered view, the media is not only bound not to disclose the identity of the child but by law is mandated not to disclose any material which can lead to the disclosure of the identity of the child. Any violation of this will be an offence under Section 23(4)… 42. The name, address, school or other particulars which may lead to the identification of the child in conflict with law cannot be disclosed in the media. No picture of such child can be published. A child who is not in conflict with law but is a victim of an offence especially a sexual offence needs this protection even more….50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under POCSO shall not be put in the public domain.50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these

documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court." (Emphasis Supplied by me)

Thus, it is not only the legislature but also the Courts of this Country which has come forward to recognise the rights of privacy and protect it. The Hon'ble Apex Court of India has also recognized the role of the media as an Institution which has great role to play not only as an educator, knowledge and information dispensation system but also to protect the rights of the victims of crime by putting restraint upon its own power.

IV. *Media Trial vis a vis Contempt of Court*

"...A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other; both are indispensable to a free society…."

***(Justice Frankfurter in John D. Pennekamp v. State of Florida* , 1946 SCC OnLine US SC 97)**

Another important dimension of the media trial touches upon the power of the Courts to punish the media for the contempt cases where serious allegations are drawn towards character of judges or unreasonable criticism of the judges and their judgments are made. Lord Denning in his Book '***Road to Justice'*** has observed that Press is the watchdog to see that every trial is conducted fairly, openly and above broad but the watchdog may sometimes break loose and has to be punished for mis-behaviour. The Indian Constitution directly under Articles 129 and 215 empowers the Supreme Court as well as High Courts, as Courts of Record, to punish people for any contempt of Court. The underlying principle here is that contempt is essentially a wrong or an injury, not to the person who sits as a judge and against whom disparaging remarks are made but, to the Court as a public institution, which has been created constitutionally for the dispensation of justice. Injury to Court is considered as injury to the public, because such a disparaging statement tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge, or tends to deter actual and prospective litigants from placing reliance upon the administration of justice by the Courts, or it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. Section 2 (c) of the Contempt of the Courts Act, 1971 defines criminal contempt as '*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)…(ii) prejudices or interferes or tends to interfere with the due course of any judicial proceedings; or (iii) interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any manner*'. Section 3(1) exempts innocent publication, if the publisher had 'no reasonable grounds for believing that the proceeding was pending'. Sub-section (2) says that there is no contempt if no civil or criminal proceeding is

pending. Sub-section (3) exempts similar distributions where similar beliefs as in sub-section (2) existed. Explanation to section 3 mentions when a judicial proceeding is to be treated as 'pending'. So far as a criminal case is concerned, it says pendency starts when the charge-sheet or *challan* is filed or when the Court issues summons or warrants, as the case may be, against the accused and in any other case, when the Court takes cognizance of the matter to which the proceedings relates. The case is treated as pending till appeal/revisions are decided. The Law Commission 200th report has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Law Commission, such an amendment would prevent the media from prejudging or prejudicing the case. It has also stated that publications with reference to character of the accused, previous convictions, confessions and judging the guilt or innocence of the accused or discrediting witnesses could be a criminal contempt. It said that publications, which interfered or tend to interfere with the administration of justice would amount to criminal contempt under the Contempt of Courts Act, 1971 and "*if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.*" These aspects are required to be considered so that protection to the concerned actors are effective and no loop holes remain to be misused.

In ***Narmada Bachao Andolan v. Union of India,*** (1999) 8 SCC 308, the Hon'ble Supreme Court highlighted:

> ***"...We wish to emphasise that under the cover of freedom of speech and expression no party can be given a license to misrepresent the proceedings and orders of the Court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the Court and bring it into disrepute or ridicule. The right of criticising, in good faith in private or public, a judgment of the Court cannot be exercised, with malice or by attempting to impair the administration of justice. Indeed, freedom of speech and expression is "life blood of democracy" but his freedom is subject to certain qualifications. An offence of scandalising the Court per se is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in a democratic society. It is not only an offence under the contempt of Courts act but is sui generis. Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without any malice, but no one can be permitted to distort orders of the Court and deliberately give a slant to its proceedings, which have the tendency to scandalise the Court or bring it to ridicule, in the larger interest of protecting administration of justice..."***

Another instance of flagrant interference with the administration of justice can be illustrated in ***M.P. Lohia etc.***v.***State of West Bengal and Anr.***,(2005) 2 SCC 686, where a newspaper

article gave a version of the tragedy by extensively quoting the father of the deceased and which could have been used in the forthcoming trial. The Court observed as follows:

> ***"..We deprecate this practice and caution the publisher, editor and the journalist who was responsible for the said article against indulging in such trial by media when the issue is subjudiced. However, to prevent any further issue being raised in this regard, we treat this matter as closed and hope that the other concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice..."***

Again, in the judgment of ***Sahara India Real Estate Corporation Ltd. V. SEBI (2012) 10 SCC 603***, it was highlighted that the law of contempt stems from the right of the courts to punish persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. The test is that the publication (actual and not planned publication) must create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. It is important to bear in mind that sometimes even fair and accurate reporting of the trial (say murder trial) could nonetheless give rise to the "real and substantial risk of serious prejudice" to the connected trials. Postponement orders safeguard therefore, the fairness of connected trials. The postponement orders are therefore not a punitive measure but a preventive measure, to protect fairness of the trial as well as the judges in charge of dispensing justice.

Transparency with regard to the judicial acts and judicial accountability towards their work are, no doubt, essential for our society and country. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act or the conduct of a judge, the institution of judiciary and its functioning as contrary to law or public good, no court would treat criticism as a contempt of court. No one is above the rule of law, however, an orderly society needs a methodical approach to solve any problem. To explain the nature of conflict between the judicial power of punishing contempt and freedom of press and the importance of balancing it, it is relevant to mention the celebrated case of ***John D.Pennekampet al*** v. ***State ofFlorida,*** **1946 SCC OnLine US SC 97**, from the United States of America. This case dealt with the contempt of Circuit Court of Dade County by the petitioners in the State of Florida, who were respectively the publishers and the editor of the local newspaper and were convicted and fined as they published two editorials and a cartoon which were critical of the administration of criminal justice in certain cases then pending before the Court. The issue before Supreme Court of United States was:

> ***"...Whether, and to what extent, a State can protect the administration of justice by authorizing prompt punishment, without the intervention of a jury, of publications out of court that may interfere with a court's disposition of pending litigation..."***

Justice Frankfurter in ***Pennekamp v. State of Florida, (Supra),*** which was a concurring opinion observed:

> ***" …. The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press. Both freedom of press and independence of the judiciary required to be protected to achieve the ends of free society."***

In ***Prashant Bhushan, In re (Contempt Matter)***, (2021) 3 SCC 160, the Hon'ble Apex Court of India has observed that:

> ***" 65. The lawyers and litigants going to press or media in a sub judice matter is another question that is at the fore in this matter. While hearing the matter, Shri Prashant Bhushan talked to the press and media. The statement which was made by Shri Prashant Bhushan, pursuant to the order dated 20-8-2020 [Prashant Bhushan, In re (Contempt Matter), (2021) 3 SCC 223] , was also published well in advance in extenso, word to word, in the newspaper and media. In a sub judice matter, releasing such statement to the press in advance is an act of impropriety and has the effect of interfering with the judicial process and the fair decision-making and is clearly an attempt to coerce the decision of the Court by the influence of newspaper and media, which cannot be said to be conducive for the fair administration of justice and would further tantamount to undue interference in the independent judicial-making process which is the very foundation of institution of administration of justice. If such kind of action is resorted to in a sub judice matter, that too by an advocate who is facing a criminal contempt, it virtually tantamounts to using a forum or platform which is not supposed to be used ethically and legally. More so, in a serious case of criminal contempt and particularly after the conviction has been recorded by this Court, it indicates that the tolerance of the Court is being tested for no good reasons by resorting to unscrupulous methods."***

In this regard, it is pertinent to draw the attention to the case of ***Rajendra Sail*** v. ***Madhya Pradesh High Court Bar Association and Others***, AIR 2005 SC 2473 where the Hon'ble Supreme Court while dealing with the contempt case, observed that for rule of law and orderly society, a free responsible press and independent judiciary are both indispensable and both have to be, therefore, protected.

V. Conclusion & Suggestions:

Any civilised,democratic and aspiring country requires both independent Judiciary as well as fearless, robust but responsible media. Many Scholars, Social Activists, Journalists and members of the society including Judges have suggested that there is a need to educate journalists and media managers to understand and respect the rights of the accused for a fair and impartial trial and they must be told of the limitations upon the intrusion into the rights of fair trial or intrusion into the privacy of individuals. It has been emphasized that the Media persons and their bosses must understand the boundaries of the freedom of expression and at what point they cross the limits so as to become liable either for the contempt of Court or for defamation or other actions. In this regard, the role of the Press Council is also important which has formulated the Press Council guidelines and Norms of Journalistic Conduct for the journalists engaged in reporting crime or legal issues which include the guidelines regarding Media Trial as well as Sting Operations and other related aspects. It is mentioned in these guidelines that (i) photograph of the accused persons should not be shown as it may affect the identification parade, (ii) media- persons should refrain from doing any act which may affect the legal presumption of innocence of the accused till pronounced guilty by the Court of competent jurisdiction and affect the right of fair trial,(iii) Publishing information based on gossip about the line of investigation by the official agencies on the crime committed gives such publicity to the incident that may facilitate the person who indeed committed the crime to move to safer place, (iv) it is not always advisable to vigorously report crime related issues on a day to day basis nor to comment on supposed evidence of the crime without ascertaining the factual matrix, (v) while media's reporting at the investigation stage in a criminal case may ensure a speedy and fair investigation, disclosure of confidential information may also hamper or prejudice investigation. There cannot, therefore, be an unrestricted access to all the details of the investigation, (vi) Victim, witnesses, suspects and accused should not be given excessive publicity as it is amount to invasion of their privacy rights, (vii) identification of witnesses by the newspapers/ media endangers them to come under pressure from both, the accused or his associates as well as investigative agencies. Thus, media should not identify the witnesses as they may turn hostile succumbing to the pressure, (viii) the media is not expected to conduct its own parallel trial or foretell the decision putting undue pressure on the judge, the jury or the witnesses or prejudice a party to the proceedings, (ix) the reporting on post trial/hearing often consists of reporting on the decision handed down. But when there is a time lag between the conclusion of the proceedings and the decision, the comments on the concluded proceedings, including discussion on evidence and/or arguments, aimed at influencing the forthcoming decision must be avoided, (x) media having reported an initial trial is advised to follow up the story with publication of final outcome by the court, whenever applicable. It is the duty of the Press Council to exercise its authority to check the growing tendency of the media personnel to encroach upon the freedom and rights of other people and take serious actions against those who violate these guidelines and norms as these are not mere dead letters.

Since the issue of media trials has serious effects on the freedom, rights and duties of individuals, courts and media, some specific legislation is required to streamline this troublesome situation. Another step to check the wrong reporting of the judgments by the media is to provide daily orders and judgments to the public on the Internet. The Supreme

Court has already taken a step to make available all the judgments and orders including that of the trial Courts on the Internet so that there should be no confusion regarding the reporting aspect of the cases to the public. The eCourts Project has now been implemented in nearly all the Courts of India to ensure transparency, access to Justice and information so that chances of wrong reporting or misleading reporting or speculation of any kind could be avoided.

The Legislature has also to play its role as the regime of the self regulatory mechanism adopted by the regulatory bodies of media require statutory flavour for legal enforcement. In a participative democracy, all the stake holders are required to be consulted before taking any concrete legislative and statutory shape so that regulatory mechanism may be beneficial for the country, society and individuals.

It is the solemn duty of the media as the *fourth estate* of the democracy to inform people about the true state of affairs and that is the reason that they are so enthusiastically protected by the Indian Constitution. The media persons must remember that journalism is not a business and they have a great responsibility towards the democratic principles and notions of public policy of the country. The present attitude of commercialisation and sensationalising the matters which are *sub-judice* is not in line with the established notions of public policy. All of us hope that with the help of effective legislation, proper implementation of the legislation and the guidelines, the media's self-restraint and mutual understanding of the rights and duties of media, courts and citizens will definitely help us solve this problem in near future.

Endnote:

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