

## MEDIA TRIAL VS. FAIR TRIAL: ARE THE NEW MEDIA RESHAPING ADMINISTRATION OF JUSTICE?

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**Abstract:** *Print and digital media have played a vital role in opinion building but it is often contested for having an impact on the fair trial process. This paper has put an effort to signify that the judiciary and the media are not the loggerheads contradictory to each other in the democracy; instead both complement each other. It analyses different paths through which media trials are affecting judicial decisions. Considering a wide variety of different media trial cases all across the world and its impact on judiciary, this paper emphasizes on the public interest in the fair administration of justice.*

**Key Words:** *media trial, fair trial, prejudice, subjudice, free press, law of contempt.*

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### 1. INTRODUCTION

Media law issues frequently dominate the news. A libel or privacy action by a politician or celebrity, an investigation into an alleged broadcasting scam, and the use of the Internet for downloading terrorist material or pornography are all stories which attract national, and increasingly international, publicity. This article is focused on the relationship of media freedom to the conduct of legal proceedings: prejudicial media publicity. In most jurisdictions the press and the broadcasting media may not publish material likely to prejudice the outcome of future or contemporaneous legal proceedings. The danger is that the jury would be unable to reach a fair conclusion on the evidence if it had been exposed to an article or broadcast, which, say, mentioned a defendant's criminal record or suggested that he was guilty of the offence. It is a contempt of court in England and other commonwealth jurisdictions to publish material of that kind. Yet there are doubts about the effectiveness of contempt of court law, particularly with the emergence of new technologies that are harder to control than the traditional mass media—the press and licensed broadcasters. Further, contempt law may sometimes limit media freedom excessively.

Among the most important impacts of press and media freedom is the power of print media and digital media to report legal proceedings comprehensively. Contemporaneous accounts of these proceedings, particularly of criminal trials, are of enormous public interest. It is now often claimed that open justice is not satisfied unless the broadcasting media have rights to film and transmit coverage of legal proceedings. After all, the public depends largely on television and radio for news and reporting of current affairs, so it is said, they have a right to see and hear how trials are conducted.

In the United States Supreme Court, Justice Hand of once said, “The hand that rules the press, the radio, the screen and the spread magazine, rules the country”, this implies the uplifted role

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of media in the present tech-savvy globalized world. This paper also emphasizes United States constitutional and statutory frameworks regulating communication media as well as the powerful systems of global media control emanating from private ordering and through the design of technological architecture. For example, the privacy policies of social media companies and the data retention practices of search engines create an ever-changing landscape of communication rights and responsibilities determining individual civil liberties online. Hence, it is critically analyzed how these legal and policy frameworks both shape, and are shaped by democratic culture, markets, and political and technological change.

In Singapore, in order to determine the contempt of court laws the courts relay upon whether statements are 'fair criticism' and there is a 'real risk' of scandalising the judiciary is present or not. This actually affords a middle way in saving free speech by not undermining public interest and buoyancy in the administration of justice.

The British approaches to resolving the conflict between the right to freedom of the press and the right to a fair trial from its origins to the present day. In particular, they focus on the provisions, defences, and penalties established in the Contempt of Court Act, 1981. This article also considers the Act's success and failures in application, as well as its future implications for freedom of the press in Britain.

In the British House of Lords, a Bill was moved by Lord Pannick to abolish the practise of scandalising the judiciary, considering it as a type of contempt of court. The countries which apply English case law mostly follow the law of England. Hence, Lord Antony Lester [1], had a view that any change in the United Kindom's law will send an important message across the common law world. The fact is, if we look closely at Singapore Laws, we will find the existence of this law, which is retained even in our Indian

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books, especially after a high-profile case of ‘Alan Shadrake’ [2], which has led to a significant judgment on the law of contempt.

It chronicles the history of the free press/fair trial conflict in the United States, focusing primarily on the effect of pre-trial publicity on the defendant’s Sixth Amendment right to a fair trial. The article covers the examination of the conventional methods used by trial courts to counter-act the problem of pre-trial publicity, and concludes that each is either ineffective or of questionable constitutionality. It argues that United States should enact a statute similar to the Contempt of Court Act, 1981 in order to protect an accused’s Sixth Amendment right to a fair trial by an impartial jury. Finally, it suggests a possible formulation of such a statute and concludes that the United States can enact it without running afoul of the First Amendment.

## **2. RIGHT TO KNOW:**

What is Democracy? Perhaps the best answer would be *the rule; of the people, by the people and for the people*, which is having three strong pillars and i.e. the executive, the legislature, the judiciary. But today perhaps, Indian democracy has become somewhat unstable on its three-pillars; hence, the fourth pillar **media** is giving stability which is enshrined under Article 19(1)(a) of the Indian Constitution [3]. A conscious keeper role is the exact role of the democracy. Like a watchdog media observes and at times correct the functionaries of the society. We can rely on the fact that in several issues the extraordinary media revolution has come out with positive impacts on the general public. Ethical and informative journalism is appreciated everywhere. The state judiciary also gets benefit from the courageous and ethical journalism. The judiciary is vested with the power to take *suo motu* cognizance of different case matters even relying on media covered reports. The news highlighting serious violations of human rights are also covered by the media and these are taken as grounds for *suo motu* cognizance by the judiciary. Many times the affluent and powerful people of our country who have committed any crime go scot-free because of the criminal justice system of our country which has many lacunae. The survey report says the conviction rate in India is abysmally down with 4%. Particularly in these type of situations where legal remedy is delayed or denied, media plays a vital role in not only stimulating the opinion of public but also tracking well-lit injustices by bringing them into the frontline which would have been overlooked otherwise. However, we have to consider always the two sides of a coin. The necessity of media professionalism and accountability in; reporting, covering and publishing the issues cannot be compromised with the increased role, importance and demand of it. Even in a Democratic Republic, “*freedom*”, howsoever invaluable cannot be considered in all circumstances absolute, unlimited and unqualified.

## **3. REASONABLE RESTRICTIONS:**

The Constitution of India has drawn reasonable boundaries within which the freedom of media has to be exercised. Great power comes with great responsibility. Hence, in India the right to freedom of speech and expression enshrined under Article 19(1)(a) of the constitution is not immune but correlative with the duty to not harm or overstep any law.

What leads disorder and anarchy? When liberty is left unbridled and the institution abuses its powers it leads to disorder and anarchy and we all are standing today on this threshold. In order to increase the TRP ratings, the television channels are willingly sensationalize the news and information with a view to earn competitive advantage over the others. Take for example the Sting Operations which have become a trend now. Though digital technology cannot be denied

but it has its limits. Hence, it is very important to have precarious balance between the fundamental rights and one's privacy. Now Media Trials also have become more of a daily occurrence. This practice was started to show the truth about the cases to the public at large has now become an interfering practice severely with the administration of justice. These aforesaid practices are frequented or often done by media. Therefore, for this reason we must highlight the enormous need of 'responsible journalism'.

#### 4. THE CONTEMPORARY ROLE OF MEDIA:

Let us now discuss about the treatment by media towards victims. Both print media and digital media, have a history of insensitive treatment towards victims. Often it has been noticed that media covers victim's blood on the site, it shows images of dead bodies and in the time of funerals also the TV cameras are on and they are trying to interview grieving parents. Do the public really is in the urge to see all this? Does the facts uncovered by media are really the truth? Are we going to understand the story or the larger issues by hearing the glory details of a brutal murder? Probably not, but these are shown us inundated with daily.

The statistical data actually shows 50-50 supporting media and against media by the victims, while some victims express a painful and draining experience with the media, other victims report a favourable involvement with media. The sensitivity the victim receives actually varies from case to case and that can only be narrated by the victim who deals with the media at that time. Example of some common objections from victims regarding media are:

i)	Blaming the victim for the crime,
ii)	Printing information that would negatively impact the victim's credibility,
iii)	Inappropriate/ aggressive questioning,
iv)	Discussion of gruesome details,
v)	Interviews at inappropriate times, such as funerals,
vi)	Footage/photographing child victims,
vii)	Glorifying the violent act or the offender and,
viii)	Naming the victim and proving access to them.

Table 1: Common Objections

The public has right to know but it is nowhere described that to what extent they can excel this right? Are they really supposed to know bits and pieces of a murder victim's last moment alive? Are these media coverage really meant for the right of the public (right to know) or just a media strategy to sensationalize the news? Even if it is public right to know, still the question remains the same that is, how it is going to serve the purpose of mankind or better the understanding of the public of the crime that has been committed? Hence here it can be suggested that there should be some rights given to the victims while they come with the contact of media. Right to grieve in private is such a right of the victims which should be given to them while they deal with media. The legislators allow Media to regulate themselves, but many also raise the issue that the media has done very little for their own regulations. In fact, there is no hard and fast procedure designed to train formally the reporters and photographers while dealing with victims in an appropriate manner. The rights of the victims would be given in such a way that it is not going to interfere with the ability of media to get the necessary information about a news story. The truth and the interest of the public in the very matter should not suffer due to these rights. Media could do very simple things to make things smooth for the victims and their families, such as:

a) Fair presentation/coverage of both side stories,
b) Avoid Inappropriate/gruesome photos,
c) To deal with the victim(s) carefully; with respect and dignity,
d) While they are grieving, leave the families alone. E.g. funerals,
e) Respect their privacy and wishes,
f) Just to create news don't humiliate or paint the victim in a bad light,
g) Avoid glorifying/ sensationalizing violence,
h) Graphic details are not required always,
i) Victim(s) blood or body bag is not necessary to be shown

Table 2: Media efforts

It is fortunate that there is a ban on publication of victim's identity in the criminal trial process to ensure the protection of their Identity. This is undoubtedly a welcoming step particularly for the victims those who have faced sexual assault also child victims as witnesses. The media cannot publish the details and privy to the information which are put under the ban by the fair trial system, particularly the details such as victim's identification or child witness. But the vital question before us is, can the media report anything unless and until there is a protection norm for the news reporting to ban it.

For the newsworthiness (either positive or negative) of the story media cited details and personal information about the victim and offender. However to sell their stories, media houses highlight the graphic details of a crime scene so that they could sensitize the news for the viewers or readers. The media is more interested to publish, when the crime is brutal, or if there are multiple victims or offenders involved with the intention to skew and twist for the public attention. In fact the most common crimes are often highlighted and reported. It creates a negative impact when the people feel crime incidents are increased and violent than they really are, which leads to a public sense of disorder. Media sensationalized the stories in such a way that the public believes they have a greater risk of being the sufferers than the actuality.

To protect victims of a crime, particularly media is restricted to report in details, like the names of the victims, child witnesses and sexually assaulted adult victims. The offender's identity may also lead to the identification of the victim, therefore the criminal's name should not be reported either. Ban on news report has both positive and negative impacts, especially in sexual assault cases where publication of the names of the victims could cause discouragement for the other victims to come forward out of fear of being identified openly. Perhaps we need to understand that by keeping the names of the victim's secret, it only adds shame to the victim's experience which is wrong indeed. Instead of hiding it or putting it under the veil we need to campaign on "nothing to hide". Because the offence is heinous and there is nothing bad or wrong about the publication of the names of such crime victims. In reality, many sexual victims want their names to be published, because they need justice and make the offenders held guilty not the victims. Sexual assault is such a delinquency in which victim may be perceived as guilty as the criminal by the misuse of media. One study found that the way the media publishes or covers criminal incidents affects the viewer's feelings of empathy or blame towards the victim. Even sometimes reporting details about what a victim was wearing during the incident judges the character of the victim and it implies the instigation for the crime against them. There is another absurd example can be mentioned here where a woman was abused by her husband for several years and finally murdered by him, promotes blame on the victim because she couldn't earlier leave the obnoxious situation.

## 5. PREJUDICIAL MEDIA PUBLICITY:

There is a central question of media law: should the law intervene to stop, or to punish as a contempt of court, the publication of material in the media which is likely to prejudice the fair disposition of pending or contemporaneous legal proceedings? The argument for legal intervention is that a jury may not reach a fair verdict if its members read or view a publication that reveals, say, that someone facing an imminent trial has a criminal record or a general bad character, or which otherwise is likely to prejudice them against the defendant. Courts in the United States cannot stop, or impose penalties for, this sort of publication, because any court order would infringe press freedom and freedom of speech; but the courts in Commonwealth jurisdictions can use their contempt powers, of varying degrees of strictness, to limit media freedom in this context, in order to safeguard the right to a fair trial[4]. That right is particularly important to defendants in criminal trials who may face the loss of their liberty on conviction, and like the right to freedom of speech and of the press, it may be guaranteed by the constitution or, as in the UK, by the constitution or, as in the UK, by the statutory incorporation of the European Convention on Human Rights.

The first two concepts compare the approaches in the United States and England to this problem. Stephen Krause argues that the UK Contempt of court Act 1981 is effective in limiting the discrimination of prejudicial publicity by the news media and that allow the media greater freedom for court reporting. He finds that the alternative measures developed by courts in the United States to safeguard fair trial rights are either effective or themselves of doubtful constitutionality. For example a trial court may postpone the start of the trial to reduce the prejudice stemming from jury exposure to prejudicial publicity; the difficulty is that a short delay will fail to remove the risk of prejudice, while the substantial delay of months or years would infringe the defendant's Sixth Amendment right to a 'speedy trial'. Research shows that instructions to the jury to take into account only the evidence given in court when considering its verdict may not be effective, while more extreme measures, such as insulating the jury from the media once it has been selected are resented;

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### *Recent Publications:*

*Book: Refugee Law in India: The Road From Ambiguity to Protection, Shuvro Prosun Sarker, Palgrave Macmillan (Imprint of Springer), Singapore, 2017, ISBN: 9789811048067.*

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moreover, they do not erase the impact of material its members may have read or seen before selection. While Krause's interest in UK contempt law is to be applauded, his view that it works effectively to curb the publication of prejudicial publicity is more controversial. Further, it is very doubtful whether a comparable law in the United States would be compatible with the press freedom guaranteed by the First Amendment.

## 6. IS THE MEDIA A 'FERAL BEAST'?

Former British Prime Minister Tony Blair did not cloak the expression of his disillusionment when he famously called the media 'a feral beast'. The comparison to an unruly pack of hungry animals was part of a speech delivered by Blair in June 2007 to highlight the problems of the media in today's world of 'impact' journalism. According to him, the state of the media—in particular its relationship with politics—has reached a point where corrective redress is warranted.

In April 2008, the Russian Parliament urgently passed the first reading of a special law that would empower courts to shut down media houses that published stories considered libellous and/ or unsubstantiated. The move came in the wake of a tabloid story alleging that President Vladimir Putin was going to divorce his wife of 25 years to marry an attractive young gymnast in her twenties. The story was picked up by the media all over the world and widely publicized before it was denied by the publication itself, *Moskovsky Korrespondent*, whose owner then announced that the tabloid would be suspending publication due to financial problems. An embarrassed Putin blamed journalists who, 'with their snotty noses and erotic fantasies, prowl into others' lives.' Russia's lawmakers voted to give courts powers to close a news outlet that 'disseminates deliberately false information damaging individual honour and dignity' of personalities.

The world over and in India, concerns are frequently expressed that, given market pressures to maximize profit, the media is not really as free and independent as it purports to be. Business imperatives of increasing revenue have taken (and continue to take) their toll on editorial freedom and journalistic excellence via the demands of advertises and the drive to increase circulation figures. At worst, the media is entirely controlled, albeit indirectly, by market pressures and, consequently, the imperative of public service has fallen by the wayside and neo-authoritarianism is the media model of the moment. Consequently, the media risks compromising its role as society's watchdog, and becoming beholden to advertisers and owners of media organizations [5].

In 1690, Benjamin Harris started a publication, *Publick Occurrences both Foreign and Domestick*, which was not only the first newspaper published in the US but, arguably, the first tabloid of its kind. The short-lived newspaper carried articles on incidents of kidnapping, suicide, and fire; stories similar to events covered by many tabloids even today. One article, however, turned out to be famous (or notorious, depending on a person's perspective). The article accused the King of France of sleeping with his son's wife. The colonial government in the US shut down Harris' paper after just one issue had been published. This decision was in tune with restrictions imposed on the press earlier in Europe. The British government had banned all newspapers from 1632 to 1641. For many years thereafter, no publication was allowed to print any information that could even mildly upset the King of England. Such societies exist even today, where writing about the head of states—monarch or otherwise—or the government is banned.

## 7. CONCLUSION:

This article essentially offers two perspectives. The major legal principles are stated together with a number of pertinent quotations from major cases. An experienced researcher eye is then cast over those principles in an endeavour to explain just what could or should not be attempted without risking a breach of the law. The text is aimed at both trainee journalists and those studying media law at undergraduate level, but we hope that it may prove to be of interest to a wider media audience as a reference article. A healthy democracy requires both an acceptance of the rule of law a thriving and responsible fourth estate. Lawyers and journalists may not always agree but at least we can keep the dialogue open, ongoing and friendly!

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