

Doctrine of postponement- Balancing Right to Fair Trial of Accused and Right to Freedom of Speech and Expression of Media

Limitation on Publication of Judicial Proceedings and its Effect on the Freedom of the Press

Trial by Media and Law of Contempt

What is Trial?

- ✓ A trial is a formal judicial proceeding in which a court hears evidence and arguments presented by parties involved in a dispute or case to determine the facts and reach a verdict or judgment.

Key Components of Trial:

- ✓ **Presentation of Evidence:** Both parties present evidence, including witness testimony, documents, and physical evidence, to support their claims.
- ✓ **Examination and Cross-Examination:** Witnesses are examined by the party who called them and cross-examined by the opposing party.

- ✓ **Arguments:** Parties present their arguments and legal positions to the court.
- ✓ **Verdict or Judgment:** The court renders a verdict or judgment based on the evidence and arguments presented.

Types of Trials:

- ✓ **Criminal Trial:** Determines the guilt or innocence of a defendant accused of a crime.
- ✓ **Civil Trial:** Resolves disputes between individuals or organizations, often involving claims for damages or other relief.

Purpose:

- ✓ **Fact-Finding:** Trials aim to determine the facts of a case.
- ✓ **Application of Law:** The court applies relevant laws to the facts to reach a verdict or judgment.
- ✓ **Resolution of Disputes:** Trials provide a formal process for resolving disputes between parties.

Principles of fair trial:

- ✓ The following are the principles of fair trial:-
- ✓ Adversary trial system :
- ✓ Presumption of innocence
- ✓ Knowledge of accusation:
- ✓ Right to open trial
- ✓ Right to free legal aid
- ✓ The trial in presence of accused
- ✓ Evidence to be taken in presence of accused
- ✓ Protection against illegal arrest
- ✓ Right to bail
- ✓ Prohibition on double jeopardy
- ✓ Right against self-incrimination

Doctrine of postponement

- ✓ The doctrine of postponement, established by the Supreme Court of India, allows a court to temporarily delay the publication of court proceedings or media coverage when there's a risk of prejudicing a fair trial. It's a preventative measure to balance the right to free speech with the right to a fair trial.
- ✓ The reporting of judicial proceedings by the press can generate unwarranted publicity and sensationalism. It may be a possibility that a journalist, having a shallow understanding of the administration of justice, acts in an incompetent and misguided manner. Hence, it becomes essential to ensure that there occurs no subversion of justice. It is imperative to provide the judiciary an atmosphere unclouded by public opinion in order to take an objective view of any case.

- ✓ In 2012 the Supreme Court of India constituted a constitutional bench in order to determine whether there existed a need for a set of guidelines to regulate the reporting of the media of court proceedings. The cause for such an action lay in the unauthorised leak of privileged communication with respect to a settlement between the lawyers on both sides in *Sahara India Real Estate Corpn. Ltd. v. SEBI*, AIR 2012 SC 3829.
- ✓ Held that in exceptional situations where reporting of judicial proceedings may adversely impact the fair administration of justice, the Supreme Court and the High Courts can pass orders to defer media reporting for a certain period.
- ✓ The court also held that the order of postponement must pass the test of necessity and proportionality and be resorted to only when no other alternatives exist.
- ✓ In *Saibal Kumar Gupta v. B.K. Sen*, AIR 1961 SC 633, the Supreme Court held that a newspaper cannot hold an investigation into a matter for which the accused has been arrested and restricted the paper to publish the result of such an investigation.

- ✓ In *Anukul Chandra Pradhan v. Union of India*, (1966) 6 SCC 354, the Supreme Court has pronounced that media publicity ought not to affect the essentials of a fair trial including the presumption of innocence.
- ✓ In P.C. Sen re, AIR 1970 SC 1821, the Supreme Court remarked that it would be an overstatement to assert that a judge may not be influenced even unconsciously by what he has read in the newspapers. Hence, media reports do impact judicial behavior.
- ✓ *Dara Singh v. Republic of India*, (2011) 2 SCC 490 ,
This case was of the murder of a missionary, Graham Staines, who lived and worked among the people of Odhisa. An angry mob had attacked him one night as he lay asleep with his two young sons and set his house ablaze. The chief accused Dara Singh was given death sentence by the trial court. In Dara Singh's appeal to the High Court, the sentence was reduced to life imprisonment.

✓The State's appeal to the Supreme Court for the restoration of the death sentence was unsuccessful and the reason the court offered was that it agreed with the opinion of the High Court as the accused had no intention of committing murder but only to teach Staines a lesson for converting poor tribals to Christianity. This reasoning of the apex court drew flak from the media organizations which created a public outcry. A few days later, the bench re-listed the case and proceeded to delete the objectionable passage from the judgment. The passage was substituted with the reasoning that since the case had dragged on for 12 years hence the court found it correct to not enhance the life sentence imposed by the High Court. This exhibits the sensitivity even the apex court possesses towards public opinion.

Primary Laws to regulate the media/press:

- ✓ **Constitution of India:** Article 19(1) (a) guarantees freedom of speech and expression, while Article 19(2) allows for reasonable restrictions on this freedom.
- ✓ **Press and Registration of Books Act, 1867:** Regulates the registration of newspapers and books, and prescribes the duties of printers and publishers.
- ✓ **Contempt of Courts Act, 1971:** Prohibits publishing or broadcasting content that may undermine the authority of the courts or interfere with the administration of justice.

Regulatory Bodies:

- ✓ **Press Council of India:** A statutory body established under the Press Council Act, 1978, to preserve the freedom of the press, maintain its independence, and promote journalistic ethics.
- ✓ **Ministry of Information and Broadcasting:** Regulates TV content, including restrictions on obscenity, communalism, and violence.

Digital Media Regulations:

- ✓ **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021:**
Provides a code of ethics for digital media platforms, including news portals and social media, and requires intermediaries to adhere to due diligence and grievance redressal mechanisms.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, regulate digital media platforms, including news portals and social media but it does not have the direct section which controls what the media/press can publish about the judiciary, the rules do outline a code of ethics for digital media platforms to follow: -

- ✓ **Code of Ethics:** Digital media platforms are expected to adhere to journalistic standards and avoid content that may be obscene, defamatory, or inflammatory.
- ✓ **Due Diligence:** Intermediaries, including social media platforms, must exercise due diligence in moderating content and removing prohibited content.
- ✓ **Grievance Redressal:** Platforms are required to establish grievance redressal mechanisms to address complaints about content

✓ **Limitation on Publication of Judicial Proceedings and its Effect on the**

✓ **Freedom of the Press**

What is a judicial proceeding?

- ✓ **A judicial proceeding is a legal process or hearing conducted by a court or tribunal to determine the rights and liabilities of parties involved in a dispute or case. It involves the examination of evidence, testimony, and arguments presented by the parties to reach a decision or judgment.**

Key Characteristics:

Conducted by a Court or Tribunal:

- ✓ **Judicial proceedings are held before a judge, magistrate, or tribunal with the authority to hear and decide cases.**

Adjudication of Rights and Liabilities:

- ✓ **The primary purpose is to determine the rights and liabilities of the parties involved.**

Examination of Evidence:

- ✓ Evidence is presented, examined, and considered to reach a decision

Binding Decision:

- ✓ The outcome is a binding decision or judgment that affects the parties' rights and obligations.

Types of Judicial Proceedings:

Civil Proceedings:

- ✓ Relate to disputes between individuals or organizations, such as contract disputes or property disputes.

Criminal Proceedings:

- ✓ Involve the prosecution of individuals or organizations for alleged crimes.

Appellate Proceedings:

- ✓ Involve appeals against decisions made by lower courts.

Importance:

Rule of Law:

- ✓ Judicial proceedings uphold the rule of law by providing a fair and impartial forum for resolving disputes.

Protection of Rights:

- ✓ They protect the rights and interests of individuals and organizations.

Accountability:

- ✓ Judicial proceedings hold individuals and organizations accountable for their actions

- ✓ A "*trial by media*" refers to the impact of television, newspapers, and social media on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a Court of law. This phenomenon can influence public opinion and potentially affect the fairness of judicial proceedings. Media trials involve the media conducting its own investigation and forming public opinion about a suspect or accused person even before the Court has reached a verdict. Media trials can prejudice the public, affect judicial functioning, and lead to wrongful portrayals of individuals, instigating hatred and violence against them.
- ✓ In India, unlike the US, the Constitution does not separately guarantee the freedom of the press. The right of the media to freedom of speech and expression is no greater and no less than the right of every citizen of India. However, several sections of the Contempt of Courts Act, 1971, including sections 2, 3, 4, 5 and 7 directly pertain to the relationship between the judiciary and the media.

- ✓ In *Nilesh Navlakha v. Union of India*, 2021 SCC ONLINE BOM 14, it was held that the freedom of the media, especially of the TV channels, cannot be allowed to super stretch to a point where, by outpouring reprobate information, begins to clog and cloud the pellucid comprehension of 'facts/news' in the people's minds and impinges upon free and fair investigation. 'Freedom of speech and expression' guaranteed by Article 19(1) (a) of the Constitution is said to be the life blood of our democracy, subject to reasonable restrictions under Article 19(2).
- ✓ In *Sidhartha Vashist @ Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 (Jessica Lal murder case), the Supreme Court has commented on the danger of serious risk of prejudice if the media exercises unrestricted and unregulated freedom. It is held that the freedom of speech protected under Article 19(1) (a) of the Constitution has to be carefully and cautiously used, so as to avoid interference with the administration of justice and leading to undesirable results in matters sub-judice before the Courts.
- ✓ Articles 10 and 11 of the 'Universal Declaration of Human Rights (UDHR)', 1948, and Article 14 of the 'International Covenant on Civil and Political Rights (ICCPR)', 1976, to which India is a party, also proclaim the right to be presumed innocent until proven guilty and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

- ✓ In a trial by the media there is no presumption of innocence. There is in fact no trial. The editor of a newspaper or of a television channel forms a view in a particular matter, and uses the media which he/she controls to further the interests of the people whose cause he or she champions. They are neither impartial, nor, generally, competent in the law.
- ✓ As a matter of fact, section 2(c) of the Contempt of Courts Act of 1971 seeks to prevent trials by the media, as they affect the administration of justice. The reaction of the judiciary to media trials has been based on the contempt law.
- ✓ In *A.K. Gopalan And Another v. Noordeen*, AIR 1970 SC 1694, the Supreme Court held that it will be contempt if there is a publication of any news or comments which have a tendency to or are calculated to or are likely to prejudice the parties or their causes or to interfere with due course of justice.

✓ In *Re: Arundhati Roy, (2002) 3 SCC 343*.

- ✓ The case involved a suo moto contempt petition initiated by the Supreme Court of India against Arundhati Roy, a Booker Prize-winning author. The contempt proceedings were initiated due to her criticism of the Supreme Court's decision to increase the height of the Narmada Dam, which led to the displacement of marginalized communities. Roy staged a protest in front of the Supreme Court gates, criticizing the Court for muzzling dissent.
- ✓ The Supreme Court held that freedom of speech and expression is not absolute and is subject to restrictions prescribed by law, such as the Contempt of Courts Act, which aims to maintain confidence in and uphold the integrity of the judiciary. The Court found that Roy's statements were not made in good faith and in the public interest and therefore could not be considered fair judicial criticism.

- ✓ The Supreme Court found Arundhati Roy guilty of contempt and sentenced her to one day's symbolic imprisonment and imposed a fine. The Court emphasized that while criticism of judicial decisions is permissible, it must be done in good faith and not in a manner that undermines the authority and integrity of the judiciary.
- ✓ The Court emphasized the importance of maintaining confidence in and upholding the integrity of the judiciary. It stated that the judiciary is the guardian of the rule of law and must be protected from contumacious behaviour.

Trial by Media and Law of Contempt

What is contempt?

- ✓ Contempt refers to behavior that disrespects or disregards the authority, dignity, or proceedings of a court, tribunal, or legislative body.

Types of Contempt:

- ✓ Civil Contempt: Failure to comply with a court order or judgment, often resulting in sanctions or penalties to enforce compliance.
- Criminal Contempt: Behavior that undermines the authority or dignity of the court, such as:
- ✓ Disrupting court proceedings
 - ✓ Disobeying court orders or directives
 - ✓ Publishing material that may prejudice a trial or undermine the court's authority
 - ✓ Showing disrespect to the judge or court officials

Purpose of Contempt Laws:

- ✓ **Protecting the Dignity of the Court:** Contempt laws aim to maintain the authority and respect due to the judiciary.
- ✓ **Ensuring Compliance:** Contempt proceedings can enforce compliance with court orders and judgments.
- ✓ **Maintaining Order:** Contempt laws help maintain order and decorum in court proceedings.

Consequences:

- ✓ **Punishment:** Contempt can result in fines, imprisonment, or other penalties.
- ✓ **Sanctions:** Civil contempt may lead to sanctions, such as fines or other penalties, to enforce compliance.

Importance:

- ✓ **Upholding the Rule of Law:** Contempt laws support the rule of law by ensuring that court orders and judgments are respected and complied with.
- ✓ **Protecting the Integrity of Proceedings:** Contempt laws help maintain the integrity and fairness of court proceedings.

Report of the 200th Law Commission of India (August 2006)

- ✓ Report recommended that it is necessary to train media personnel in certain aspects of law, such as the width of the right under Article 19(1)(a) and about what is not permitted to be published under Article 19(2).
- ✓ Media persons would also be required to know aspects of constitutional law, human rights, protection of life and liberty and the law on contempt.

Some Media Guidelines in India

- ✓ Press Council of India's Norms on Journalistic Conduct
- ✓ NBSA Code of Ethics and Broadcasting Standard, 2008
- ✓ Additional NBSA Guidelines • Guidelines on Reportage of Cases of Sexual Assault

- ✓ Guidelines for Accreditation by Delhi High Court
- ✓ Guidelines for Registration of Legal Correspondents for Reporting the Proceedings, Judgments & Orders of Punjab & Haryana High Court
- ✓ Norms for Accreditation of Legal Correspondents in the High Court of Kerala
- ✓ Norms for Accreditation of Legal Correspondents in the High Court of Himachal Pradesh .

R.K. Anand v. Registrar, Delhi High Court (2009) 8 SCC 106

- ✓ Viewed as a lost opportunity for the judiciary to ensure a fair and free trial to every citizen and to provide fundamental guarantees against arbitrariness.
- ✓ Delhi High Court certainly did right by the public in holding both I.U. Khan (Special Public Prosecutor) and R.K. Anand (Defence Counsel) in contempt. However, it did not consider it necessary to discuss the role of NDTV or the question of NDTV's responsibility and liability under the Contempt of Courts Act, 1971.

✓“The appellants might have taken the stand that not only the sting recordings but their respective responses shown by the TV channel were fake and doctored. In such an event the TV channel would have been required to be subjected to the strictest proof of electronic materials on which its programmes were based and, in case it failed to establish their genuineness and correctness, it would have been equally guilty, if not more, of serious contempt of court and other offences. By all reckoning, at the time of initiation of the proceeding, the place of NDTV was along with the appellants facing the charge of contempt. Such a course would have put the proceeding on a more even keel and given it a more balance appearance.”

Indu Jain v. Forbes Incorporated 2007 SCC OnLine Del 1424

Principles identified by the Delhi High Court on the media's freedom of publication versus an individual's right to privacy:

“Public or general interest in the matter published has to be more than mere idle curiosity.

Public figures like public officials play an influential role in ordering society. They have access to mass media communication both to influence the policy and to counter criticism of their views and activities. The citizen has a legitimate and substantial interest in the conduct of such persons and the freedom of press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events.

- ✓ Right to privacy that rests in an individual may be waived by him by express or implied consent or lot by a course of conduct which estops its assertions. Such implication may be deduced from the conduct of the parties and the surrounding circumstances.
- ✓ A public person or personage is one who by his standing, accomplishment, fame, mode of life or by adopting a profession or calling which gives the public a legitimate interest in his doings, affairs and character has so become a public figure and thereby relinquishes at least a part of his privacy.
- ✓
- ✓ The standard to be adopted for assessing as to whether the published material infracts the right to privacy of any individual is that of an ordinary man of common sense and prudence and not an out of ordinary or hyper-sensitive man.
- ✓ Even though in this country, the freedom of press does not have presumptive priority as in some other jurisdictions including the United States of America, however the importance of a free media of communication to a healthy democracy has to receive sufficient importance and emphasis.

- ✓ In evaluating a relief to be granted in respect of a complaint against infraction of the right to privacy against freedom of press and the right of public to disclosure of newsworthy information. Such consideration may entail the interest of the community and the court has to balance the proportionality of interfering with one right against the proportionality of impact by infraction of the other.
- ✓ The publication has to be judged as a whole and news items, advertisements and published matter cannot be read without the accompanying message that is purported to be conveyed to the public. Pre-publication censorship may not be countenanced in the scheme of the constitutional framework unless it is established that the publication has been made with reckless disregard for the truth, publication shall not be normally prohibited.”

Restrictions on the Media in India

Freedom of the press in India is unfettered with three distinct exceptions:

- ✓ Defamation – injury to a person's reputation [Sections 499, 500, 502 IPC]
- ✓ Incitement to offence – added to Article 19(2) under the First Amendment to the Constitution .
- ✓ Contempt – Contempt of Courts Act, 1971: publication of material to:
 - bring a court or judge into disrepute; or
 - obstruct or interfere with the due course of justice or lawful process of the court .
- ✓ The courts also issue postponement orders; privacy injunctions in specific cases.

Legal Provisions in Detail

- ✓ **Section 72(1) Bharatiya Nyaya Sanhita (BNS) 2023**– makes it a criminal offence to disclose the identity of the victim of offences under Sections 64, 65, 66, 67, 68 and 71 of BNS, 2023. The offence is punishable with imprisonment of either description for a term which may extend to two years and also a fine.
- ✓ **Section 23, POCSO Act, 2012** – describes the procedure for the media and states that no person shall make any report which may have the effect of lowering a child's reputation without having complete and authentic information.

- ✓ **Section 23(2), POCSO Act, 2012** – mirrors the offence under Section 228A of the IPC in the context of POCSO Act, 2012
- ✓ **Section 44(3), UAPA, 1967** – gives the Court the power to order that all or any of the proceedings pending before such a court shall not be published in any manner, where it believes that such a decision would be in the public interest.
- ✓ **Order XXXII Rule 2 CPC, 1908** – provides that where the suit or proceedings relates to matters concerning the family, the Court would have the discretion to conduct the proceedings in camera if it so desires, and where the parties to such proceedings make an application for the same, it shall be conducted in camera.
- ✓ **Section 22, Hindu Marriage Act, 1955; Section 43, Parsi Marriage and Divorce Act, 1936; Section 33, Special Marriage Act, 1954; Section 11, Family Courts Act, 1984** – provides that every suit filed under this act shall be tried in camera and that it shall not be lawful for any person to print or publish any matter in relation to any such case.
- ✓ **Section 16, Protection of Women from Domestic Violence Act, 2006** – provides that if the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, the Magistrate may conduct the proceeding under this act in camera.

- ✓ In *State of Maharashtra v. Rajendra Jawanmal Gandhi*, AIR 1997 SC 3986, which arose out of the rape of an eight-year-old girl illustrates this point. The Supreme Court strongly expressed its displeasure and observed, "A trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to a miscarriage of justice."
- ✓ Held that the credibility of media is based on unbiased and objective reporting, and responsibility for the same needs to be fixed so as to ensure that administration of justice is not undermined. A trial by the press will lead to miscarriage of justice.
- ✓ The reporting of judicial proceedings creates a conflict between the right of the media to report and the right of an accused to a fair trial. The two rights are of a fundamental nature and their conflict emanates from the incompatibility between the concept of open justice and its potential to interfere with the judicial process.

- ✓ The media has been vociferous and persistent in its campaigns against injustice. It has performed a commendable job in various cases but its overzealous approach tends to interfere with the administration of justice.
- ✓ There are serious consequences if parallel trials are conducted by the media. The electronic media has a profound effect on the sensibility of the people and can serve to erode the confidence of the people in the judiciary.
- ✓ There is a very thin line between right to comment on sub judice issues and interference with the administration of justice. The truth is
- ✓ Therefore, it is essential that the media reports, court proceedings, in a fair, accurate and responsible manner. that even a judge is not immune to public censure.

THANK YOU