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Media Trials: An Antithesis to Sub-Judice

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ABSTRACT

Media is considered the fourth pillar of democracy. One of the most vital functions of media is to disseminate information powered by the ability to control the masses. The point of concurrence between the press and judiciary is related to the issue of media trials and their influence on judicial matters. The position maintained by the judiciary is well established in terms of the existence of separate functions and regulations concerning media. The core aim of this research article is to address the issue of media trials in determining the verdict of sub-judice matters. This paper shall deal extensively with the problems concerned with the legitimacy of the verdict of media trials. Article 19(1)(a) of the Indian Constitution is comprehensive enough to include media channels, agencies, and publishers; it also aims to protect their freedom of speech and expression to maintain the sanctity of Indian democracy. In this day and age, publications, opinions, and digital media formulate public opinion. They are believed to be the main perpetrators in influencing the court judgement as it amounts to public pressure. Natural School of Jurisprudence laid down a few core principles that operate in favour of the accused. This paper will provide an in-depth analysis of media trials and their influence on the judiciary by demonstrating major constitutional law cases and comparative studies of other significant legal models. Through this paper, the reader can ascertain the position of media trials in the Indian context.

Keywords: *Democracy, Indian constitution, Judiciary, Media Trials, Freedom of speech and expression.*

I. INTRODUCTION

Media acts as a tool between the information available and the information provided by processing, moulding, and delivering it to the audience is available. The term media trial evolved from the concept of fair trial, derived from the Indian criminal judicial system. Fair trial is a crucial concept formulated by the judiciary encompassing principles of natural justice. “Presumption of innocence until proven guilty,” “Right against self-incrimination,” and “Right to a fair trial” forms the basis of criminal jurisprudence in India. Media trials harm the accused primarily by replicating what is considered a fair trial. Secondly, providing unverified evidence and information about the accused tarnishes their reputation. Finally, throughout this process, the media acts as a catalyst for forming negative public opinion about the ongoing case, which

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can be an antithesis to the principles of criminal jurisprudence in India.

The constituent assembly enacted Article 19 (1)(a) conferring freedom of speech and expression to citizens.² The interpretation is wide enough to encompass the media with freedom of the press. American Constitution explicitly provides the media with the liberty of the press under the First Amendment³ whereas, in the Indian Constitution, it is implicitly included within the ambit and scope of Article 19(1)(a). Press editors and managers are all citizens, and when they write in newspapers, they exercise their individual right to expression.⁴ It is, then, settled law in India that the right of freedom of speech and expression includes liberty of press as well.⁵ One of the most important principles that evolved through the common law system is the principle of audi alteram partem.⁶ During the adjudication, the judge must hear both sides, i.e., the Plaintiff and the Defendant. It is based on principles of natural justice that were developed during the era of the Romans and Greeks. This principle acts as a differentiating factor between media trial and fair trial.⁷ The term sub judice originated from the Latin meaning ‘Under Judicial Consideration’.⁸ According to the Contempt of Courts Act, 1971, the media is disabled, and it cannot publish on matters related to sub-judice as it will attract civil and criminal liability.⁹ Every judge is granted the authority to conduct judicial procedures within a set of reasonable and lawful boundaries, and their views are safeguarded through the Doctrine of judicial immunity; therefore, they cannot be sued for the verdict and opinion expressed through the judgment.

Section 2(c) of the Contempt of Courts Act, 1971, deals with criminal contempt, barring the media from publishing any material that may lower the judiciary's authority. Media interference in the judicial and administrative process of the judiciary shall amount to contempt of court, attracting criminal liability.¹⁰ The media is protected from attracting contempt in matters related to sub-judice by protection accorded to them through the Contempt of Courts Act, 1971.¹¹

Freedom of the press today means the absence of interference by the state with the media except in such force as it is authorised by the constitution and by the laws which are constitutionally

² Article 19(1)(a), INDIA CONST.

³ U.S. Const.

⁴ B.R Ambedkar, VIII C.A.D. 726.

⁵ Sakal Newspapers Ltd. V. Union of India, A.I.R. 1962 S.C. 305.

⁶ John M. Kelly, *Audi Alteram Partem*, 9 NAT. L.F. 103 (1964).

⁷ Supra at 5.

⁸ Ridhima Chandani, *The Rule of Sub Judice & Freedom of Speech and Expression: Scope and Restrictions*, 5 INT’J.L. MGMT. & HUMAN. 1071 (2022).

⁹ Contempt of Courts Act, 1971, No. 70, Acts of Parliament, 1971 (India).

¹⁰ Bhavana BK, *Legislation Commentary on Contempt of Court Act, 1971*, Volume I, ILE Judicial and Legal Review, Pg. 102-104, 2023.

¹¹ Contempt of Courts Act, 1971, § 3-6, No. 70, Acts of Parliament, 1971 (India).

valid law.¹² Articles 19 (1)(a), 19 (2), Art. 21 and Art. 14 of the Indian Constitution play a particularly crucial role in striking an even balance.¹³ Trial by media as a concept has evolved during the 21st century, indicating the overlapping of the two estates, i.e. judiciary and the media. In the case of Romesh Thappar V. State of Madras,¹⁴ The apex court held that freedom of the press is granted to the media within reasonable restrictions. Article 19(1)(a) is comprehensive enough to include within its ambit that no statutory law can be enacted that violates it. This was upheld and explicitly stated in the case of Brij Bhushan v. State of Delhi.¹⁵ The court included electronic and print media within the ambit of freedom of the press under freedom of speech and expression. The Supreme Court of India, in the case of Om Prakash Chautala vs Kanwar Bhan & Ors,¹⁶ held that the right to the reputation of a person flows from Article 21,¹⁷ A person's reputation is fundamental to him as a member of society due to it having ancestral, social and personal importance. Therefore, the judiciary aims to protect the rights of the accused in matters related to the media's interference in the proceedings of sub-judice.

The primary question then arises is whether such media trials are an antithesis to sub-judice. This paper seeks to answer this question in four limbs. The first limb shall deal with the principles of fair trial and the rights of the accused. The second limb shall deal with the evolution of media trials and the right to freedom of the press. The third limb shall deal with the constitutional validity of media trials regarding sub-judice. The fourth limb shall focus on a comparative analysis between India and the United States of America.

II. BASIC TENETS OF FAIR TRIAL AND RIGHTS OF ACCUSED

Ei incumbit probatio qui dicit, non qui negat is a Latin maxim that translates to Right to Be Presumed Innocent Until Proven Guilty, forming the basis of criminal jurisprudence in India.¹⁸ The adjudication process involves certain fundamental procedural aspects inherent to any fair trial. The principles of natural justice constitute what is considered a fair trial. *Audi alteram partem* forms the basis of fair trial.¹⁹ It is based upon the principles of justice, equity and good conscience. This principle originated from the naturalist school of jurisprudence and states that no party should be left unheard. In a case, the accused is deemed innocent until the other party

¹² D.D. Basu, Law of Press, 4th ed. 2002 Wadhwa & Co. Nagpur.

¹³ 200th Report of The Law Commission of India, pp17.

¹⁴ Romesh Thappar v. State of Madras, AIR 1950 SC 124.

¹⁵ Brij Bhushan v. State of Delhi, AIR 1950, SC 129.

¹⁶ Om Prakash Chautala vs Kanwar Bhan & Ors, 2014 (5) SCC 417.

¹⁷ Article 21, INDIA CONST.

¹⁸ U.P. v. Naresh and Ors, [(2001) 4 SCC 324].

¹⁹ Legal service India, <https://www.legalserviceindia.com/legal/article-46-audi-alteram-partem.html> (last visited March 25, 2024).

can prove otherwise beyond a reasonable doubt.

Media trials often create a false image of the accused by carefully disseminating the information and manipulating and persuading the public and its opinions. The victim in a media trial is the accused in a particular case who suffers from discrimination, ostracisation and damage. The impact of media trials is negative and violates the procedural mandate required for a fair trial.²⁰ The case of *Manu Sharma v. State (NCT of Delhi)*,²¹ infamously known as Jessica Lal's murder case, was widely received by the media. The accused, Manu Sharma, was acquitted by the lower court, but due to increased public sentiment, it gained comprehensive media coverage. The accused was acquitted due to a lack of probable evidence and a detailed situation. The case was later tried in the Delhi High Court due to public pressure, and the court convicted the accused, Manu Sharma.

This case is an example of how media trials can damage a person's reputation and pressure the judiciary to act in a specific manner, ignoring the procedural aspect of law. In conclusion, the Apex Court, in the case of *T. Nagappa v. Muralidhar*, held that the accused has a right to a fair trial. He has the right to defend himself as a part of his human life is also a fundamental right as enshrined under Article 21 of the Constitution of India.²²

Actori incumbit onus probandi is a Latin maxim that translates to Burden of Proof. The prosecution bears the burden of proof while determining the accused's guilt. The claimant must prove beyond a reasonable doubt rather than mere allegations. "If the preponderance of the evidence is too low a standard for releasing investigative findings about ordinary citizens, then certainly the even lower reasonableness and scintilla tests are inadequate. The most appropriate standard for private persons is clear and convincing evidence. That burden is not so high that it unnecessarily protects people from consequences relevant to criminal trials but not news reports. Nor is it so low that it tramples over the privacy rights of ordinary people or undermines the credibility of the media as watchdogs."²³ This principle is clearly established through section 101 of the Indian Evidence Act.²⁴

The legislative intent behind this statutory provision is to prove the existence of facts. Then, the burden arises on the prosecution to prove that a violation of legal rights occurred. A double

²⁰ Tanya Mayal, *Presumption of Innocence and Dilution of Facts by Media Trials*, Vol. 3 Iss 3 IJLSI 475, 475-476 (2020).

²¹ *Manu Sharma v. State (NCT of Delhi)*, (2010) 2 SCC (cri) 1385.

²² *T. Nagappa V Y.R. Muralidhar* (2008) 5 SCC 633.

²³ Edward Felsenthal, *Trial by Journalism: Toward a Burden of Proof for Investigative Reporting*, 16 COMM. & L. 21, 31-32 (1994).

²⁴ Indian Evidence Act, 1872, & 101, No. 1, Acts of Parliament, 1872 (India).

murder occurred in 2008, infamously known as the Aarushi Talwar murder case.²⁵ The trial court convicted the accused in the said case; later, this decision was overturned by the Allahabad High Court. The court expressed dissatisfaction while overturning the trial court's order. It criticised the investigative agency and its inability to follow the procedural aspects of adjudication proceedings. There was a lack of concrete evidence against the parents/accused in the said case, and the State failed to determine the guilt of the accused beyond a reasonable doubt, thus being unable to shift the burden of proof. The case received wide media attention due to its peculiar circumstances. The media devised many angles to create controversy and generate TRP. The media trial caused irrevocable damage to the parties, causing a plethora of problems. The parents in the case suffered from excessive discrimination and mental agony due to ingenuine speculations made by the media. Consequently, they suffered from a loss of reputation even after being acquitted by the court.

III. EVOLUTION OF MEDIA TRIALS AND RIGHTS OF THE PRESS

Media trials must be made aware of the principles established for a fair trial, with increased cutthroat competition. News agencies chase television rating points, often known as TRP.²⁶ Due to a rise in economic competitiveness and a requirement to stay relevant in the business, media channels frequently report unverified and hearsay information, hampering the principles of natural justice concerning criminal jurisprudence.

The Supreme Court of India, in the case of *R.K. Anand v. Registrar, Delhi High Court*,²⁷ recognised the media trial and held that since a simultaneous media trial puts the rights to “free speech and expression” and “a fair trial” in jeopardy, it lacks legal standing in our legal system. The Delhi High Court later clarified and stated that primacy should be given to the former as it amounts to public interest, which is considered essential for democracy. Moreover, in the case of *Sanjay Dutt v. State Through C.B.I. Bombay*,²⁸ The accused, Sanjay Dutt, was charged with the TADA and Arms Act in 1993. The prosecution failed to link him to the terrorist attacks; therefore, the lower court acquitted him due to a lack of substantial evidence and proof available against him. Later, this case received wide media attention, and news agencies labelled him as a terrorist even though the court acquitted him. Being a superstar, he suffered from defamation and loss of reputation due to comprehensive media coverage. Later, he was convicted of the Arms Act and not of TADA.

²⁵ *Nupur Talwar v. Central Bureau of Investigation & Another*, A.I.R. 2012 S.C. 1921.

²⁶ Shazia Shaikh, *Law and Media Trial in India*, 7 J. NAT'L. U. DELHI 76 (2020).

²⁷ *R.K. Anand v. Registrar, Delhi High Court*, (2009) 8 SCC 106.

²⁸ 1995 SCC (6) 189.

There are mixed opinions regarding the legitimacy of media trials, which can be deduced from various instances. Media trials are often considered illegitimate and unjustifiable by the judiciary; nevertheless, in the infamous case of the Nirbhaya gang rape case,²⁹ it acted as a saviour for the victim. The media maintaining the victim's anonymity throughout the trial is commendable, fair and just on their part. While delivering the judgement, the doctrine of Rarest of the Rare was applied by the Apex court, which found all the accused in the said case guilty. There was a conflict regarding the jurisdiction of the crime, due to which there was a delay in the procedure of registration of the First Information Report. The introduction of Zero FIR helped curb this issue. Due to an enormous public outcry, protests, debates and media reporting, the legislature introduced and enacted a Criminal Law (Amendment) Act, 2013, to protect the victims of such crimes. Along with this amendment, the legislature passed a bill, the Juvenile Justice Act, in 2015 to deal with minors committing such heinous crimes.

Dr. B.R. Ambedkar recognised freedom of the press, which is considered the fourth pillar of democracy. In one of the constitution assembly debates, he expressed his opinions and views on the same. “The press is merely another way of stating an individual or a citizen. The press has no special rights not to be given or exercised by the citizen in his capacity. The editors of a press or the managers are all citizens, and therefore, when they choose to write in newspapers, they are merely exercising their right to expression; and in my judgement, therefore no special mention is necessary of the freedom of the press at all.”³⁰ Freedom of the press is implicitly mentioned under Article 19 of the Indian Constitution. Rights have been accorded to the press through various precedents and judgements. The Supreme Court of India, in the case of *Romesh Thappar v. State of Madras*,³¹ explicitly stated that “Freedom of speech and the press lay at the foundation of all democratic organisation, for without free political discussion, so essential for the proper functioning of the process of popular government, is possible.”³² In a landmark case known as *R. Rajagopal v. State of Tamil Nadu*,³³ The topmost court of India broadened the purview of Article 19 (1)³⁴ and encompassed the right to freedom of the press within reasonable restrictions. While delivering the judgement, the court referred to the *New York Times vs United States*³⁵ and stated that freedom of the press should exist within the ambit of the right to privacy of an individual. A recent judgement by the Supreme Court set forth specific guidelines

²⁹ *Mukesh & Anr v. State (NCT of Delhi) & Ors*, (2017) 6 SCC 1.

³⁰ Constituent Assembly Debates, Volume VII, Page 780.

³¹ *Supra* at 14.

³² Arunav Talukdar, “*Media Trial and right to freedom of speech and expression: An Analysis*”, 2018, p 22.

³³ *R. Rajagopal v. State of Tamil Nadu*, 1994 SCC (6) 632.

³⁴ *Supra* at 2

³⁵ *New York Times vs. United States* ([1971] 40 U.S. 713).

that must be followed during the media's publication of proceedings. In the case of *Nilesh Navalakha v. Union of India*,³⁶ The apex court stated that media trials are often considered pre-trial devoid of the rule of sub-judice. The court directed the media on a method of publication of ongoing cases:

1. Media channels cannot interrogate and examine the person related to sub-judice matters.
2. The victim is conferred with protection under Article 21, through which privacy and dignity are maintained.
3. Delicate and sensitive details of the case should be kept private.

IV. CONSTITUTIONAL VALIDITY OF MEDIA TRIALS W.R.T RULE OF SUB-JUDICE

The essence of any fair trial is when the rights of the accused are protected collectively in all senses. Article 19(1)(a)³⁷ provides freedom of the press within the ambit of Article 19(2),³⁸ which is a reasonable restriction. Freedom of the press is fundamental for the functioning of democracy in India. Every so often, while conducting a media trial, the press invades and violates the right to privacy of an individual as recognised through Article 21 of the Indian Constitution.³⁹ The Supreme Court addressed the conflict between fair trial and free press in the case of *Zahira Habibullah Sheikh and Ors. v. State of Gujarat*,⁴⁰ it further affirmed that free trial is the cornerstone of judicial freedom exercised through principles of natural justice forming the basis of criminal jurisprudence. Fair trial means a trial before an unbiased judge free from the influence of media and prejudice against the accused.⁴¹ Whenever a conflict emerges between fair trial and freedom of the press, the rights of an individual shall prevail over the rights of the press, as any violation of an individual right can cause a lasting impairment to him, as enumerated in the case of *Anil Kumar v. M/S. I Sky B & Ors.*⁴² The court further recognised the influence of media on the judge in the case of *Rao Harnarain v. Gumani Ram*,⁴³ and expressed concern over the practice followed by the media during media trials. Moreover, it observed the impact journalists have on the subconscious of the judges, which hampers the effective decision-making process and, therefore, violates the principle of presumption of

³⁶ 2021 SCC OnLine Bom 56.

³⁷ *Supra* at 2

³⁸ Article 19(2), INDIA CONST.

³⁹ *Supra* at 17

⁴⁰ *Zahira Habibullah Sheikh and Ors. v. State of Gujarat* (2006) 3 SCC 374.

⁴¹ Nimisha Jha, "Constitutionality of Media Trials in India: A Detailed Analysis" 2015, *Academike* <https://www.lawoctopus.com/academike/media-trials-india/#_ftnref43> accessed 3 April 2024.

⁴² *Anil Kumar v. M/S. I Sky B & Ors.*, CS No. 323/2013.

⁴³ *Rao Harnarain v Gumani Ram* (1958) AIR P H 273.

innocence until proven guilty.

Trial by media lacks transparency and validity during publication of information about a case, therefore amounting to contempt of court under the Contempt of Courts Act, 1971.⁴⁴ The Contempt of Courts Act was conceived to deal with the problems that arise from the process of media trials. Contempt is dissected into two parts, namely civil and criminal contempt. It will be attracted when the adjudication process is hindered due to the presence of anti-social elements. In the case of *Subhash Chandra v. S.M. Agarwal*,⁴⁵ the court stated that a case under judgment cannot be commented upon as it will attract liability under contempt of court. The Apex Court and the High courts have the power to punish those who abandon themselves to such acts through Articles 129⁴⁶ and 215⁴⁷ of the Indian Constitution.⁴⁸ Hon'ble Mr Justice Kurian Joseph of the Supreme Court of India recollected the words of the Judge presiding in the Nirbhaya case. The judge said, 'If I had not given that punishment, they would have hung me; the media had already given their verdict, (like) it is going to be this only'.⁴⁹ The pressure faced by the judges is extraneous in nature. Media trials, reports, electronic media and publications collectively impact the judges. The amount of pressure the judges face while giving the verdict amounts to a biased and prejudiced decision due to them being subconsciously influenced by it, as also expressed in the case of *Reliance Petrochemicals case*.⁵⁰

Under Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971), there are various recommendations made through the 200th Law Commission Report to curtail the unregulated power exercised by the media during the adjudication process.⁵¹ The basic code of conduct must not be violated in any circumstance so that the integrity of the press is maintained.⁵² The defamatory materials published and controversy created by the media are done to generate TRP in order to achieve commercial success. The success is contingent on the breach of rights suffered by the accused. Therefore, the subject of freedom of the press, along with freedom of speech and expression, was taken *suo moto* by the commission. They aimed to define the scope and ambit of what amounts to

⁴⁴ Supra at 9

⁴⁵ *Subhash Chandra v. S.M. Agarwal* (1984) Cri LJ (Del) 481.

⁴⁶ Article 129, INDIA CONST.

⁴⁷ Article 215, INDIA CONST.

⁴⁸ Lity Manisha & Meghna Rawat, *Trial by Media: Undermining of the Indian Judiciary*, Vol.3 Iss 4 IJLSI 434, 446-447 (2021).

⁴⁹ PTI, *Media Trials Strain Us, Says SC Judge*, THE TIMES OF INDIA (26 July 2015), <http://195.timesofindia.indiatimes.com/india/Media-trials-strain-us-says-SC-judge/articleshow/48221249.cms> (accessed 4 April 2024).

⁵⁰ *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express*, AIR 1989 SC 190.

⁵¹ Anamika Ray & Ankuran Dutta, *Media Glare or Media Trial: Ethical Dilemma between two Estates of Indian Democracy*, 5 OJCMT 92, 97 (2015).

⁵² Supra at 40.

publication. The report recommended amending the power of the High courts concerning prejudicial publication.

The Press Council of India Act⁵³ enacted in 1978, gave a particular journalistic code of conduct that must be followed while publishing any news. The act aimed to balance between the rights accorded to the press and the individual during sub-judice matters. According to various precedents, judgements and norms, it is a clearly established principle that the individual's rights will always supersede the press's rights. The dignity and privacy of an individual are given utmost importance to uphold the democratic principles of the Constitution.

V. COMPARATIVE ANALYSIS BETWEEN INDIA AND THE UNITED STATES OF AMERICA

The First Amendment of the US Constitution guarantees freedom of speech and press.⁵⁴ Freedom of the press under the First Amendment is accorded with extensive freedom, thereby failing to establish a concrete definition of the First Amendment. This problem exists due to the lack of a satisfactory theory developed concerning the First Amendment specific to freedom of the press.⁵⁵ People engage themselves in society and are a part of the decision-making process, thus influencing each other. While the media is expressing its right to free speech and expression, it becomes of paramount importance that a well-defined regulatory mechanism should exist.⁵⁶ The factors that the court considers while determining the scope of the First Amendment are contingent on the facts and circumstances of that particular case. The Supreme Court of the United States of America, in the case of *Spence v. Washington*,⁵⁷ answered this question of law and stated that the First Amendment should come into effect only when there is "an intent to convey a particularised message was present, and in the surrounding circumstances the likelihood was great that the message would be understood by those who view it."⁵⁸ The judge's examination of the case's particulars during the adjudication process shall be the final interpretation of the First Amendment with respect to the said case. The First Amendment's ambit and scope are comprehensive, due to which mixed views have been expressed about the same through various precedents and judgements.

The case of *Rideau v. Louisiana*⁵⁹ is a landmark judgement produced by the Supreme Court of

⁵³ The Press Council of India Act, 1978.

⁵⁴ *Supra* at 3.

⁵⁵ Thomas I. Emerson, *Toward A General Theory Of The First Amendment*, 72 Yale L.J. 877, 878 1962-1963.

⁵⁶ Geoffrey R. Stone, *Content Regulation and the First Amendment*, 25 William and Mary Law Review 189, 193 1983.

⁵⁷ *Spence v. Washington* 418 U.S. 405 (1974).

⁵⁸ Ludwig Wittgenstein, *Recuperating First Amendment Doctrine*, 47 Stan. L. Rev. 1251 1994-1995.

⁵⁹ *Rideau v. Louisiana* 373 U.S. 723 (1963).

the United States of America about the rights of the accused during pre-trial publicity. The court laid down the test of "presumed prejudice", in which the accused was interviewed for three whole days, further admitting guilt due to lack of a legal representative. The court laid down certain reasonable restrictions on the freedom of the press. It upheld the principles of natural justice, such as the right to be represented, thus focusing on protecting the individual rights of the accused. There was a shift from the protection of the private rights of an individual to the protection of the rights of the press, thus broadening the interpretation of the First Amendment. The test of "presume prejudice" later shifted to the test of "reasonable likelihood", demonstrated through the case of *Sheppard v. Maxwell*.⁶⁰ The rights of the accused were breached due to a massive pre-trial publication, therefore hampering his right to a fair trial.⁶¹ Indian judiciary also holds the same position that the judges must adhere to norms established by the rule of law and must not be violative of the rights of the accused due to pre-trial publication, as expressed through the case of *State of Maharashtra v. Rajendra Jawanmal Gandhi*.⁶² This case dealt with the rape of a minor, and due to pre-trial publicity, it led to defamation of the minor concerning her autonomy and dignity, thus violative of Article 21 of the Indian Constitution. Violation of rights of any side, either accused or victim, is violative to the rule of sub-judice as it fails to follow the rules established by law.

The Press Council set down basic principles that must be followed to maintain judicial integrity. The publication must be reasonable and appropriate to achieve a fair and just outcome. The press must act in a constricted manner so that the reputation of an individual is not damaged through news reports. Whenever prejudicial news reaches the audience, it creates a wrongful impression in the minds of the people, leading to the formation of stereotypical perspectives.⁶³ In *Maxwell's case*,⁶⁴ The apex court of the United States laid down a few guidelines concerning press control:

1. Regulation of press attendance during adjudication proceedings.
2. Stricter imposition of rules by the judiciary to control the publication of case-related material.
3. The court laid down the test of "reasonable likelihood". It stated that if any prejudicial publication negatively affects the judicial proceedings and rights of the accused, thereby

⁶⁰ *Sheppard v. Maxwell* 384 U.S. 333 (1966).

⁶¹ *Supra* at 40.

⁶² *State of Maharashtra v. Rajendra Jawanmal Gandhi* 8 SCC 386.

⁶³ Justice R.S. Chauhan, *Trial by Media: An International Perspective*, SCC Online (Apr. 5, 2024, 12:21 PM), <https://www.sconline.com/blog/post/2020/09/13/trial-by-media-an-international-perspective/>.

⁶⁴ *Supra* at 58.

hampering his right to a fair trial, then the case shall be transferred to another country unaware of it.

Though these guidelines exist in the American legal system to protect the rights of the accused, they need proper implementation. Through this comparative analysis, we can outline the relationship between the Indian and American legal systems for media trials during the matters of sub-judice.

1. The Indian judiciary protects the rights of the press by widening the scope of Article 19(1)(a), which aims to maintain an individual's autonomy based on the principles of natural justice. Similarly, The American legal system is intrinsic to freedom of the press. As mentioned in the First Amendment, freedom of the press provides the media with a broad means of expression, thereby protecting their rights.
2. Both legal systems aim to strike an even balance between the rights of the press and the rights of the individual. In India, by broadening the interpretation of Article 21 of the Indian constitution, the judiciary has tried to protect the rights of the accused by granting him the right to be represented fairly and unbiasedly, as also explicitly stated in the case of *Zahira Habibullah Sheikh and Ors. v. State of Gujarat*.⁶⁵ Identical to this, the American legal system has protected the rights of the accused by imposing stricter regulatory mechanisms by developing tests like "presumed prejudice"⁶⁶ and "reasonable likelihood".⁶⁷

VI. CONCLUSION

The core aim of this paper is to brief the reader on the position of media trials with respect to the rule of sub-judice. The media conveys information to the public, influencing their perception of the ongoing trial. The readers must verify the integrity of the publication to form a just opinion regarding the subject matter. The media has been given freedom of speech and expression through Article 19(1)(a) but within reasonable restrictions as mentioned in Article 19(2). The rights of the accused are protected through the Contempt of Courts Act 1971, in which it is clearly stated that any publication that violates the principles of fair trial and hampers the ongoing trial process shall then attract criminal liability. "Presumption of innocence until proven guilty", "Right to a fair trial", and "Beyond a reasonable doubt" are fundamental principles that form the basis of natural justice inherent to any trial process. The process

⁶⁵ Supra at 39.

⁶⁶ Supra at 57.

⁶⁷ Supra at 58.

followed during media trials is distinct from the adjudication process followed by the judge according to the procedure established by law. Implementing well-defined regulatory mechanisms is of utmost importance to maintain harmony between the institutions regarding media and judiciary. Through the 200th Law Commission Report, guidelines were given by the legislature for a stricter interpretation of Article 19(1)(a) with regard to the elucidation of freedom of speech and expression. The term publication must be adequately defined for better interpretation of the statute. The comparison between the Indian and American judiciary helps us understand and determine the scope of rights of the accused and freedom of the press concerning media trials. There still exists a lack of a specific set of rules that one must adhere to during a media trial, which is deemed violative of the private rights of an individual. Therefore, a more comprehensive system must be established to curb this issue and balance both estates.
