

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

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Trial by Media: Free Speech v. Fair Trial

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ABSTRACT

In contemporary society, the intersection of free speech and the right to a fair trial has become a complex and contentious issue, particularly in the context of media influence on legal proceedings. This abstract explores the delicate balance between the constitutional guarantee of free speech and the imperative to ensure a fair and impartial trial. The phenomenon of "Trial By Media" refers to the potential for media coverage to shape public opinion, influencing jurors and jeopardizing the accused's right to a fair trial. Examining high-profile cases and their media portrayals, this abstract delves into the ethical and legal challenges posed by sensationalized reporting, social media commentary, and the 24/7 news cycle. It considers the impact of pretrial publicity on juror bias and the judiciary's struggle to mitigate these effects. Furthermore, the abstract discusses the evolving role of the media in the digital age, where information spreads rapidly and often uncontrollably. It explores potential solutions and legal frameworks aimed at reconciling the constitutional right to free expression with the imperative to safeguard the integrity of the judicial process. As societies grapple with these competing interests, finding a nuanced equilibrium between the principles of free speech and fair trial becomes essential to uphold the foundations of justice and maintain public trust in the legal system.

Keywords: *impartial trial, media, social media, fair trial, publicity.*

I. INTRODUCTION

Due to the widespread use of the Internet, television, and print media, the manner in which news is disseminated has undergone a significant transformation. This shift, commonly referred to as "Trial by Media," can adversely affect individuals involved in a case, including suspects, accused individuals, witnesses, and the judges overseeing the proceedings. The impact extends beyond the legal realm to the general public and the administration of justice.

In the context of Indian society, the pervasive influence of media, both in print and on television, is evident. Recent events, such as the Sushant Singh Rajput case, highlight the potential for individuals like Rhea Chakraborty to face a media trial, with possible repercussions on their legal outcomes.

Consequently, the proliferation of the internet, television, and print media has led to an alarming

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increase in the public attention given to any suspect or accused individual. This heightened exposure poses a risk of biased convictions for innocent individuals, while genuinely guilty parties may escape justice or face disproportionately severe penalties. Moreover, there seems to be a lack of restraint in the media's coverage of criminal justice proceedings.

We are well aware that in a democratic setting, freedom of speech and expression is extremely important, as stated in Article 19². Nevertheless, in any given nation, no right is considered absolute, as complete absoluteness could potentially exacerbate issues related to law and order and internal security. Hence, Article 19 permits the imposition of reasonable restrictions on the freedom of expression.

The case of *Mother Dairy Foods & Processing Ltd v. Zee Telefilms*³ accurately reflects the current state of the media. It says to present something in which the public is interested rather than something in which the public is disinterested.

Excessive publicity affects not only suspects and accused, but also victims and witnesses, resulting in violations of their fundamental rights. The media, both print and electronic, also paints a negative picture of the police. Furthermore, after a crime is reported, news channels demonstrate that the police have no idea what happened and blame the entire state apparatus for it.

This creates a constant burden on law enforcement as they repeatedly broadcast the same news, compelling the police to protect their image. Faced with this pressure, the police construct a narrative where they assert having captured the culprit, who allegedly confessed. Once the confession is disclosed by the police and subsequently reported by the media, the fate of the suspect is essentially determined.

The case of *Nupur Talwar v. Central Bureau of Investigation and Others*⁴, is a shining example of such a situation. However, in criminal jurisprudence, the accused is deemed innocent unless proven guilty in a court of law.

Furthermore, Art. 19(1)(a)⁵ guarantees freedom of speech and expression, and Art. 19(2)⁶ allows the state to impose reasonable limits on many topics, including "Contempt of Court."

The legislature drafted "The Contempt of Courts Acts, 1971" to cope with "Contempt" issues.

² The Constitution of India Act, 1950.

³ AIR 2005 Delhi 195.

⁴ (2012) 11 SCC 465.

⁵ The Constitution of India Act, 1950.

⁶ Ibid.

Criminal contempt, according to Section 2(c)(iii)⁷, This takes place when media outlets disrupt the functioning of the legal system. To avoid such disruption, the restrictions outlined in the Contempt of Courts Act, 1971 would be considered legitimate if they reasonably limit Article 19(1)(a), which guarantees the right to freedom of speech and expression.

Section 3⁸ pertains to the concept of innocent publication, asserting that an individual cannot be held liable for civil or criminal contempt if legal proceedings were not in progress at the time of the publication. In other words, if no charges were filed in court, or if no summons or warrant had been issued by the date of publication, such disclosures would not be deemed contempt of court. The crucial condition for contempt would be the genuine pendency of legal proceedings, meaning that a charge sheet must have been filed or a challan issued by the Court of Law on or before the publication date.

Now, the following queries emerge:

- Is this permissible according to the Constitution of India?
- Should the regulation of publications occur from the moment the crime is discovered, upon the arrest of the accused, or starting from the date when the warrant is issued?

The Supreme Court of India, as well as the House of Lords, have acknowledged that such media releases may have an unintended impact on judges. We will examine their decision throughout this paper. This can be noticed at the bail stage (granted or refusing bail) or at the trial stage.

However, in *Surendra Mohanty v. State of Orissa*⁹, the Supreme Court ruled that filing a FIR or issuing a challan could not be the first step in a criminal case. Because of this decision, a biased publication issued after the issuance of a challan or the filing of a FIR is now protected under the law of contempt.

Later, in *A.K. Gopalan v. Noordeen*¹⁰, the Supreme Court of India reversed the preceding decision, ruling that any biased publication published after an accused's 'arrest' shall be considered contempt of court. And, as far as the Constitution of India and the Contempt of Courts Acts of 1971 are concerned, this remains the law of the nation.

The 24-hour rule states that once a suspect is arrested, he or she is placed under the 'care' and protection of the Court since he or she must appear in court within 24 hours. In India, this freedom is guaranteed under Article 22(2)¹¹, which specifies that arrest and detention are

⁷ The *Contempt of Courts Acts*, 1971.

⁸ *Ibid.*

⁹ AIR 1961 SC.

¹⁰ 1969 (2) SCC 734.

¹¹ The *Constitution of India Act*, 1950.

prohibited in certain circumstances.

In addition, in the case of *Maneka Gandhi v. Union of India*¹², The Supreme Court changed the legal landscape before 1978 by ruling that the 'process established by law' mentioned in Article 21 must now be just, fair, and reasonable.

Aside from the aforementioned problem, there is also a need to strike a balance between the right of media houses to free speech and expression on the one hand and the right of suspects and accused to due process on the other. However, Articles 19(1)(a), 19(2), 21, and 14 can all play key roles in achieving such balance.

II. INDIAN CONSTITUTION, CONTEMPT OF COURT & PRESS

Part III of the Indian Constitution does not specifically focus on the liberty of print or electronic media, commonly known as press freedom. Nevertheless, these rights fall under the broader category of 'freedom of speech and expression' outlined in Article 19(1)(a). It's important to note that this right is subject to 'reasonable constraints,' as elaborated in Article 19(2) of the Indian Constitution.

“Article 19 ensures the protection of certain rights related to freedom of expression. It grants all citizens the right to freedom of speech and expression. However, this right is subject to reasonable restrictions imposed by existing laws or new laws enacted by the State. These restrictions are permissible in the interest of India's sovereignty and integrity, the security of the State, friendly relations with foreign States, public order, decency, and morality.”¹³

Moreover, the Indian Constitution, through Article 20, safeguards individuals facing criminal convictions. Notably, Clause 3 within Article 20 is pivotal as it ensures the accused's privilege against self-incrimination, safeguarding them from being compelled to testify against their own interests.

Additionally, Article 21 of the Indian Constitution is of significant importance, addressing the right to life and personal liberty. It explicitly states that no person can be deprived of their life or personal liberty except through a legal process.

In a similar vein, Article 22(2) of the Indian Constitution mandates that individuals taken into custody must be presented before the nearest magistrate within 24 hours of their arrest, excluding travel time.

¹² AIR 1978 SC 597.

¹³ The Indian Constitution, 1950.

Furthermore, in *Maneka Gandhi v. Union of India*,¹⁴ The Supreme Court interpreted the phrase "according to procedure established by law" in Article 21 of the Indian Constitution to mean a procedure that is equitable, impartial, and rational, as opposed to being arbitrary or lacking merit.

Furthermore, in *Life Insurance Corporation of India v. Manubhai D Shah*,¹⁵ The Indian Supreme Court declared that the term "freedom of speech and expression" as mentioned in Article 19(1)(a) of the Indian Constitution signifies the entitlement to express personal opinions without constraint, encompassing various mediums such as writing, speech, printing, electronic media, and other forms of communication.

It was established in *Romesh Thapar v. State of Madras*¹⁶ that the right to freedom of speech and expression encompasses the liberty to publish and disseminate one's ideas.

In *Hamdard Dawakhana v. Union of India*,¹⁷ The Supreme Court expanded the freedom of expression, affirming that it includes the right to obtain and share ideas related to matters of general public concern.

However, in *State of Maharashtra v. Rajendra Jawanmal Gandhi*,¹⁸ The Supreme Court determined that conducting a trial through print or electronic media, commonly referred to as "trial by media," is against the constitution and has the potential to lead to a miscarriage of justice. The court emphasized the importance of judges being vigilant against such media trials and the associated pressures.

Directing our focus to the Contempt of Courts Act of 1971, our investigation places specific emphasis on Sections 2 and 3. In Section 2(c), 'Criminal Contempt' is described as the spreading of information or the undertaking of actions that:

- 1) Disparage or can potentially undermine the authority of any court;
- 2) Bias or disrupt the progress of judicial proceedings; or
- 3) Hinder or obstruct the dispensation of justice.

Section 3 pertains to the release and distribution of content that does not qualify as contempt. As per this section, an action is not deemed contemptuous if the dissemination is carried out by a publisher who lacked reasonable grounds to be aware of ongoing legal proceedings, be they

¹⁴ AIR 1978 SC 597.

¹⁵ 1992 (3) SCC 637.

¹⁶ AIR 1950 SC 124.

¹⁷ AIR 1965 SC 1167.

¹⁸ 1997 (8) SCC 386.

criminal or civil, during the publication. The Supreme Court of India, functioning as a 'court of record,' guarantees the enduring documentation of judicial proceedings and possesses the power to penalize contemptuous acts. The Supreme Court utilizes this authority to address actions that hinder the smooth functioning of the administration of justice.

As previously stated, there are two categories of contempt of court:

- Civil Contempt¹⁹ implies wilful defiance of court orders, judgments, or instructions.
- Criminal Contempt²⁰ entails the dissemination of any material that undermines the authority of any court.

In the case of *Amicus Curiae v. Prashant Bhushan and Another*, the Supreme Court recently examined whether Prashant Bhushan's tweets criticizing Chief Justice of India S.A. Bobde and the court's activities over the past six years amounted to contempt of court. Prashant Bhushan was ultimately convicted under the Contempt of Courts Act, 1971, and received a fine of Re. 1, a potential three-month jail term, and a three-year prohibition from practicing before the Supreme Court of India.

Aside from that, the Supreme Court has defined what constitutes contempt of court. Some of its pronouncements include the following:

According to *Pritam Pal v. High Court of Madhya Pradesh*²¹, Attempting to sway the Judge's opinion in one's favour and obstructing the execution of their responsibilities is considered as contemptuous behaviour. In a different scenario, it was established that deliberately disobeying a court's order, writ, or directive is likewise recognized as contempt of court.

Another significant case is *M/s. Shorilal & Sons v. Delhi Development Authority*,²² in which the Supreme Court instructed the Delhi Development Authority to establish an investigative committee to look into allegations surrounding the allocation of sites within the Naraina Warehousing Scheme. Despite the court's directive, the Delhi Development Authority did not form the committee, leading the court to deem it in contempt for disobeying the order. Nevertheless, the court granted the Delhi Development Authority a subsequent opportunity to comply. The water of the Gomti river was poisoned by a company's distillery in *Vineet Kumar Mathur v. Union of India*²³ As a consequence of the discharge of effluents, the Supreme Court

¹⁹ Krishnadas Rajagopal, "Prashant Bhushan held guilty of contempt for tweets against CJI" *The Hindu*, (last accessed 10th October 2023).

²⁰ Krishnadas Rajagopal, "Pay ₹1 fine by September 15 or face simple imprisonment for 3 months: Supreme Court to Prashant Bhushan", *The Hindu*, Last accessed 10th October 2023).

²¹ AIR 1992 SC 904.

²² AIR 1995 SC 1084.

²³ (1996) 7 SCC 714.

of India mandated the company's leadership to address shortcomings in the waste treatment facility by a designated deadline. Despite the court's order, the company's management disregarded it and persisted in its activities. The Supreme Court concluded that the company's management intentionally and premeditatedly violated its earlier directives. Consequently, the court imposed a penalty of Rs. 5 lakhs on the corporation, and the funds were utilized for the restoration of the Gomti River.

The Supreme Court of India stated in *Hira Lal Dixit v. State of Uttar Pradesh*²⁴ Contempt proceedings do not necessitate actual interference with the administration of justice; it is adequate if the unlawful behaviour or publication disrupts the administration of justice in any manner. Any implications that show disrespect or disparagement towards the court's dignity, while also eroding public trust in the judiciary, qualify as contempt of court.

The Supreme Court ruled in *C.K. Daphtary v. O.P. Gupta*²⁵ Following the resolution of a case, any unwarranted and harsh critique of the judgment is deemed contempt according to the Contempt of Courts Act. Nevertheless, constructive, sincere, lawful, rational, and mild criticism of the Court or a Judge's decisions might be acceptable.

In the context of criminal contempt, the Court has three options under Section 15:

- Suo Motu means "on its own motion." This is exactly what happened in the Prashant Bhushan case. or
- On the suggestion of India's Attorney-General or Solicitor-General. or
- By any other person with the concurrence of India's Attorney-General.

What happens if any of the aforementioned refuses to grant consent? The same issue was addressed in the case of *P.N. Duda v. P.N. Shivashankar*²⁶, The principle stated that before someone could commence legal proceedings for contempt of court or file a contempt suit, they were required to secure written consent from either the Attorney-General of India or the Solicitor-General. In the event of refusal, the issue could be subjected to judicial review by the Court. Alternatively, the court itself had the option to initiate action.

The Right of the press, as established in *New York Times v. Sullivan*, emphasizes the vital role of a free press as a distinct entity independent of the government. This fourth organ is crucial for overseeing and balancing the powers of the legislative, executive, and judicial branches. The press serves as a check on potential abuses of governmental authority, holding elected officials

²⁴ AIR 1954 56 743.

²⁵ AIR 1971 SC 1132.

²⁶ AIR 1988 SC 1211.

accountable to the public. In India, although the Constitution does not explicitly mention freedom of the press, it is derived from Article 19(1)(a), which guarantees freedom of speech and expression.

As an implied right stemming from Article 19(1)(a), freedom of the press in India is equivalent to that of individual citizens, as clarified in the case of *Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer*. The Supreme Court recognized that although not expressly stated in the Constitution, freedom of the press can be inferred from Article 19(1)(a). The question arises as to whether media publications can unconsciously influence judges. While the American perspective asserts that media cannot impact judges, the English view, accepted in India, suggests that unconscious influence is possible.

This acceptance is evident in the case of P.C. Sen (in Re), where the Supreme Court acknowledged that judges can be unconsciously affected by media comments on pending cases. Additionally, in *Reliance Petrochemicals Ltd. vs. Proprietors of Indian Express*, the Supreme Court highlighted that freedom of speech and expression in the Indian Constitution is not absolute and differs from the American Constitution. The court reiterated this point in the *Union of India v. Naveen Jindal case*, emphasizing the restricted nature of rights under Article 19(1)(a) compared to the absolute nature of the US First Amendment. In another case of *M.P. Lohia v. State of West Bengal*, a tragic incident unfolded when a woman took her own life at her parents' residence. Subsequently, the girl's parents filed a legal case against their son-in-law and in-laws under the Indian Penal Code of 1860, alleging it to be a dowry death. The husband, in defence, presented various documents indicating his wife's struggle with schizophrenic psychosis. As the legal proceedings were about to commence in the lower court, two articles were published in a magazine, focusing solely on the accusations made by the woman's parents. Regrettably, these articles omitted any reference to the documents submitted by the son-in-law, which attested to his wife's mental health condition. Consequently, the lower court denied bail based on the one-sided narrative presented in the articles.

The case reached the Supreme Court, which granted temporary release to the accused. The highest court also strongly criticized two articles that presented only one perspective of the story. The court remarked that such media articles could significantly impact the administration of justice.

To summarize, freedom of speech and expression in the United States is extensive and unconditional, barring any direct threat to the right. In contrast, India adopts a distinct perspective, constraining the right through Article 19(2) of the Constitution. For instance,

should a court label an article as criminal contempt according to Section 2(c) and determine that it hampers the functioning of justice, any limitations imposed by the court would be considered justified under Article 19(2) of the Indian Constitution.

III. POSTPONEMENT OF PUBLICATION BY COURT

Another critical issue in the field of trial by media is the postponement of publications in order to avoid preconception of a suspect or accused in a pending or ongoing criminal or civil case. Furthermore, the punishment stipulated in Section 3²⁷ is not always sufficient, nor does it protect the accused or suspect from media scrutiny.

Today's query revolves around the possibility of delaying harmful disclosures through a court-issued order and the specifics of such an order, whether it should be broad or specific. In the United Kingdom, Section 4(2) outlines that the court can extend the postponement of publication for a duration it deems suitable to mitigate substantial risks to the administration of justice. This provision is applicable to both civil and criminal cases.

Now, what is the meaning of the words substantial risk of prejudice in the above section. In *Attorney General v. Newgroup Newspapers*²⁸ the court discussed a dual criterion to prevent a significant risk of bias:

1. Initially, there was a potential for the proceedings to be influenced.

2. Subsequently, if the proceedings were indeed affected, the consequences would be substantial. Moreover, in *Ex-parte the Telegraph Group and Others*²⁹, The court emphasized the significance of ensuring the validity of the suppression order by assessing the fulfilment of the three-pronged test. This test involves addressing three specific questions, namely:

1. Whether the act of broadcasting will pose a significant risk of bias.
2. Can the directives issued under Section 4(2)³⁰ effectively mitigate the risk?
3. Is it essential for the issuance of these directives?

If the conditions of the three tests mentioned earlier are met, the publication could be halted. Nevertheless, the language in Section 4(2) is found to be flawed by different commissions. The New South Wales Law Reform Commission's report on "Contempt by Publication" highlights that the application of U.K. law is inconsistent, frequent, and unnecessary. Hence, there is a question for consideration regarding the inclusion of the phrase 'substantial risk of prejudice' in

²⁷ The Contempt of Courts Act, 1971.

²⁸ 1986 (2) ALLER 833.

²⁹ 2001(1) WLR 1983.

³⁰ The Contempt of Courts Act, 1981.

the provisions related to postponement orders.

Additionally, there is another document addressing the same subject issued by the Australian Law Reform Commission, titled "Contempt and Prejudice to Jury," specifically Report No.35 from 1987. In this report, the commission proposed that the court should be empowered to delay the publication of a media report on any part or the entirety of legal proceedings. This authority would be exercised if the court is fully convinced that such media coverage poses a significant risk of prejudicing the fair trial of an individual facing criminal or civil charges due to its potential influence on judges.

Furthermore, the commission put forth the suggestion that media reports on committal proceedings should be prohibited. Another crucial aspect to consider is whether the court inherently possesses the authority to issue a 'postponement order' concerning publication.

The Privy Council ruled in *Independent Publishing Co Ltd v. Attorney General of Trinidad and Tobago*³¹ that there is no inherent jurisdiction to allow a "postponement order," and that the ability to postpone publication must be obtained by legislation.

However, as recently demonstrated by the *Sudarshan News T.V. case*,³² The preceding perspective lacks relevance in the context of India. The Sudarshan News case does not pertain to an ongoing trial but rather concerns the media's right to broadcast a specific program. It is evident from this case that, despite the trial not commencing, the Supreme Court issued orders to delay proceedings.

Furthermore, in another case involving actor *Rakul Preet Singh*,³³ She appealed to the Delhi High Court, requesting an order for the Press Council of India and the central government to enforce a prohibition on the broadcast or publication of any program or article pertaining to the Rhea Chakraborty case.

Furthermore, in the case of *Express Newspapers vs. Union of India*³⁴, the Supreme Court deals exclusively with the right to free speech and press, but states that, like other rights, it is not absolute.

Following are the media publications which are prejudicial to an accused or suspect:

1. Publication relating to the character of suspect or accused:

³¹ (2004) UKPC 26.

³² The Wire, Available at <https://thewire.in/media/sudarshan-news-show-cause-mib-responseupsc-jihad>. (last accessed 30th October 2023).

³³ NDTV, Available at <https://www.ndtv.com/india-news/actor-rakul-preet-singh-movesdelhi-high-court-over-media-linking-her-to-drug-case-2301614>. (last accessed 30th October 2023).

³⁴ AIR 1959 SC 12.

- In the case of **R v. O’Dogherty (1848)**, it was declared that deliberate media observations aimed at generating feelings of hostility toward a defendant undergoing trial constitute contempt of court.
- In the celebrated case of **R v. Parke**,³⁵ In this instance, the individual was apprehended for forgery. The Star agency released a report stating that the suspect had previously engaged in forgery and had been convicted for it. Nevertheless, Judge Wills determined that such an article could bias the perception of the suspect.
- Again, in **Gisborne Herald Co. Ltd. vs. Solicitor General**,³⁶ It was mentioned that a previous criminal history results in bias, and this proof should be considered unacceptable since it unconsciously influences the adjudicator.
- In another case of **R v. Davis**,³⁷ In this instance, a woman faced legal action for abandoning her child, and subsequently, a newspaper reported that the accused had been convicted of fraud on multiple occasions in the past. The court determined that such publications could strongly bias the perception of the accused and be detrimental to her case.
- Again, in case of **Solicitor General v. Henry and News Group Newspapers Ltd**, The individual faced allegations of committing a personal robbery, and subsequently, a newspaper article revealed that the accused had a prior conviction for rape. The U.K. Court deemed this publication as contempt, citing a significant risk of prejudice. Consequently, the newspaper received a fine of £15,000.
- In **A.G of New South Wales v. Truth and Sportsman Ltd.**, In this instance, a newspaper released an article characterizing the defendant as a well-known criminal due to charges of possessing a firearm without the required license. The court deemed the publication to be in contempt.
- Again, in **R v. Regal Press Pty Ltd (1972)**, The newspaper ran a story reporting that the individual, previously charged with a DUI, had a prior conviction for murder. As a result, the court found the newspaper in contempt.
- In **Solicitor General v. Wellington Newspapers Ltd**, In this instance, John Giles faced charges related to the killing of a police constable. However, three newspapers, including Gisborne Herald, reported on the suspect's prior conviction. The court deemed

³⁵ (1903) (2) KB 432.

³⁶ 1995(3) NLLR 563.

³⁷ (1906) 2 KB 32.

this act as contempt by the three newspapers.

2. **Publication of Confessions:** It is evident that a confession made to the police is not admissible in a court of law. Nevertheless, the act of publicizing the confession before or during the trial is deemed highly prejudicial to the suspect. This indirectly impacts the court's impartiality and constitutes contempt.

- In *R v. Clarke*³⁸, Crippen, the accused, was captured in Canada without formal charges related to the alleged murder. Nonetheless, the Daily Chronicle in England reported that Crippen, the suspect, had confessed to killing his wife in the presence of witnesses. The court deemed this revelation as contemptuous.
- Furthermore, in the case of *AG (NSW) v. Dean*,³⁹ Police officers were discovered to have committed contempt of court. For instance, after the apprehension of the murder suspect, a law enforcement official responded to a journalist's question, suggesting that the accused had admitted guilt to the police.

3. **Publication which comment or reflects upon the merits of the case:** It represents the utmost manifestation of media-driven judgment. In this scenario, a newspaper assumes the role of the court, lacking essential procedural safeguards such as the right to cross-examine. Essentially, it involves a pseudo trial by media that disregards the principles of natural justice. Publications of this kind prematurely form opinions about the facts, thereby impacting all involved parties, including the court, witnesses, and others. Nonetheless, it is acceptable to report the precise details of the case and the charges levied against the accused.

- In *R v. Bolam (1949)*, The newspaper, Daily Mirror, labelled an individual named Mr. Haigh as a "vampire" and alleged him to be a murderer. Additionally, the publication listed the names of the victims. As a consequence, the owners of the Daily Mirror were fined, and the editor was sentenced to imprisonment.
- Furthermore, in *R v. Odham's Press Ltd*⁴⁰, The defendant was operating a brothel and held a position of authority in its management. Nevertheless, a media article claimed that the defendant was involved in the illicit management of women on the streets. The court deemed the publication to be in contempt of court for labelling him a 'vampire'

³⁸ (1910) 103 LT 636.

³⁹ (1990) 20 NSWLR 650.

⁴⁰ 1957 (1) QB 73.

and asserting that he was a murderer. Additionally, the article presented a roster of the victims' names. As a consequence, The Daily Mirror's proprietors were fined, and the editor was incarcerated.

4. **Photographs:** The act of publishing a photograph in a newspaper or on television not only hinders the process of identifying a suspect but also introduces the possibility that such publication could unfairly suggest guilt on the part of the individual.
 - During the trial of the accused in *AG v. News Group Newspapers Ltd (1984)*, The Sun Newspaper published an image of the individual accused of causing harm to his child. The headline of the news article stated, "Father accused of blinding baby." Despite the accusation, the individual was ultimately declared not guilty, and the Sun Newspaper received a fine of 5000 pounds.
 - It was declared in *Attorney General v. Tonks* Publishing pictures of individuals accused before the trial commences, especially when there is a potential risk of misidentifying the suspect, could be considered contempt of court.
5. **Police activities-** we have already discussed that confession to police is not admissible. And also, publication of such confession is treated as contempt.⁴¹
 - In case of *R v. Pacini*,⁴² A radio station aired an interview featuring the detective who played a role in apprehending the suspect. The broadcast took place while the accused awaited trial, and the interview strongly suggested the guilt of the suspect. Consequently, the court ruled that the radio station was in contempt.
6. **Imputation of innocence:** A straightforward imputation of innocence of the accused is also referred to as contempt by the court.
 - The same has been explained in the case of *R v. Castro Onslow and Whelley's*.⁴³ In this instance, two Members of Parliament asserted at a public event that the accused was innocent of the charges but instead a target of a plot. The court later convicted both of them for contempt.
7. **Publication which creates atmosphere of prejudice:** The same can be

⁴¹ The Law Commission of India, Two Hundred Report, on 'Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure, 1973 (2006) p. 205.

⁴² (1956) VLR 544.

⁴³ (1873) L.R 9 Q.B 219.

indicated by the case of *R v. Hutchison*,⁴⁴ in which a news station inferred a charge against the accused that was more serious than the real allegation was held contemptuous.

- The Indian case on the same topic is *M.P. Lohia vs. State of West Bengal*,⁴⁵ The Supreme Court criticized a newspaper for presenting a biased narrative that claimed the deceased (wife) was a victim of dowry harassment. The court also noted that the newspaper only included the perspective of the deceased's parents.

IV. SUGGESTIONS FOR MODIFYING THE CONTEMPT OF COURTS ACT OF 1971

1. Initially, it is proposed to expand the definition of "publication" to encompass various media forms, including electronic and print media, radio and television broadcasts, and various internet platforms. Achieving this broadening can be facilitated by introducing an Explanation clause into Section 2 of the primary statute.

2. Another amendment to the law pertains to the handling of contempt cases by lower courts. Section 10 currently mandates lower courts to refer contempt cases to the High Court, a process that has the potential to embarrass these lower courts and disrupt the administration of justice, as indicated in Sections 2(c)(ii) and (iii) of the Act. To address these concerns and expedite the process, a new Section 10A may be introduced, exempting criminal contempt cases of lower courts under Sections 2(c)(ii) and (iii) from mandatory referral to the High Court, enabling direct approach to the High Court.

3. An additional modification to the legislation involves incorporating provisions for delay orders, empowering courts to issue postponement orders. This would allow the postponement of publications to mitigate bias against a suspect in an ongoing criminal prosecution. It is imperative that these postponement orders are issued only when there is a significant risk of prejudice. Therefore, a new Section 14A is suggested, with any violation of this section being considered contempt under Section 14B of the act.

4. The most crucial recommendation is the inclusion of a law degree course in journalism programs. Through this course, journalists can gain insights into the rights of victims and accused/suspects, contempt proceedings, defamation legislation, and the various freedoms granted to individuals under the Indian Constitution and human rights.

⁴⁴ 1936 (2) All ER 1514.

⁴⁵ IR 2005 SC 790.

V. CONCLUSION

The idea of 'trial by media,' which pertains to the dissemination of information during a trial or the 'pre-trial' phase, is closely linked to Article 19(1)(a) dealing with 'freedom of speech and expression' and Article 19(2) outlining reasonable restrictions on these freedoms. The challenge, therefore, is to find a balance that protects the right to free speech and expression while preventing undue interference with the administration of justice, as specified in the 1971 Contempt of Courts Act. This delicate balance must be maintained without compromising the right to a fair trial for both the victim and the accused, as guaranteed by Article 21 of the Indian Constitution.
