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# Media Trial and Abuse of Principles of Natural Justice: Analysis using Tools of Statutory Interpretations

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## ABSTRACT

*A media devoid of freedom indicates failure of democracy but a media on a path to destroy and abuse this freedom is a bigger disgrace. Media when conducts parallel trials it exploits principles of natural justice and deprives the accused of it rights. Media trials hinder and obstructs the administration of justice. The paper attempts to analyses the phenomena of media trails using rules and aids of statutory interpretation and attempts to fathom why media is able to abuse principles of natural justice and fair trial and escape. This research work aims to highlight the impact of media trials by analysing historical backgrounds and external aids of construction. The paper attempts to provide effective recommendations and solutions to curb the abuse of principles of natural justice and rule of law and draw operative conclusion. The interpretation acts as a road roller and tries to strike an even balance between freedom of speech and expression & when it should be restricted.*

*Harmonious construction, freedom of speech and expression, contempt of court, international convention, natural justice; fair trail*

## I. INTRODUCTION

*“A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice<sup>2</sup>.”*

In recent times media trials have become a trend which tremendously hamper the justice system. The culture of media trails has brought little to no good to the society. Journalists devoid from ethics and the public is fed lies, their aim is to earn views and TRPs even at the cost of forgoing integrity and causing more disturbance than assistance. Media is often referred as the fourth pillar of the democracy and its disappointing to see it crumbling down in such a distasteful manner.

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<sup>2</sup> State of Maharashtra vs. Rajendra Jawanmal Gandhi, 1997 (8) SCC 386.

The supreme court defined media trial as “the impact of television and newspaper coverage on a person’s reputation by creating a wide spread perception of guilt regardless of any verdict in a court of law. During high publicity cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial impossible but means that regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny<sup>3</sup>”

Democracy is the rule of people and it stands firmly on all of its 4 pillars but when one of them become wobbly the crux of democracy starts to shake. Media connects mass to rest of the pillars, hence it is burdened with great responsibility.

It has a vital role of acting as a watchdog, a conscious keeper, it has a duty to report wrongs in the society to the public. Judiciary has benefited multiple times from fearless and principled journalism, enabling courts to take Suo-moto cognizance of important matters which media has shed light upon, highlighting the wrongs and cases of human rights violation<sup>4</sup>.

By no means the trial conducted by media is fair, it doesn’t pay heed to what the parties have to say, they merely collect baseless facts twist them, point fingers at people and sensationalize the matter to gain viewers or readers attention and in the process violate principles of natural justice.<sup>5</sup>

What are the principles of natural justice, there are namely three principles (i) Nemo Judex In Causa Sus; no one should be a judge of his case (ii) Audi Alteram Partem; one cannot be judged without being given a fair opportunity to be heard (iii) Reasoned decisions; this simply means the decision provided by court is rational and judicial in nature; these can be summed up in two words ‘Impartiality’ and ‘fairness’ needs to be ensured.

For the purpose of this research paper, we will mainly focus on two principles (i) Audi Alteram Partem (ii) Reasoned decisions and how they are violated and abused by conducting simultaneous media trails. Adherence to principles of natural justice is essential to ensure fair trial.

In 1676, Sir Mathew Hale, the then Chief Justice of King’s Bench (1671-76), set out 18 tenets for dispensing of justice. The sixth tenet read as follows, “That I suffer not myself to

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<sup>3</sup> Giddens, Anthony, Introduction to sociology (W.W. Norton & Co. 5<sup>th</sup> ed.2005).

<sup>4</sup> Right to Privacy in Sting Operations of Media (Nov. 16· 2020, 10:15AM), [http://odisha.gov.in/emagazine/O\\_rissareview/2013/may/engpdf/57-61.pdf](http://odisha.gov.in/emagazine/O_rissareview/2013/may/engpdf/57-61.pdf)

<sup>5</sup>Zahira Habibullah Sheikh v. State of Gujarat, (2005) 2 SCC (Jour) 75.

be possessed with any judgment at all till the whole business of both parties be heard.<sup>6</sup>

One of the requirements for fair trial is to ensure that procedural fairness is followed and that can only be done when both parties are heard. Reasoned decision is also an inevitable outcome of fair, impartial hearing.

The court noted that A.14 is only a guardian of principle of natural justice and these are “great humanising principles”<sup>7</sup>.

Now if we look at media trials through the scrutinizing lenses of natural justice, we can observe that conducting simultaneous trials by media are sheer violation of jus naturale.

Media fails to acknowledge the dissimilarity between a suspect and a criminal and as a result it affects the principle of “audi alteram partem”<sup>8</sup>.

When media conducts the trials, it doesn't prioritize deliverance of justice through fair procedural means nor are they authorized to. When media declares someone guilty, the accused even after being acquitted by the court of law remain guilty in the eyes of the society. Media has great powers, it can mobilize the entire country, unite the mass for greater good but they often forget that with great power comes greater responsibility.

The parties in the matter are not given a fair chance to be heard in fact in several cases they are not heard at all which violates the principle of right to be heard and when media is involved in conducting its own trials it influences the mass and it would be naïve to state that judges are not subconsciously affected and influenced by media, they are at the end of the day humans and this phenomenon eventually hinders the reasoned decisions<sup>9</sup>.

This research paper will focus on interpreting and analysing what causes the abuse of rules of natural justice by media. What are the lacunas that allows media houses to escape through the gaps and abuse the principles of natural justice and what could be the plausible solutions to mitigate these shortcomings?

## **II. HISTORICAL ANALYSIS OF MEDIA TRIALS AND ITS IMPACT ON PRINCIPLES OF NATURAL JUSTICE**

Media trial is a relatively newly coined term but the fact that media is a strong influencing tool and is capable of swaying the justice system and the mass, can be traced back to the

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<sup>6</sup> The Principles of Natural Justice – Origin and Relevance (Nov. 16, 2020, 6:12 PM), <https://corporate.cyrilamarchandblogs.com/2018/03/principles-natural-justice-origin-relevance/>

<sup>7</sup> Maneka Gandhi v. UOI, (1978) 1 SCC 248.

<sup>8</sup> Prerana Priyanshu, “Freedom Media Trial: Freedom of Speech v. Fair Trial”, 3 IJLLJS (2015), p. 285.

<sup>9</sup> 200th Law commission report, (Nov. 14. 2020, 11:17AM), <https://lawcommissionofindia.nic.in/reports/rep200.pdf>

emergence of print media. During the fight for independence from the Britishers Indian freedom fighters utilized print media to assemble the mass and spread awareness, as early on they had realized the influencing effect of media.

In the early 20th century one of the popular instances is when Roscoe Arbuckle's case was tried by media and later even though he was acquitted by courts he lost his reputation and career due to the trail held by media.

One can't forget the O.J. Simpson's case, the iconic car chase and glorification of the crime done by media had everyone glued to their television.

Unlike Indian media, US Justice system in their first amendment grants unlimited freedom to media. The media coverage of trial in USA is unrestricted. A great population of America believed that Simpson's lawyers used the media effectively for unprecedented advantage, public following the case so closely resulted in interpersonal discussion about the US justice system and called for unwarranted public scrutiny<sup>10</sup>.

As for India one can recall the dramatization of Aarushi Talwar case, the media was so invested in convincing the public that Nupur and Rajesh Talwar had plotted and committed the perfect crime against their own daughter that no regards was paid to what courts had to say and the popular parallel media investigation diverted public's attention to what was 'trending gossip' rather than what was a sound decision based on relevant admissible facts and evidences.

Within the span of two months which took to complete the investigation and declare the parent's innocent, the media utilized those months to hold the father guilty at any cost, tarnished the reputation of the family and the young girl<sup>11</sup>. The more time judicial officers took to resolve the case, the longer media strived on the basis of it<sup>12</sup>.

The media has been on its toes to gain popularization with leading parallel investigation be it the Sheena Bora murder case, death of Sunanda Pushkar or Sri Devi but there is a sharp contrast when it comes to Priyadarshi Mattoo case, Nitish Katara, and Jessica Lal murder case where the guilty would have gone unpunished if media didn't intervene<sup>13</sup>.

An advisory has been issued by Press council of India stating and promptly advising that media shouldn't conduct parallel investigations or foretell the decision prior to completion of

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<sup>10</sup> William J. Brown, James J. Duane & Benson P. Fraser, Media Coverage and Public Opinion of the O.J. Simpson Trial: Implications for the Criminal Justice System, 2 COMM. L. & POL'y 261 (1997).

<sup>11</sup> The Arushi Murder case; Nupur Talwar v. Central Bureau of Investigation and another, AIR 2012 SC 1921.

<sup>12</sup> Trial by Media, (Nov. 18, 2020, 03:22 PM) [www.hrhc.net](http://www.hrhc.net).

<sup>13</sup> Perna Lidhoo, Aarushi Talwar to Rhea Chakraborty: A Tale of Two Media Trials and Zero Lessons Learnt, (Nov. 11, 2020) [shorturl.at/iszEF](https://shorturl.at/iszEF)

judicial trials in order to avoid building pressure during police investigation and trial. They have strongly emphasized that broadcasters need to self-regulate<sup>14</sup>.

In the incident of parliament attack case, when a press conference was called by the police a week after the attack and “Mohd. Afzal” incriminated himself on the national media. The media negatively impacted the case of Afzal even prior to the trial commenced<sup>15</sup>.

Taking a leap from history to present day, the way media handled the Sushant Singh Rajput suicide case is disappointing. While media was zooming in cameras inside the prime suspects house through a window and calling her names, one can say that her career along with reputation is evidently destroyed. The adverse effect of parallel trails conducted are so grave that it should be avoided at all cost but media has not learnt from its previous mistakes and have decided to keep aside their integrity and then only step into the media houses.

From the past analysis one can tell that media trials have been devoid of the principles of natural justice from the very beginning and hinders with the process of fair trial to a great extent. Instances of media trails disrupting the legal justice system can be observed internationally as well.

It is necessary to take into account such external or historical facts as may be necessary to understand the subject matter of the rules and concept<sup>16</sup>.

### **III. INTERNATIONAL CONVENTIONS AND REGULATIONS ON MEDIA TRIALS:**

#### **ANALYSIS**

A statue should always be read in conformity with the international treaties and convention, if India has ratified a treaty, they must make a domestic law to give effect to that treaty<sup>17</sup>.

When media trails abuse principles of natural justice it is also devoid of rules present in international conventions and it is always essential to take international convention into account in case of ambiguity arising.

One of the most basic tent of justice system is that a person is innocent till proven guilty by the court of law and a person also has the right to remain silent, he has a right against self-incrimination and hence confession to police is also inadmissible.

Several basic rights of a suspect or accused is enlisted in the “Universal declaration of human rights” (UDHR).

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<sup>14</sup> [http://presscouncil.nic.in/Content/NewDetails/8164\\_7\\_WhatnewdDetails.aspx](http://presscouncil.nic.in/Content/NewDetails/8164_7_WhatnewdDetails.aspx) (Nov.11, 2020 at 04:00 PM)

<sup>15</sup> State v. Mohd. Afzal and Others, 107 (2003) DLT 385.

<sup>16</sup> R.L. Arora v. state of UP, 1964 AIR 1230.

<sup>17</sup> UOI v. Azadi bachao andolan AIR 2004 SC 1107.

Following the paper will discuss relevant articles in relation to Indian context and how media trails defy the presumption regarding being in conformity with international convention.

“Article 10: deals with the right of an accused in full equality to a fair and public hearing by an independent and impartial tribunal...<sup>18</sup>”

The first important rule is that a trial should be conducted by an impartial and independent tribunal. Media in no manner is an impartial body it favours the party which will attract mass appeal and connect with audience and more so often Judges are also subconsciously affected by the judgement of media and moves forward in the matter with a prejudice, impairing the fair hearing.

“Article 11: of the Universal Declaration deals with the right to be presumed innocent.<sup>19</sup>”

“Article 14(2) of ICCPR: Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.<sup>20</sup>”

The UDHR and ICCPR emphasises on the fact that a person should be presumed innocent until the court proceedings are complete and formal judgement has been adjudicated after carefully assessing all the relevant facts and evidences but on the contrary media trials declares a person guilty and derails the formal trail relying on baseless allegations.

The ‘doctrine of innocence until proven guilty’ is openly flouted and the fundamental right of the accused ‘to have a fair trial’ is put to dust<sup>21</sup>.

“Article 12: No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.<sup>22</sup>”

Media trials have been called out for violating the privacy of the accused. Accused are followed around with camera’s everywhere and asked questions at odd hours. In Katar Singh<sup>23</sup>, Supreme court stated that a person is entitled to their autonomy. Their privacy can’t be compromised just because they are an accused in a matter and the same was later reaffirmed in K.S. Puttaswamy judgement<sup>24</sup>. There is no denying that after a media trial even though a person is acquitted or declared innocent by the courts his/her reputation is entirely lost and it brings great dishonour to the accused’s family and the society doesn’t consider

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<sup>18</sup> A.10 of UDHR

<sup>19</sup> A.11 of UDHR

<sup>20</sup> A.14(2) of UDHR

<sup>21</sup> Hon'ble Mr. Justice G. S. Singhvi, Bharati Law Review, Oct.- Dec., 2012 Trial by media: A need to regulate freedom of press. (Nov. 15, 2020, 6:30PM) <http://docs.manupatra.in/newslines/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf>.

<sup>22</sup> A.12 of ICCPR

<sup>23</sup> Katar Singh v. State of Punjab, 1994 SCC (3) 569

<sup>24</sup> Justice K.S.Puttaswamy(Retd) vs Union Of India, (2017) 10 SCC 1.

him/her to be a credible citizen despite being completely innocent.

The “International Covenant on Civil and Political Rights”, 1966 (ICCPR) was ratified by India in 1976:

“Article 14(3) (d) of ICCPR: to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing...”<sup>25</sup>

Now if we analysed this provision with respect to media trials none of the essentials and rights of an accused are satisfied. While being tried by media accused doesn't have any sort of legal representation, he is solely tried by media persons who have very little to no knowledge about law and in no scenario, this type of trial is fair. It violates basic human rights principles.

The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 declares:

Right to Fair Trial: It reads: “26 (1) everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require<sup>26</sup>.”

The “European convention” also lays down similar basic principle of a fair trial as the ICCPR, the most important principle found common in all three international convention is the right to be heard and to be legally represented which is in line with the principle of natural justice – everyone has a right to be heard before pronouncing a decision. The judgements passed by media is often biased and lopsided.

The right to fair trial by an impartial and independent tribunal is referred to be protected under Article 14 of the Indian constitution<sup>27</sup>. Any international convention not formulated in domestic law should be read with in harmony with the spirit of Fundamental rights (especially the golden triangle) enriched in Part III of COI<sup>28</sup>.

When India ratifies an international convention, it is the legislatures duty to implement them

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<sup>25</sup> A.14(3) of ICCPR

<sup>26</sup> A.26 of European convention

<sup>27</sup> Dwaraka Prasad Agarwal v. B.D.Agarwala. AIR 2003 SC 2686.

<sup>28</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011

through laws and regulations and when a law is formulated it is presumed that it is in accordance with international rules<sup>29</sup>. Currently there isn't a law in place or being formulated by the legislature for regulating media trials, while judiciary can restrict media house through orders and Press trust of India has laid down certain guidelines. The judiciary is entitled to impose restrictions while staying in conformity with the international guidelines.

From the analysis of international rules and conventions we can conclude that principle of natural justice and giving effect to fair trial is more essential than letting media conduct parallel investigations under the garb of freedom of speech and expression. "In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all other things being equal, the latter should prevail."<sup>30</sup>

#### **IV. ABUSE OF PRINCIPLES OF NATURAL JUSTICE: HOW MEDIA HOUSES ESCAPE CRIMINAL CONTEMPT UNDER THE CLOAK OF FREEDOM OF SPEECH AND EXPRESSION**

In this chapter an analysis of the contempt of court act through external aids of construction like the law committee reports is done to grasp better understanding why and what cause media trials to escape and cause hindrance with administration of justice, further in the chapter it is discussed how through rule of harmonious construction a balance can be drawn between freedom of speech and the contempt of court.

While there is a very thin line of balance between what publication made amounts to contempt and what was is within the meaning and ambit of the freedom guaranteed and often media houses take benefit of this slim gap between the two and escape and abuses the rules of natural justice.

The court often refrains from moving forward with contempt of court proceedings as it will often attract counter petitions alleging violation of fundamental rights and the courts are stuck between this loop of process.

It is very essential to understand the background of a legislature and then apply the rules of construction while giving regards to the whole context.

##### **(a) Interpretation of the Contempt of Court Act 1971:**

The contempt of court Act, 1952 was very narrow and didn't cover wide spectrum of aspects, definition of "contempt" was not even provided in the Act. The 1952 act didn't define civil or

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<sup>29</sup> Justice GP Singh, Principles of statutory interpretation, 14th ed, (2016).

<sup>30</sup> New Herald and other papers in Solicitor General v. wellington Newspapers Ltd., 1995 (1) NZLR 45.

criminal contempt. The contempt of courts Act, 1926 was an effort made to provide for a comprehensive legislation but it wasn't substantive enough. After the Sanyal committee report and Joint committee of parliament (1969-1970), The contempt of court Act, 1971 was introduced definition of contempt both civil and criminal was provided<sup>31</sup>.

The Supreme court and High Courts are empowered to punish a citizen for their contempt, this power is guaranteed under article 129 and 215 of the constitution of India respectively.

In order to interpret and construed a statute it is important look at external aids, one of the important tools of construction is Law committee reports, they give a brief background and important arguments considered before making the law and clarifies the intention of legislation there are two reports present prior to the contempt of court of Act,1971 (i)Sanyal committee report (ii) Joint committee of parliament (1969-1970) report.

The supreme court has observed that where a particular enactment or amendment is the result of recommendations of law commission of India, it is permissible to refer to relevant reports<sup>32</sup>.

**(b) Sanyal Committee report:**

A committee was set up in 1961 under the Late H.N. Sanyal, he was acting as the additional solicitor general then. In 1960, a bill was introduced in the parliament and the committee was established to review and recommend on the same and conducted detailed research on the subject matter and laws involved.

The method of interpretation that can be observed that was adopted by the committee was harmonious construction, they had to find a balance between freedom of speech and expression of the citizens and to protect independence of the administration of justice and suggest changes according on the same. The contempt of court Act, 1971 is an outcome of Sanyal committee report.

The biggest recommendation made by the report was that mere filing of FIR will not declare a matter be pending in court of law. Pendency of a matter will only commence after arrest has been made, this provision is included in the act and it be construed strictly and literally with respect to all criminal matters.

The committee report also suggested that if a criminal proceeding is imminent then the prejudicial publication will be considered as contempt of court. But if the report is able to show that he had reasonable reasons to believe that he wasn't aware that matter was

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<sup>31</sup> Juhi P. Pathak, Introduction to media law and ethics, 1st ed. 2014, p. 56.

<sup>32</sup> Mithilesh kumari v. Prem Bihari Khare, AIR 1989 SC 1247

imminent or pending then he won't be liable for contempt of court under the Act of 1971.

(c) The joint committee report of parliament (1969-1971):

The Joint Committee of Parliament (Bhargava Committee) reviewed the "Bill of 1963 which was prepared by the Sanyal Committee" and after discussing briefly, the reference to "imminent" proceedings was dropped by the decision of the Joint Committee.

The joint committee also known as the Bhargava committee was established to revise and review the bill and recommendations prepared by the Sanyal committee. After careful deliberation and discussion, the word "imminent" proceeding was omitted and only prejudicial publication of matters in Pendency would amount to contempt.

The committee could foresee that addition of this word would give rise to mischief, due to vagueness of the word imminent it would create a ruckus and would give rise to mischief by omitting the word it would make the wording of the rule precise and suppress the mischief and give effect to a concrete law. They also considered that the word vagueness of word 'imminent' criminal proceeding would also hinder with freedom of speech and expression calling for unwarranted petitions. Due to the recommendations of the joint committee all reference to the word 'imminent' criminal proceeding or direct reference to 'arrest' indicating pendency of trial was omitted in order to mitigate the anticipated mischief.

The committee looked over the consequence of word imminent being present and through application of mischief rule omitted the word to avoid ambiguity and advance the remedy.

#### **(d) The Contempt of court Act, 1971**

The act deals with criminal contempt under sections 2 and 3, these sections don't provide for excess powers to the judiciary, the extent of the sections is to only curb contempt which hinders with administration of justice.

Section 2(c) of the Act states that: Criminal contempt is when a publication through words, spoken or written, or by signs or through visible representation or otherwise – which results in

- (i) Scandalizing or intends to scandalize, lowers or tends to lower the authority of any court, or
- (ii) Prejudices or interferes or has the intention to interfere with the judicial proceeding, or
- (iii) Interferes or obstructs or intends to do either with the administration of justice.

Section 3 of the Act provides for a proviso, if the published material amounts to contempt under section 2 but if the publisher can show that he had reasonable ground to believe that the matter published was not obstructing the justice or scandalous in nature, the person won't be liable for contempt of court. It also provides that if proved that civil or criminal matter was not pending then such publication won't amount to contempt. Pre-trial publications are immune from the wrath of contempt<sup>33</sup>.

The explanation provided to Section 3, states that a criminal proceeding will only be deemed to be pending when a charge-sheet has been filed, or summons or warrants have been issued or an arrest has been made or presented in court with 24 hours according to A.22(2) of the COI. Explanation provided is also to guide and remove all vagueness from the statute.

When a statute is formulated after setting up a committee the basic duty of committee is to mitigate the mischief that may arise. When a proviso is added as observed in section 3 which acts as an exception to section 2 of the Act, the intent of the legislative body on the guidelines of advisory committee is always to be considered before construing a statute. An exception always acts as an internal aid and the section should be read in the entire context.

It is a cardinal rule of interpretation to construe a section only after reading it along with its exception<sup>34</sup>. The exception added indicates that the law makers intended to protect the freedom of speech and expression and not unnecessary curtail. But the media houses have time and again misused their rights and not only conducting parallel trials hampers the process of independent justice administration, they have also violated fundamental rights of the accused.

The biggest dilemma regarding this act was the balance between right to freedom of speech and expression and the extent of restriction that can be imposed. The right under constitution of India is not unlimited and it can be reasonably restricted. Under contempt of court act they had to ensure that it doesn't override or curtail the fundamental right guaranteed under A.19(1)(a) and hence the proviso was introduced to give effect to an unarbitrary provision. The law makers have to harmoniously interpret the two conflicting provisions of law.

## **V. FREEDOM OF SPEECH AND EXPRESSION & THE CONTEMPT OF COURT ACT: BALANCE USING RULE OF HARMONIOUS CONSTRUCTION**

The rule of harmonious construction is applied when there are two conflicting provisions of law, it is one of the most commonly applied rules, it considers two things (i) Conflict between two statutes or provisions of law (ii) the intent of legislature behind both.

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<sup>33</sup>: Dr. S. Krishnan, Trial by media: Concept and phenomena, IJAR 6(3), 889-901, (2018)

<sup>34</sup> Abdul Jabbar Butt v. State of J&K, AIR 1957 SC 281

The rule of harmonious construction aims in resolving inconsistency and conflict between sections or provisions of law. The premise of this rule that every law when made has a purpose and intention behind it and either can't render void the other both shall exist harmoniously. The aim is to mitigate the hardship and injustice arising out of two laws. The interpretation which gives effects to both the provisions should be picked<sup>35</sup>.

A.19(1)(a) while guarantees freedom of speech and expression, A.19(2) imposes reasonable restriction in order to maintain security and sovereignty of the country, to ensure decency and morality or in relation to contempt of court, defamation or incitement to offence.

The constitutional article itself provides an exception for contempt of court and a contrast can be found in the contempt of court act where an exception is provided for honest publication who had no reasonable ground to suspect that the publication would amount to obstruction of justice.

The basic issue is about balancing the freedom of speech and expression on the one hand and undue interference with administration of justice within the framework of the Contempt of Courts Act, 1971, as permitted by Article 19(2).

When media is given freedom also unrestricted due to the proviso present in S.3 of contempt of court act, it should also follow the duty and keep in mind that freedom of speech and expression can be restricted but right enshrined under Article 21 is more vital.

The liberty of the Press in India flowed from this freedom of speech and expression of a citizen and stood on no higher footing and no privilege attached to the Press as such<sup>36</sup>. There is no express separate right that has been provided to the media.

So, where media is concerned their rights have to harmoniously constructed, they have to be kept in check without curtailing their freedom of speech without reasonable reasons. Through the analysis of committee reports on contempt of court act, we could observe that the intention of the legislature was not to curtail freedom of speech and expression but to prevent obstruction of justice.

The Supreme Court exhaustively dealt with freedom of the press but stated that it cannot be unbridled. Like other freedoms, it can also suffer reasonable restrictions<sup>37</sup>.

There is no need to give media any special right or protect them specifically, they are at par with any ordinary citizen who holds the same rights and are subjected to restrictions in the

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<sup>35</sup> Union of India v. B.S. Aggarwal AIR 1998 S.C. 1537

<sup>36</sup> Arnold v. King Emperor, (1914) L.R. 41 I.A. 149.

<sup>37</sup> Express Newspapers vs. Union of India 1959 SCR 12.

same manner and this is evident from the statement provided by Dr. B.R. Ambedkar<sup>38</sup>.

While media can express its own view and put forward their opinion it won't be correct for them to conduct parallel investigation and the same stated In *Saibal v. B.K. Sen*<sup>39</sup> the Supreme Court said: it is mischievous for press to conduct media trials, this is because when a tribunal is conducting trials and media tends to interfere, such act of media hinders the justice process.

Every constitutional and statutory right including privacy and principles of natural justice of individuals have been trampled upon with impunity by this class. The fundamental rights of the accused in a case pending<sup>40</sup>.

It is fair to state that rule of harmonious construction is applicable and has evidently been applied by the law makers and it is the duty of the court to strike a balance between freedom provided to media and when that freedom jeopardizes the fair function of courts and encroaches upon the principles of natural justice.

## **VI. SUGGESTIONS AND RECOMMENDATIONS**

After looking at how Media trials are able to escape and abuse the principle of natural justice and obstruct deliverance of reasoned decision. The only reason media trials still persist is due to balance that is created between freedom of speech & expression and contempt of court act and media houses use this to their benefit and go to unrestricted extents to cause turbulence in the justice system.

New suggestions can always be implemented to correct the mischief still perpetrating. It is the responsibility of the legislature and law reform committees to implement and suggest necessary changes.

Following are the few suggestions that can help curb media trials and retain their freedom of speech and expression:

(i) Media ethics: Journalism courses should include lessons on ethics, colleges should include ethics as a mandatory subject for budding journalists. There is a lack of ethical conscious when media trials are conducted, they forgo the humanitarian principles and run behind TRPs. Media houses have a mandate to follow ethical principles on humanitarian grounds, there is an ethical code that needs to be followed while collecting data and to ensure that the news broadcasted is authentic and useful that the mass can rely on, it fair and just and

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<sup>38</sup> Supra 36.

<sup>39</sup> AIR 1961 SC 633.

<sup>40</sup> R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264.

keeps the gushing effect it might have on the society<sup>41</sup>. It seems like a need of the hour to include ethics as a course subject for journalism. Media has to follow the virtues of ‘accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people’<sup>42</sup>.

(ii) Mandatory regulations: Media houses need to self-regularize them, they need to understand that with their right to freedom of speech and expressions is also their duty to not violate others fundamental rights. When media trails encroach upon principles of natural justice and devoid a person from a fair trial and fair hearing, they irreparably obstruct and hinder the criminal justice system. Press council of India should mandatorily impose regulations violation of which would attract consequences which deems fit.

(iii) Journalism and Law: Course subject should be introduced which teaches students of journalism about laws. The media houses should be aware about laws and principles of natural justice and rule of common law that can’t be ignored at any cost. It is also an upcoming phenomenon that law professionals are also opting for legal journalism and subject on journalism can be introduced in law schools as well. The journalist needs to be trained in laws relating to freedom of speech and expression, the defamation law, human rights and contempt of court laws, ignorance of law is never an excuse<sup>43</sup>. The reporter and journalist with better understanding of law will be more mindful towards them. It is necessary that the syllabus in Journalism should cover the various aspects of law referred to above. It is also necessary to have Diploma and Degree Course in Journalism and the Law<sup>44</sup>.

(iv) Educate them regarding – impact on judges of medial trials and how it hampers fair trail: Publications which are prejudicial with regards to a suspect or accused, digs out his past and irrelevant factors about him in bad light, it may affect judges subconsciously. The snowballing effect of this results in unfair and impartial decisions and the accused is subjected to a fair hearing. The American Supreme Court, stated that “forces which enter into the conclusions of Judges” observed that “the great tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judges by”<sup>45</sup>.

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<sup>41</sup> “Media Ethics, G.N. Ray, (Nov. 18, 2020, 9:20 PM) <https://presscouncil.nic.in/OldWebsite/speechpdf/Media%20Ethics%20at%20IIMC,%20Dhenkanal.pdf>

<sup>42</sup> *Mother Dairy Foods & Processing Ltd v. Zee Telefilms* (IA 8185/2003 in Suit No. 1543/2003 dated 24.1.2005)

<sup>43</sup> 200th Law commission report, (Nov. 14, 2020, 11:17AM), <https://lawcommissionofindia.nic.in/reports/rep200.pdf>

<sup>44</sup> *Dr. Shashi Tharoor vs Arnab Goswami And Anr*, CS(OS), 253 of 2017, Judgment Date: Dec 01, 2017.

<sup>45</sup> 'Nature of the Judicial Process' (Lecture IV, Adherence to Precedent. The Subconscious Element in the Judicial Process) (Yale University Press), (1921).

Judges though a rational minded and won't consciously get affected but at the end they are human beings and are capable of forming prejudices subconsciously which will result in biased decision.

(v) Impose fines for obstruction of justice: Media trials are equivalent to obstruction of justice and scandalizing the matters at hand. They have multiple times jeopardized a judicial matter just because dichotomy arises between A.19(1)(a) and contempt of court act. A media house can go free if the publication is pre-trial without facing any consequences. They blatantly violate rules of natural justice and fundamental rights of the accused. These actions shouldn't go unwarranted and they should be subjected to fine whichever amount the legislative body deems fit to impose, as they are within their right to impose reasonable restriction through due process of law which should be fair and reasonable.

Media trails often leads to travesty of justice and it should be avoided at all costs.

“Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible<sup>46</sup>.”

## VII. CONCLUSION

The nation wants to know and the nation should know about important and pressing matters but the nation shouldn't be fed twisted facts and distorted evidences while principles of justice are jeopardized and ethics are palmed off.

“The demi-world of journalism is like the fun house of mirrors that one finds in carnivals. In one reflection you are too fat; in another you are absurdly thin; in another reflection you appear to have an elongated neck; in another, a flat head, - in still another you have next to nobody. Yet there you are, standing in front of these bizarre reflections, fully formed and hearing little resemblance to any of the images before you. The difference is, however, that unlike the funhouse of mirrors, the distortions of the media are rarely a joke<sup>47</sup>.”

It will be ignorant to state that role and importance of media is not essential, especially in a democratic country media plays an important role, it acts as a medium of communication and agent of deliverance of important facts and happening around the country and world. It the duty and right of media to express it opinions and publish their view point, but they shouldn't

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<sup>46</sup> Dr. Shashi Tharoor vs Arnab Goswami And Anr, CS(OS), 253 of 2017, Judgment Date: Dec 01, 2017.

<sup>47</sup> Trial by media and trial of media, (Nov. 13, 2020, 10:04 AM), <http://www.rtd.nic.in/MassMediaIndia2009.pdf>

ignore the fact that they have a duty to report truthful content and not violate rights of an individual.

There is no denying that a strong independent media exists in India and they have reported and busted several scams, 'publicity is the very soul of justice' as stated by Jeremy Bentham. But the media should refrain themselves to reporting the cases and should not go on their independent journey to solve a case and declare the accused guilty without any proper means to assess the evidence or without any authority to pronounce any judgement.

Principles of natural justice are protected by Constitution of India, every accused is entitled to a fair trial, he has a right to be heard and to be presumed innocent till proven guilty no authority or individual can strip off another individual of their rights<sup>48</sup>. These rights are also guaranteed and recognized by international conventions; UDHR and European convention both recognize and embody principles of natural justice and how they should be construed literally. The ICCPR also lays down certain restriction with regards to media trials and allows restrictions to be imposed till they are not arbitrary or unreasonable in nature.

The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. A media trial in its entirety functions in absence of impartiality and fairness.

The principles of statutory interpretation help us guide and weed out the ambiguity from the provisions, just as we observed how the joint committee omitted the word 'imminent' criminal proceedings from the contempt of court act to avoid mischief and ambiguity. We could observe how rule of Harmonious construction was utilized to create an even platform between the right to freedom of speech and expression & the criminal contempt under the contempt of court Act, 1971.

The external aids of construction highlight the importance of fair trial and those principles of justice shouldn't be abused at the cost of media's unrestricted freedom. It helps identify and solidify the intentions behind the legislature and what is causing the abuse of principles of natural justice, once these ambiguities and hardships are identified necessary recommendations can be made to curb them. Aids to statutory interpretation has significance and they are considered to rightly interpret a statute and mitigate the mischief arising from it. Media trials are not favoured and have to be diluted out of the media culture, a balance has to be created between their freedom and their responsibility. The media needs to be imparted with knowledge and importance of fair and impartial trial.

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<sup>48</sup> Exclusion of rules of natural justice, Matthew Grover, MULR, Vol 39 No 2, (2013).

It is best if media is regulated and improved through the mode of education and diploma courses, where they understand the crux of ethics and importance of rule of law and principles of justice. Trial by media needs to be curbed, in order to protect and prevent the abuse of rules of natural justice.

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