

# ● A LEGAL DISCOURSE BETWEEN FAIR TRIAL AND MEDIA TRIAL: INDIAN PERSPECTIVE



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## **Abstract**

*In present scenario number of instances have witnessed in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgement. Often the targets of media to portray them as they have really committed the offence and sometimes victimize the innocent person led to violation of their right of fair trial. It is so because the gap between an accused and a convict is minimized by portraying the image of accused as a real offender which has to be decided by the courts on the basis of the evidences. In addition, it builds up a public opinion against the accused based on the image portrayed in media and later if the judgement grants acquittal to accused person it puts a question mark on the fair justice delivery system. However, in this connection, the 200<sup>th</sup> Law Commission report has suggested the prohibition of anything that is prejudicial towards the accused or suspect and this restriction should operate from the time of arrest. The paper makes an attempt to draw the attention towards the media practices infringing the human rights of the accused as the criminal jurisprudence is based on thinking that a person is innocent in the eyes of law until proven guilty.*

## **Key words**

*Media Trial, Fair Trial, Rights of Accused, Pre-Trial Publicity, and Presumption of Innocence.*

## **I. INTRODUCTION**

Trial is a word which is associated with the process of justice. It is important for media to recognise the fact that apart from the truth behind a case, both parties to litigation have a constitutional right to have a fair trial in court of law including free, fair, and uninfluenced by any pressure, fear or favour. This right of fair trial may be defeated if media while reporting a matter uses such a language which may have an effect to influence the mind of judges and control the judicial process. Therefore it is responsibility of media to take due care while reporting court proceedings. There must be an obligation to ensure fair and accurate reporting throughout the course of a legal proceeding, whether at the stage of investigation, during arguments in courtrooms and eventually when the judgement is delivered. This is a concern since it is very common place to come across reports in the media where statements made by investigations or even the courtroom proceedings inter se the judges and lawyers are either erroneously

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cited or quoted without an explanation of the context in which they were cited, acting as a misnomer.

In some specific cases, there is a compelling need to protect the identity and privacy of parties. Commonly, judicial proceedings should be open to public scrutiny, but there is a need to restrain the same in some exceptional circumstances. Therefore, law in extreme cases provides for in camera proceedings. For instance, the identity of victims of sexual offences should not be disclosed.<sup>1</sup> Our procedural laws empower judges to order in camera proceedings in family related disputes and rape trials, to protect the victims and witnesses from undue pressure and unwanted media attention. The Madrid Principles on The Relationship between the Media and the Judicial Independence (1994) expressly allow for the preservation by law of secrecy during investigations of crimes even when such investigations form a part of the judicial process.<sup>2</sup> The preference for the secrecy in such circumstances must be regarded as mainly for the benefit of persons who are suspected and to preserve the 'presumption of innocence'.<sup>3</sup>

The Supreme Court recognised the problem many years ago and observed in *Saibal Kumar v. B.K. Sen*.<sup>4</sup>

"No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of investigation. This is because trial by newspapers, when a trial by one of regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution."

## II. PRE-TRIAL PUBLICITY

In a democratic society people enjoy the right to know. Therefore, the media has a corresponding duty to inform the people about the criminals and the crime. It thus,

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<sup>1</sup>*R. Rajagopal & Ans. v. State of Tamil Nadu*, (1994) 6 SCC632.

<sup>2</sup>Law Commission of India 200th Report on "Trial by media free speech and fair trial" under Criminal Procedure Code, 1973, (August, 2006)..

<sup>3</sup>In respect of the interface between media freedom and criminal law, one of the Siracusa principles (1984) stipulates:

All trials shall be public unless the Court determines in accordance with law that:

- (a) the press or the public should be excluded from all or part of a trial on the basis of specific findings announced in open Court showing that the interest of private lives of the parties or their families or of juveniles so requires; or
- (b) the exclusion is strictly necessary to avoid publicity prejudicial to the fairness of the trial or endangering public morals, public order or national security in a democratic society.

<sup>4</sup>(1961) 3 SCR 460.



demands the right to carry on pre-trial publicity.<sup>5</sup> Yet, on the other hand, the judiciary is keenly aware of the fundamental rights of the accused to a fair trial and of due process of law. Since pre-trial publicity can derail a fair and a speedy trial, the judiciary has to balance the competing fundamental rights. While the freedom of speech and expression of the media, the right to know of the people need to be protected and promoted, the right to fair trial of the accused needs to be secured and guaranteed. Pre-trial publicity is injurious to the health of a fair trial. Even before the accused is arrested and tried, the cacophony of media proclaims the accused to be guilty. It may project irrelevant and inadmissible evidence as the gospel truth, thereby convincing the people about the guilt of the accused. Thus, it undermines the fundamental principle of common law that every man is presumed to be innocent till proven guilty. Once the accused is portrayed as a despicably depraved character, at times, the Bar may refuse to defend him. It, therefore robs the accused of his fundamental right to defend himself. Such publicity also convinces the witnesses to custom-tailor their testimony to the prosecution case. Most importantly, the appreciation of the evidence by the public and the judiciary may differ. While the people are convinced of the guilt of the accused, the court, after meticulous examination of the evidence may acquit him. Such differences in perception weaken the

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<sup>5</sup>First Amendment case law has encouraged a vigorous press in American public life. However, under the 6th Amendment, a fair trial in a criminal court requires that the judge and jury make their judgment solely on the basis of the evidence introduced in the courtroom. When vast publicity threatens the conduct of a fair trial, a fundamental conflict occurs between two constitutional rights i.e. a fair trial and a free press. Traditionally, the Supreme Court had been reluctant to attempt any control of pre-trial publicity. But *Irvin v. Dowd* (1961), *Rideau v. Louisiana* (1963), and *Sheppard v. Maxwell* (1966), where the Court reversed criminal convictions because of prejudicial publicity which contributed to a heightened judicial awareness of the potential dangers of pervasive publicity. This awareness in turn led many trial courts to impose certain controls on the press's reporting of criminal proceedings. The issuance of "gag orders" restricting the press from reporting certain facts regarding trials constituted one such control. In the wake of Sheppard, despite the Courts holding that press coverage serves a vital role as it "guards against the miscarriage of justice," some trial courts faced with criminal trials attracting much publicity resorted to gag orders against the press. Bid the mid-1970s, gag orders threatened the hard-won freedoms previously secured by the press. In *Nebraska Press Association v. Stuart* (1976), the Court invalidated a gag order on the grounds that it was an unconstitutional prior restraint on the press. The Court held that such a prior restraint could be sustained only if the prohibited publicity constituted a clear and present danger to the defendant's right to a fair trial. As a result of that decision, gag orders on the press must now be regarded as presumptively unconstitutional.

In *Oklahoma Publishing Co. v. District Court of Oklahoma County* (1977), the Court struck down a gag order restricting the press from publishing the name or picture of a juvenile involved in a delinquency proceeding. In *Landmark Communication v. Virginia* (1978), the Court struck down a state statute preventing the press from covering activities of the state Judicial Review Commission. In *Smith v. Daily Mail* (1979), the Court struck a similar law preventing the press from publishing the name of a minor charged in juvenile court. Despite the Nebraska Press ban, some judges try to do indirectly what they cannot do directly and have attempted to control prejudicial publicity by curtailing the flow of information to the press. One means of controlling the media is closure of trial proceedings to the public and press. However, in *Richmond Newspapers, Inc v. Virginia* (1980), the Court greatly narrowed a judge's ability to close trials and held that the paramount right of the public and press to attend criminal trials was guaranteed by the First and 14th Amendments. *Globe Newspaper Co. v. Superior Court* (1982), *Press-Enterprise Co. v. Riverside Superior Court I* (1984), and *Press-Enterprise II* (1986) made it clear that open trials were the rule, and excluding the public and press from even a portion of a trial was the rare exception. Another means of curtailment is the restriction of information divulged by trial participants to the press. In *Gentile v. State Bar of Nevada* (1991), although finding the state's guidelines too vague, the Court held that some restrictions on lawyers' speech, if carefully drawn, may be constitutional.

faith of the public in the criminal justice system. Ultimately, pre-trial publicity undermines the criminal justice system and overturns the rule of law. However, in a democracy, the right of free press and right of fair trial must peacefully co-exist. The United States of America, England and India are the torchbearers of democracy. We are progenies of the common law. We, thus, share a common political ideology, a common legal heritage. Our Constitutions, whether written or unwritten, proclaim, protect and promote the same set of fundamental rights: both the First Amendment of the American Constitution<sup>6</sup> and Article 19(1) (a) of the Indian Constitution guarantee the freedom of speech and expression. The Fifth Amendment of the American Constitution protects the right to life, liberty and property. Article 21 of our Constitution, likewise, protects life and personal liberty. While the former speaks of due process of law, the latter requires procedure established by law. Similarly, the Sixth Amendment of the American Constitution ensures the right to a speedy and public trial, by an impartial jury. Although we do not have trial by jury, but Article 21 of our Constitution also ensures the same right of fair trial.<sup>7</sup> Though England has an unwritten Constitution, but it, too, subscribes to the identical inalienable rights. Therefore, the three countries share a common denominator of this perpetual confrontation between the freedoms of speech versus fair trial.

### III. IMPACT OF HIGH PUBLICITY TRIALS ON JUDICIAL SYSTEM

The system in which we live is full of rampant corruption everywhere. Media activities to expose corruption are welcome. Media is taking a proactive step to weed out the evils that have crept in our system. Media is creating pressure on the system in order to

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<sup>6</sup>The First Amendment to the U.S. Constitution prohibits the making of any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of press. It was adopted on December 15, 1791, as one of the ten amendments that constitute the Bill of Rights.

The Bill of Rights was originally proposed as a measure to assuage Anti-Federalist opposition to Constitutional ratification. Initially, the First Amendment applied only to laws enacted by the Congress, and many of its provisions were interpreted more narrowly than they are today. Beginning with *Gitlow v. New York* (1925), the Supreme Court applied the First Amendment to states, a process known as incorporations through the Due Process Clause of the 14th Amendment. In *Everson v. Board of Education* (1947), the Court drew on Founding Father Thomas Jefferson's correspondence to call for "a wall of separation between church and State", though the precise boundary of this separation remains in dispute. Speech rights were expanded significantly in a series of 20th and 21st-century court decisions which protected various forms of political speech, anonymous speech, campaign financing, pornography, and school speech; these rulings also defined a series of exceptions to First Amendment exceptions to the protections.

The Supreme Court overturned English Common Law precedent to increase the burden of proof for Defamation and liable suits, most notably in *New York Times v. Sullivan* (1964). Commercial speech, however, is less protected by the First Amendment than political speech, and is therefore subject to greater regulation.

The Free Press Clause protects publication of information and opinions, and applies to a wide variety of media. In *Near v. Minnesota* (1931) and *New York Times v. United States* (1971), the Supreme Court ruled that the First Amendment protected against prior restraint, pre-publication censorship in almost all cases. The Petition Clause protects the right to petition all branches and agencies of government for action. In addition to the right of assembly guaranteed by this clause, the Court has also ruled that the amendment implicitly protects freedom of association.

<sup>7</sup>There are various aspects of right of fair trial. These include the adversarial trial system, the presumption of innocence, independent judges, and the knowledge of the accusation, trial and evidence in the presence of the accused, adequate legal representation to respond the charges. The right to a fair trial has been interpreted to be one of the implicit rights contained within the Right to Life under Article 21 of the Constitution of India.



convert the system into more accountable and responsible one. It is keeping vigilance over our society, ensuring that the truth is out there in the open and making sure that the voice of the common man and the under privileged ensuring that the truth is out there in the open and making sure that the voice of the common man and the under privileged section is heard. If media scrutiny is forcing the system to be responsive to the common man then there should be no complaints.

However, as every coin has two sides, there is another side of this role of media also. In every attribute of a democratic society it is one that cannot but make us a little more than worried. Now it has become the tendency of news channels and print media to drift towards sensationalism, even towards a distortion of facts of the case. As an example look at Arushi murder case. In present some television channels put out reconstructions of the murders, which were not based on any solid evidence. That is the whole point. True, they had the word reconstruction in small print in one corner of the screen but that does not minimise the fact that as a news media they did not stick to the facts of the matter as was established. That is not however, the only filling of which some media units have been guilty, encouraged there are more widespread attempts to sensationalise a case. Media was following the case since Aarushi and Hemraj were found murdered. Media has provided the case too high publicity by giving every minute detail pertaining to every little breakthrough in the case. During the arrest of Dr. Talwar on 23 May, 2008, media had started to publish the stories of him being guilty. Whenever, the two families one of Talwars and another of the Durrans ventured out, groups of reporters continued to harass them. Gradually the case has become a matter of trial by media.

#### IV. TRIAL BY MEDIA AND ITS IMPACT

Now the days, practices are nurturing in media to act as a public court as media conducts the *independent investigations*<sup>8</sup> and publish the result of investigation which instigate people to develop a public opinion against the accused even before the verdict of the courts in sub-judice matters. It gives rise to unnecessary controversies and apparently has an effect of interfering in administration of justice. Display of Photographs of the suspect or accused in media creates problems during identification parade conducted under the Indian Evidence Act.<sup>9</sup> Consequently the accused that should be assumed innocent is presumed as a criminal characterising him as a person who had indeed committed the crime. It defeats the '*presumption of innocence*' which is the base of Criminal Jurisprudence.<sup>10</sup> This media practice in the name of trial by media overlooks the differences between the accused and a convict. Hon'ble Supreme Court

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<sup>8</sup>*Saibal Kumar v. B.K. Sen* (1961) 3 SCR 460.

<sup>9</sup>Section 9, 1872.

<sup>10</sup>The presumption of innocence, sometimes referred to by the Latin expression *Ei incumbit probatio qui dicit, non qui negat* (the burden of proof is on he who declares, not on he who denies), is the principle that one is considered innocent until proven guilty. In many nations, presumption of innocence is a legal right of the accused in a criminal trial. The burden of proof is thus on the prosecution, which has to collect and present enough compelling evidence to convince the fact, who is restrained and ordered by law to consider only actual evidence and testimony that is legally admissible, and in most cases lawfully obtained, that the accused is guilty beyond reasonable doubt. If reasonable doubt remains, the accused is to be acquitted.

has already cautioned all modes of media to extend their cooperation to ensure fair investigation, trial, and defence of the accused and non-interference with the administration of justice in matters sub-judice.

## V. PRESUMPTION OF INNOCENCE

The presumption of innocence is the cornerstone of criminal justice administration and is recognised in all human rights instruments. In an excessively strict interpretation the presumption of innocence would only come into play during the actual trial. The presumption of innocence has implications for the overall treatment of the suspect or accused by the organs of criminal courts, detention personnel, and the media. For example, in their external communications towards the media, criminal courts have to take care that the suspect or accused is considered to be innocent until proven guilty in a fair trial. Furthermore, the refusal of a guilty plea cannot affect the presumption of innocence and consequently a plea of not guilty on behalf of the accused has to be entered. In addition, the presumption of innocence implies the right to remain silent.<sup>11</sup>

As a legal right of the accused in a criminal trial presumption of innocence, is recognized by the criminal jurisprudence of almost all the nations. The burden of proof is on the prosecution to prove the guilt of the accused beyond a reasonable doubt, and let the judge make the final determination. In other words, the burden is on the person who asserts, not the person who denies. The state must prove that: the crime was committed, and the defendant was the one who committed the crime.

According to ICCPR<sup>12</sup> everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. India is also a signatory to ICCPR. Media reporting in present scenario has witnessed the sensationalisation of self-manifested stories, half-baked truth resulting in the violation of right of individuals. Trial by media is a medium to treat an accused or suspect as a seasoned criminal or Television News items to boost the TRPs, keeping at stake the reputation of the accused. The media provides excessive publicity to the accused or suspect which provokes atmosphere of public hysteria resulting into the impossibility of free and fair trial. It also injures the reputations of the accused to such degraded level as even if they are acquitted by the court on the grounds of proof beyond reasonable doubt, they cannot rebuild their lost image in society.

In addition apart from suspects or accused even victim and witnesses suffer from excessive publicity as it invade their privacy rights. Disclosure of the identity of witnesses in the media leads towards the constant change in the statements of witnesses. There are various reasons responsible for it like pressure of opposite parties and police.

The perusal of above aspects of trial by media indicates the interference with the administration of justice tends to lower the authority of courts<sup>13</sup> and finally hampering the functioning of democracy because an independent judiciary is necessary to dispense justice free from fear or favour and achieving strength with maintaining the faith among public at large.

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<sup>11</sup>Article 19(1) (a).

<sup>12</sup>International Covenant on Civil and Political Rights, 1966.

<sup>13</sup>Contempt of Courts Act, 1971(Act 45 of 1976).



The grey area of the trial by media is the allegations prejudicing the judges presiding over a particular case. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*<sup>14</sup> the Court cautioned the judges to guard themselves against the pressure generated by means of a trial by press by way of public agitation. This was held to be very anti-thesis of rule of law and leading towards the miscarriage of justice. Cardozo one of the great Judges of the American Supreme Court observed that judges are subconsciously influenced by several forces.<sup>15</sup> Hon'ble Supreme Court of India has expressed the similar views in *Reliance Petro Chemicals Ltd. v. Proprietor Indian Express*.<sup>16</sup> Chairman of M.P Human Rights Commission Hon'ble Justice D.M. Dharmadhikari has also asserted that there is always a chance that Judges get influenced by the flowing air of remarks made upon a particular controversy. Media represents the case in such a manner to the public that if a judge passes an order against the media verdict, he or she is deemed either as corrupt or biased. The same facts were recognised by Lord Dilhorne in *Attorney General v. BBC*<sup>17</sup> that Judges and Jurors could not claim to be super human and may be influenced subconsciously.

The Constitution of India under Article 22 provides every person who is accused of any offence the right to get himself represented by a lawyer of his choice to put up his points in favour of his innocence before the adjudicating court and no one has the right to debar him from doing so.<sup>18</sup> However apart from these constitutional guarantees media is indulge in creating pressure on the lawyers even not to take up the cases of the accused. The media assumption of guilt clearly encroaches upon the right to legal representation which is a critical component of fair trial. It may also intimidate lawyers into refusing to represent the accused persons. As we have seen when Mr. Ram Jethmalani one of the

<sup>14</sup>(1997) 8 SCC 386.

<sup>15</sup>Cardozo, "Lecture IV, Adherence to Precedent: The subconscious element in Judicial Process" Nature of Judicial Process, (Yale University Press, 1921).

<sup>16</sup>(1988) 4 SCC 592.

<sup>17</sup>1981 AC 303 (HL).

<sup>18</sup>Rights of the Accused under Article 22:

1. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
  1. Nothing in clauses (1) and (2) shall apply -
    - i. to any person who for the time being is an enemy alien; or
    - ii. to any person who is arrested or detained under any law providing for preventive detention.
  2. No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless -
    - i. an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause of clause (7); or
    - ii. such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
3. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the

best lawyers of the country decided to defend Manu Sharma accused of a murder case.<sup>19</sup> Television News Channels called the decision an attempt to defend indefensible. When Mr. Jethmalani took the case media posed him as a villain and the same was happened in the case of terrorist Amir Ajmal Kasab apart from a terrorist he was also a human being and had same right of fair trial and legal right to represent him in a court of law as per the provisions of Article 22 of the Indian Constitution. In addition Article 21 of the Indian Constitution also restricts the deprivation of personal life and liberty of a person except the procedure established by law. UN Declaration of Human Rights<sup>20</sup> also talks about the right of fair trial for the accused.

## VI. JURIST'S OVERVIEW ON TRIAL BY MEDIA

Former Chief Justice of India K.G. Balakrishnan said that the tendency of newspapers and news channels to carry unverified reports posed a danger to a free and fair constitutional judicial process. The manner, in which "the modern media and telecommunications" intruded into a person's life and caused embarrassing and damaging publicity, if left unchecked, would become "alarming." The media trial, conveying public opinion in favour of one side or the other, particularly in criminal matters, had become increasingly frequent in recent times. Even before the court trial began, the accused was being shown as guilty. This questioned the very premise on which the judicial system was based. The right of every party involved in a court proceeding to have his case adjudicated in a free, fair and unbiased manner.<sup>21</sup> Gujarat High Court Chief Justice K.S. Radhakrishnan said giving reference to Arushi murder case that "Trial by media sometimes does not give the accused a fair trial".<sup>22</sup>

Addressing a programme organized by Jain Seva Samiti and Shantaram Potdukhe College of Law Eminent lawyer Mr. Ram Jethmalani came down heavily on the role of media saying the fourth estate should immediately stop indulging in 'trial-by-media' acts. "Of late media acts as a court and passes judgment even before the court pronounces its verdict. This has to be stopped." Trial by media is nothing but breach of law. This media activity amounts to contempt of court.<sup>23</sup> Freedom of press is not absolute and it can be restricted, Soli J. Sorabjee said that there is a need to regulate the media in

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grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

4. Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.
5. Parliament may by law prescribe -
  - i. the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
  - ii. the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
  - iii. the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

<sup>19</sup> *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1.

<sup>20</sup> Article 10.

<sup>21</sup> The Hindu 'Media trial challenges judiciary', Sunday, Aug 10, 2008.

<sup>22</sup> PTI, New Delhi, May 16, 2012.

<sup>23</sup> *Id.*, Feb. 20, 2010.





country. Speaking at a panel discussion on Self-Regulation of the Media organised by Indian Women Press Corps (IWPC), he said the media has to be regulated and there cannot be a media trial of everything."It has been seen that when a certain case is in court, media starts a parallel trial, which is not good. Yes, the media has done a lot good in certain cases like Jessica Lal murder case but there can't be a media trial to everything. Let the court first decide on a matter, then the media can criticise. However, he said court can't frame guidelines as it is the job of the legislature.<sup>24</sup>

## VII. MEDIA TRIAL AND LAW COMMISSION RESPONSE

The 17th Law Commission of India was setup under the chairmanship of Hon'ble Justice Mr. M. Jagandha Rao. The Commission has drafted 200th report on the various issues related with media reporting. It is the most reckoning research of Law Commission on the subject of trial by media issues which deals with the positive and negative shades of media trials.<sup>25</sup> The recommendations of the commission addressed the prejudicing impact of sensationalized news reports on the administration of justice. The report has suggested the prohibition of anything that is prejudicial towards the accused or suspect and this restriction should operate from the time of arrest. The law commission with the perception to stop the media from prejudging or prejudicing the case recommended that the starting point of a criminal case should be from the time of arrest of an accused rather than from the time of filing of charge sheet. A controversial recommendation of law commission is that the High Courts should be empowered to issue directions to print and electronic media to postpone such publications or telecasts pertaining to criminal cases or to postpone the publications in order to avoid the abuse of right of fair trial by way of excessive publicity. The commission has also recommended the central government to enact a law to abstain the media from publishing prejudicial materials against the rights the accused in criminal cases. The law commission has also suggested certain amendments in Contempt of Court Act to protect the administration of justice from excessive use of freedom of speech.

A committee was appointed in the Chairmanship of Justice Brian Leveson<sup>26</sup> to inquire the culture, practice and ethics for press including the relationship of media with politicians and police. The report has criticized the media for sensationalisation and recklessness. The report had submitted its recommendations to constitute a strong and independent regulator. India has borrowed several democratic setups based on the concept of UK. The report also focuses on the relationship between media and people in power. According to this report political parties in UK agreed to adopt and setup a mechanism under the royal charter. In India we have also seen that after the commission of an incident media outlets start blaming certain outfits dependent upon information based on certain source, this sets out an idea for investigation. It is a well-known fact that the cases of the innocent people are acquitted after years in prison. The committee

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<sup>24</sup>*Id.*, May 10, 2012.

<sup>25</sup>Law Commission of India 200th Report on 'Trial by media free speech and fair trial' under Criminal Procedure Code, 1973, (August, 2006).

<sup>26</sup>Leveson report on an Inquiry In to the Culture, Practices and Ethics of the Press: Executive Summary and Recommendations(2012).

in his report discussed the "interplay of different forces in the public domain, especially between the media and law-enforcement agencies".

## **VII. CONCLUSION**

A trial primarily aimed at ascertaining truth has to be fair to all concerned which includes accused, victims and the society at large. Each person has a right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and society.<sup>27</sup> Blackstone's formulation named after English jurist William Blackstone that there is hardly anything more undesirable in a legal system than the wrongful conviction of an innocent person. This is because the consequences of convicting an innocent person are so significantly serious that its reverberations are felt throughout a civilised society. This media practice in the name of trial by media overlooks the differences between the accused and a convict. The Supreme Court has already cautioned all modes of media to extend their cooperation to ensure fair investigation, trial, and defence of the accused and non-interference with the administration of justice in matters sub-judice.

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<sup>27</sup>Maja daruwala (ed.), *Fair Trial Manual: a Handbook for Judges and Magistrates*, (commonwealth human rights initiative and the international human rights clinic, cornell law school ISBN: 81-88205-91-5, 2010).