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**Role of Media and Administration of Justice in Indian Perspectives**

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**Dr. Manirani Dasgupta, Head & Associate Professor,  
Department of Law, University of Calcutta.**

**Abstract**

*Human rights are inherent, basic and fundamental and not gifted by States. In contemporary information communication technology era complexities are increasing with growing needs and desires. Law in the changing society needs to be changed to resolve conflicting claims in society. The welfare State has to perform several functions through its branches to fulfill social needs, protect the rights of individuals with maintaining safety and security, law and order. Right to freedom of expressions of the media is recognised under article 19(1)(a). However, issues may be raised, e.g., right of suspects and accused for fair trial as well as administration of justice. Freedom of media is the emergence in the democracy but it is restricted by contempt of court under article 19(2). According to the Criminal Jurisprudence and Constitutional principles any person who may be suspected or the accused should be entitled to fair trial and should also be presumed to be innocent till the guilty is proved. Furthermore, prejudice or prejudice act relating to guilty of any person, when his case is pending before court, till the trial is completed is not permitted. The freedoms with social interests, social morality, media as well as administration of justice for governing our contemporary dynamic society are significant and needs of the day. There is need of check and balance system between right to know, right to information and right of accused to be presumed as innocent till the guilty is proved and established along with honour to administration of justice.*

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**1. Introduction**

Since the origin of human society certain rights are treated as basic, fundamental, natural and sacrosanct not only in India but also in the World. It is internationally recognised rationale that human rights are inherent rights and not gifted by government or by states. By virtue of birth as human being we have inherited human rights.

Due to outstanding growth in science and technology the needs and desires of contemporary dynamic society are changing, therefore, with the tune of the society Law needs to be changed to fulfill the conflicting socio-economic cultural needs and desires. The welfare state has to perform more functions following the principles of Rule of Law in post-modern society. The state performs functions as provider, protector, economic planner, arbitrator, economic enterprise, maintain law and order as well as social security through social justice.

According to Roscoe Pound Law is the vehicle for social engineering<sup>1</sup> and there are several conflicting interests in society which are to be fulfilled and repaired through Law. Those social interests are called conflicting claims in society. In sociological school, Roscoe Pound had said that there are several conflicting claims or interests in society, those claims are inherent and not given by any one, law only recognise and govern these in the form of rights for protection of claims and interests. There are conflicting private and public interests in society. Public interests are sub-categorised as follows: (i) general security, (ii) public morality, (iii) general progress, (iv) public resources and (v) protection of individuals. In Indian Constitutional Law, Preamble, Part-III, Part-IV and in other Parts we find the relevance of his theory for the protection of human rights and social interests.

However, in welfare society state has to perform its all functions and responsibilities to resolve the conflicts and to protect rights through its main three branches, i.e., legislature, executive and judiciary, and the fourth is the press. The principle of Rule of Law has to be followed by all as we are governed by Law and no one can function beyond legal boundaries. So, media can enjoy freedom with reasonable restrictions as specifically mentioned under the Constitutional provisions. More specifically, while media publish any news relating to administration of justice it should function subject to reasonable restriction, i.e., contempt of court, fair trial etc. There should not be conflicts rather need of balance of powers

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between all branches of government which includes the media. In every democratic society freedom of media is very significant and any attempt to suppress it unreasonably may go against sacrosanct democratic principles.

However, according to the criminal jurisprudence and Constitutional principles any person who may be suspected or the accused should be entitled to (i) the fair trial and should also be presumed to be innocent till the guilty is proven by a Court of Law. (ii) Prejudice or prejudice act relating to guilty of any person, when his case is pending before court, till the trial is completed is not permitted.

Sometimes, media takes excessive coverage and cross its limits by publishing interviews of witnesses, relatives and commenting on the case of conviction of the accused which may have tendency to prejudice and try to create undue influence in the mind of the judges in the court, prosecutors as well as general public in society. These activities of media are not permissible in Indian legal system.

## 2. The Constitution of India

The Preamble of our Constitution indicates basic and fundamental human rights with sovereignty, democracy, liberty, equality, social justice etc. The Constitution of India guarantees fundamental rights in Part-III from articles 12 to 36. The name itself is 'fundamental' which means basic and inherent too. So, these are very important and core of our Constitution to achieve and promote social justice, social progress and protection of right to life, liberty, equality, access to justice etc. Article 19 guarantees rights in the form of several freedoms of which article 19(1)(a) provides that all citizens have the right to freedom of speech and expressions. Absolute freedom may devastate the society, destroy social structures and disturb to regulate society properly. Therefore, freedom of speech and expressions are to be enjoyed with reasonable restrictions as mentioned under article 19(2) of our Constitution. These reasonable restrictions are in the interest of sovereignty and integrity of nation, the security of the state, friendly relations with foreign states, public order, decency and morality, in relation to contempt of court, defamation or incitement to an offence. Under article 20 clause (2) no person shall be prosecuted and punished for the same offence more than once. Article 21 guaranteed right to life and personal liberty to every person except procedure established by Law. Article 22 provides certain rights to suspects, arrested and accused person with the objectives of free and fair trial in administration of justice.

Though the term *administration of justice* is not mentioned in article 19 but if we co-relate the term *contempt of court* under constitutional provisions with the provisions of the Contempt of Courts Act, 1971 then it will be very clear that contempt of court refers to the administration of Justice. According to section 2(b) of the Act, civil contempt means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of a undertaking given to a court. Section 2(c) defines the term criminal contempt which means the publication, whether by words spoken or written or by sign or by visible representation or otherwise, of any matter or the doing of any other act what so ever which (i) scandalises or tends to scandalise the authority of court, or lowers or tends to lowers the authority of any court, (ii) prejudice the trial and (iii) hinder back the administration of justice. Therefore, the criminal contempt is essential to protect entire judicial system and judicial independence.

However, innocent publication and distribution of matter is not to be treated as contempt. When the media publication intentionally interferes or have tendency to lowers the authority, prejudice the due course of judicial proceedings or obstructs the administration of justice then it will amount to criminal contempt. Therefore, reasonable restrictions to prevent and control such contempt will be valid under article 19(2) and under the Contempt of Court Act, 1971.

Free and fair trial is also fundamental right under article 21 of the Constitution of India. There should be balance between these two fundamental rights, as on the one hand freedom of press or media for publication or coverage of any issue pending before court and on the other hand free and fair trial as fundamental human rights, both are guaranteed under article 21 of the Constitution of India. The Law Commission of India in its 200<sup>th</sup> Report tried to balance between two rights and applied harmonious rule of construction to articles 14, 19 and 21 while submitted its Report on 31<sup>st</sup> August 2006 with

recommendations for few amendments to the Act, 1971.

In **Maneka Gandhi v. Union of India**,<sup>2</sup> the Supreme Court of India adopted the American principle of due process and expanded the scope of article 21 so that every right which are essential to enjoy right to life with dignity, liberty are to be treated under article 21, i.e., right to life and personal liberty. Articles 14, 19 and 21 are to be interpreted by application of harmonious rule of constructions. Therefore, there is no water tight compartment between these three articles, they are closely related and for fulfillment of one right other right should also be enjoyed. Right to life and personal liberty only can be deprived according to the procedure established by Law which should be just, fair and reasonable and not arbitrary. In this case Indian judiciary had adopted American principle of 'Due Process' for the interpretation of 'procedure established by Law' under article 21. The court held that procedure must be 'Due' which means and includes just, fair and reasonable and not arbitrary or fanciful. Thus, the process of Law should be due process and following of natural justice principles. And right has to be interpreted not 'as it is' in black letter following positivistic theory of Law rather it needs to be interpreted by application of theory of Natural Law, i.e., 'as it ought to be'. Hence, the positivistic interpretation of article 21 in **A. G. Gopalan v. State of Madras**<sup>3</sup> was prospectively overruled by Indian Apex Court in **Maneka Gandhi's** case.

In **Whitney v. California**,<sup>4</sup> Louis Brandeis J. held those who own our independence believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that the freedoms to think as you will and to speak as you think are means indispensable to the democracy and spread of political truth. Public discussion and political duty are fundamental principle of the American Government.

In **Ramesh Thapper v State of Madras**,<sup>5</sup> Supreme Court of India held that freedom of speech and expression includes freedom of propagation of ideas and liberty of circulation. The freedom of press is essential for the liberty of propagation of ideas, their publications and circulations are subject to reasonable restrictions. However, there is no doubt that media is the fourth pillar of democracy and plays significant role in imparting information but there is need of balance between freedom of media and social justice. They should not interfere with due administration of justice.<sup>6</sup> In **L.I.C. of India v. Prof. M.D. Shah**,<sup>7</sup> judiciary held that freedom of speech and expression is basic and fundamental right of individuals which they acquired by virtue of birth as human being. In a democratic country any attempt to gag this right except under article 19(2) is violation of democracy and article 19(1)(a). In this case court also held that the freedom of speech and expression in article 19(1)(a) includes the right to express one's convictions and opinions freely by words of mouth, writing, printing, pictures or electronic media etc. In **State of U. P. v. Raj Narain**<sup>8</sup> and other cases the Apex Court held that right to know, right to information or freedom of information are considered to be included under article 19(1)(a) subject to article 19(2). In **R. Rajagopal v. State of Tamil Nadu**,<sup>9</sup> the court held that the Government or its officials had no authority to impose a prior restraint upon publication of a material on the ground that such material was likely to be defamatory of them. The right to publish the life story of a convicted prisoner was also included under article 19(1)(a). In **Hamdard Dawakhana v. Union of India**,<sup>10</sup> court held that the right includes the right to receive and import ideas, formation of opinions, exchange of thoughts and information about matters of common interest. The right to telecast includes the right to educate, to inform and to entertain and also right to be educated, be informed and be entertained. However, in **Secretary, Ministry of Information and Broadcasting v. Cricket Association of West Bengal**,<sup>11</sup> the court held that article 19(1)(a) includes the right to information and the right to disseminate or broadcast through all types of media, whether print, electronic or audio-visual. In **the State of Maharashtra v. Rajendra J. Gandhi**,<sup>12</sup> it was held that a trial by press, electronic media or by way of a public agitation is the extremely anti-thesis of the principle of rule of law which can lead to miscarriage of justice. The judiciary has play as self protector against such pressure. Media may duly publish any court matter following provisions of article 19(2) and the Contempt of Court Act in India. In **Anukul Chandra Pradhan v. Union of India**,<sup>13</sup> the court observed thus: 'no occasion should arise for an impression that the publicity attached to these matters (the Hawala

transactions) has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial'.

### **3. Relevant Provisions of the Contempt of Court Act in India**

**3.1 Civil and Criminal Contempt:** Under section 3(1) of the Contempt of Court Act, 1971 a person shall not be guilty of contempt of court on the ground that he has published any matter which interferes or tends to interfere with the course of justice in connection with civil or criminal proceeding pending at the time of such publication if at that time he had no reasonable grounds for believing that the proceeding was pending. Section 3(2) of the Act provides that notwithstanding anything to the contrary contained in this Act or any other Law for the time being in force, the publication of any such matter also shall not be treated as contempt of court if the matter is not pending before the Court at the time of publication. Explanation to section 3 of the said Act provides that a judicial proceeding is said to be pending (a) in case of a civil proceeding, when it is instituted by filing of a Plaint or otherwise, and (b) in case of a criminal proceeding under the Code of Criminal Procedure, 1973 or any other Law if the issue is relating to the commission of an offence, when the charge sheet or challan is filed or when the court issues summons or warrant against the accused then it will be treated as pending court procedure. In other cases when the court takes cognizance of the matter to which the proceeding relates whether in civil or in criminal proceeding, it shall be treated as pending until it is heard and finally decided. Under section 3(3)(a) it will be treated as pending case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or until the period of limitation prescribed for such appeal or revision has expired and where there is no appeal or revision preferred. However, under section 3(3)(b) of the said Act when the matter in issue has been heard and finally decided by the competent court then it shall not be deemed to be pending before the court merely by reason of the fact that only the proceedings for the execution of the decree, order or sentence passed therein are pending.

**3.3 Fair and Accurate Report:** Section 4 of the Act provides that subject to section 7 of the said Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage of it. Publication of information relating to administration of justice in chambers or in camera is not contempt except in certain cases.

According to section 7(2) to make a person guilty of contempt of above mentioned cases, which otherwise may come under the fair and accurate publication, the court has to prohibit the publication of proceedings expressly on the grounds of (i) public policy, or (ii) for reasons connected with public order, or (iii) the security of state, or (iv) that publication contains information relating to secret process, discovery or invention, or (v) in exercise of any power vested in the court.

**3.4 Fair Criticism:** The media shall not be guilty of contempt of court for publication of any fair comment or fair criticism on the merits of any case which have been heard and finally decided by the judiciary; because section 5 starts with the term 'a person' which includes any citizen, lawyer, academician, corporate personality and media too. According to sections 10 and 11 of the said Act, every High Court shall have and exercise the jurisdiction, powers and authority in respect of contempt of courts subordinate to it as it has powers and it exercise the same in respect of the contempt of itself. So, the subordinate courts have no power to punish for the contempt of the proceedings rather they only can refer the case to the respective High Court. Provided under the proviso that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt itself is an offence punishable under the Indian Penal Code, 1860.

Section 12 deals with punishment for contempt of court. According to section 12 (1) except otherwise so provided by law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. Section 12(3) provides that notwithstanding anything contained in this

section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit. Section 12(4) provides that where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person. Proviso of this section also provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission. According to section 12(5) notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer. Section 13 of the Act deals with certain situations where contempt of court is not punishable. It provides that notwithstanding anything contained in any law for the time being in force, under this act, (a) no court shall impose a sentence for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice; and (b) in any proceeding for contempt of court, the court may permit justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

#### **4. The 200<sup>th</sup> Law Commission Report in India on Contempt of Court**

**4.1** The 200<sup>th</sup> Law Commission Report is significant to discuss at this juncture. The Chapter –III of the Report referred the decisions of the Supreme Court of India and the House of Lords. The report observed that publications which are prejudicial to a suspect or accused may affect Judges subconsciously at the stage of granting or refusing of bail or at the trial. Under the Contempt of Courts Acts of 1926 and 1952 there were no specific definitions of ‘civil’ and ‘criminal’ contempt. The Common Law principles were applied to treat publications made even before the arrest of a person as contempt prior to the 1972 Act in India. Even publications after the filing of a First Information Report (FIR) were treated as prejudicial. However, in **Surendra Mohanty v. State of Orissa**,<sup>14</sup> the Supreme Court held that filing of an FIR should not be treated as stage of pendency of a criminal case. In **A.K. Gopalan v. Noordeen**,<sup>15</sup> it was held that a publication made after arrest could be contempt if it was prejudicial to the suspect or accused. The court observed thus *‘the Sanyal Committee (1963) which was appointed for this purpose, while observing that our country is very vast and publications made at one place do not reach other places, however, recommended that so far as criminal matters are concerned, the date of arrest is crucial, and that should be treated as the starting point of pendency of a criminal proceeding. It conceded that filing of an FIR could not be the starting point. The Sanyal Committee prepared a Bill, 1963 stating that prejudicial publications could be criminal contempt if criminal proceedings were imminent’*. The term ‘imminent’ became the issue of debate thereafter among legal fraternity.

**4.2** The Bill of 1963 was reviewed by a Joint Committee of the Parliament since 1969 to 1970. The Joint Committee discussed about the term *imminent* relating to court proceedings and recommended the rationale that (a) the word *imminent* was vague and (b) it may unduly restrict the freedom of speech if the law applied to *imminent* criminal proceedings. Therefore, in the Contempt of Court Act, 1971 there is omission of all references to *imminent* proceedings and to *arrest* as the starting point of pendency of a criminal proceeding. A part of the report is thus: *‘the date of arrest is the starting point under the UK Contempt of Court Act, 1981 and the Bill of 2003 prepared by the New South Wales Law Commission. Case*



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law in Scotland, Ireland, Australia or the Law Commission Reports of those countries have also declared that if a person is arrested or if criminal proceedings are imminent, prejudicial publications will be criminal contempt'.<sup>16</sup> The leading judgment in **Hall v. Associated Newspaper**,<sup>17</sup> (Scotland) the court held that the basis of the provision in the UK Act of 1981 was for fixing arrest as the starting point of pendency of a criminal case. **The Sunday Times judgment of the European Court**<sup>18</sup> was related to prior restraint of publications relating to a civil case and there the restraint was absolute and not temporary. However, this is not applicable in the Indian context.

In India publications with reference to character, previous convictions, confessions are to be treated as criminal contempt and judging the guilt or innocence of the accused or discrediting witnesses by media may be treated as contempt. The Law Commission also discussed the impact of information and media interviewing of potential witnesses and publicity about police and investigations by the journalists. However, journalists must to be trained on the basic and relevant law relating to freedom of speech under article 9(1)(a) and the reasonable restrictions under article 19(2) of the Constitution of India, human rights, the laws of defamation and contempt of court.

### 5. International Perspectives

The principles of 'presumption of innocence until proven guilty', 'guilt beyond reasonable doubt' and 'right to silence' are very significant in Criminal Jurisprudence. At this juncture we need to refer certain International provisions for the protection of Human Rights of suspects and accused as well as media publications.

**5.1 The Universal Declaration of Human Rights:** The Universal Declaration of Human Rights, 1948 recognised certain rights of suspects and accused as inherent and basic human rights. Article 3 states that everyone has right to life, liberty and security of person. Article 9 of it states that no one shall be subjected to arbitrary arrest, detention. Article 10 deals with the right of an accused in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him. Article 11(1) states that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has all the guarantees necessary for his defence. Article 12 states that no one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation and that everyone has the right to protection of the law against such interference and attacks. Under article 19 everyone has the right to freedom of opinion and expression which includes freedom to hold opinions without interference and to seek, receive and pass on information and ideas through any media regardless of frontiers.

**5.2 The European Convention:** The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 declares the same right under article 10 with certain restrictions. Article 10(1) states right to freedom of expression and clause (2) deals with the restrictions. Article 2 deals with right to life and provides that no one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Under article 5 no one shall be deprived of his liberty save in the certain cases and in accordance with the prescribed law. However, article 6 deals with right to fair trial which includes a fair and public hearing within a reasonable time by an independent and impartial legal tribunal and that everyone shall be presumed innocent until proved guilty according to law, informed promptly about the nature and cause of the accusation against him, should have adequate time and facilities for the preparation of his defence etc. Under article 8 everyone should have right to respect for private and family life and there shall be no interference by a public authority with the exercise of this right except, such as, is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms.

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### **5.3 The Madrid Principles on the Relationship between the Media and Judicial Independence, 1994**

**5.3.1 Issues:** Lawyers and Media representatives were assembled by the International Commission of Jurists for the Independence of Judges and Lawyers in the Spanish Committee of UNICEF met at Madrid in Spain between 18<sup>th</sup> to 20<sup>th</sup> January, 1994 (a) to examine the relationship between the media and judicial independence as guaranteed by the United Nations Principles on the Independence of Judiciary in the year 1985 and (b) to formulate principles relating to the relationship between freedom of expression and judicial independence.

**5.3.2 Statement:** The media representatives and jurists stated that freedom of the media is an integral part of freedom of expression which is essential in a democratic society governed by the rule of law. It is the responsibility of the Judges to recognise and give effect to it by applying a basic presumption in their favour and by permitting only such restrictions on the media which are authorised by the International Covenant on Civil and Political Rights.<sup>18</sup>

#### **5.4 Strategies:**

**5.4.1** The Judges should receive guidance in dealing with the press and they shall be encouraged to assist the press by providing summary of long or complete judgment relating to the matters of public interest.

**5.4.2** Judges shall not be forbidden to answer questions from the press etc.

**5.4.3** The equilibrium of independence of judiciary, freedom of the press and respect to the rights of the individual is difficult to achieve. Consequently, it is indispensable that one or more of the actions are to be placed at the disposal of affected persons or groups; legal response, Press Council, Ombudsman for the Press and the like with the understanding that such circumstances can be avoided to a large extent by establishing a Code of Ethics for the media which should be elaborated by themselves.

**5.4.4** 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 which are prejudicial to the fairness of the trial or endangering public morals, public order or national security in a democratic society.

### **6. Recent Judicial Decisions in India**

**6.1** In **Sahara India Real Estate Corporation Ltd. and Ors. v. Securities and Exchange Board of India (SEBI) and Anr.**,<sup>19</sup> the Apex Court constituted five judges Constitution Bench because few news media had published the judicial proceedings during the pendency of appeal irrespective of the interim order of the Court. In this case the SEBI had passed an order against the plaintiff on 08.10.2011 with direction to refund certain amounts of their investors under the Bonds called Optionally Fully Convertible Bonds. An appeal was filed by the plaintiff against such order of SEBI before the Supreme Court. During the pending of such procedure the Judiciary passed an order directing the Sahara to submit the detail report about their liability and Bonds to SEBI. Accordingly there was a negotiation between the parties to determine the sufficient security to be provided. On 07.02.2012 the Counsel for Sahara sent letter to SEBI stating the details of the repayment of liabilities and to act as pre-condition for the stay of the SEBI order along with valuation certificate of fair market value. This negotiation was published in a television news channel and then in other media too. Counsel for Sahara, Shri Fali S. Nariman expressed his anguish before the Judiciary about the breach of confidentiality by SEBI by disclosing of confidential business information though it was denied by SEBI. The hon'ble court observed that there are three essential need of laying down of guidelines relating to sections 2, 3, and 4 of the Contempt of Court Act, 1971 and the right of media to make fair and accurate reporting of matters which were sub-judice in nature and also matter of great public importance, rights of private individual relating to privacy, financial security, business communications by third parties and duty of court to ensure administration of justice by preventing all interferences and obstructions.

And the Court also referred the principle of *neutralising devices* as evolved by the United States

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Judiciary which traditionally have balanced the freedom of media, rights of individuals and the maintenance of Judicial neutrality with Independence of Judiciary. The judiciary laid down guidelines relating to reporting by print and electronic media when the matter is sub-judice in court along with manner and extent of publicity of the pending issues.

**6.2 Open Justice and Prior Restraint:** People of India have great faith in the judiciary in Indian legal system. The foundation of judicial independence is the open justice though it is not absolute rather restricted by the judicial self-restraint and Law. In **Naresh Shridhar Mirajkar v. State of Maharashtra**,<sup>20</sup> relating to the necessities of administration of justice the court held that according to the provision of the inherent jurisdiction of court, the orders prohibiting publication of court affairs during the course of trial are permissible. If the judiciary is satisfied that it is required for the interest of justice, a temporary order for prohibition of publication of court proceedings by media be issued which cannot be said to upset the freedom under article 19(1)(a) of the Indian Constitution. Thus, when required and necessary to prevent and control such unpleasant situation a prudent prior restraint by court is permissible.

The media has right to know about the court proceedings and publish it to people so that society can enjoy their right to information. This process of enjoyment of freedom and exchange of opinions by media and public also enhances the public confidence in the judiciary due to such transparency in procedures. The rationale behind section 4 is to grant a privilege in favour of the media if it is fair and accurate which is based on the presumption of 'open justice'. However, there may be risks of prejudice in the subsequent or connected trial even though not in the pending trial. Therefore, inaccuracy of reporting of court proceedings should be treated as contempt of court in the concerned case if it amounts to substantial interference with the administration of justice.

**6.3 Order of Postponement of the Publication:** The First Amendment in the Constitution of the United States of America (USA) guarantees absolute right of freedom of expression. But in India it is not absolute rather reasonable restrictions are there. Even section 1 of the Charter of Canada is similar with the provisions of the Indian Constitution relating to freedom of expressions. Thus, order of postponement of publications as well as publicity in appropriate cases maintaining the timing or the stage of the order, duration and the right of appeal to challenge such order is just a neutralising device when alternative ways, such as, change of venue, postponement of trial as available in the USA are not available in India. Therefore, the Indian judiciary evolved the preventive measures to protect the freedom of press and also to protect them from getting prosecuted for contempt by prejudice publication as well as due respect to the administration of justice.

**6.4 Right to Approach or Access High Courts and Supreme Court:** Whether accused or an aggrieved person, if genuinely apprehends of danger due to the content of publication which may result in his or her rights and upset the right to fair trial then he or she will be entitled to right of access to justice and proper judicial remedies through an appropriate writ and also can seek order of postponement of the offending publication or reporting of any parts or phases of the trial including identity of the victim or witnesses of the complainant. Judiciary may grant preventive relief as claimed harmonising the right to fair trial and freedom under article 19(1)(a) maintaining the principle of necessity of justice, proportionality. Moreover such order of postponement should be for shorter duration, applied only in cases of real and substantial risk of prejudice to the administration of justice as well as the fairness of trial.

**6.5 Indian Judiciary referred Sunday Times v. United Kingdom**<sup>21</sup> case where the European Court of Human Rights (ECHR) observed that balance is tried to be maintained between the rights of the media and fair trial. There can be pre-publishing censorship of a report for the purpose of such interference or prejudice the administration of justice which was also recognised under section 4(2) of the English Contempt of Court Act, 1981. The court also recognised that contempt is an offence sui-generis and held that postponement order can be passed to prevent risk of prejudice of any court proceedings. In the continental countries individual's rights, i.e., privacy, dignity and presumption of innocence are superior.



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The right of the media is subject to the fair trial and rights of the private individuals. The ECHR was in favour of the doctrine of proportionality. This doctrine was also advocated by Indian Judiciary far before in **Chintaman Rao v. the State of Madras**<sup>22</sup> However, the Court of Canada has adopted a combination of necessity test and proportionality test.<sup>23</sup>

## 7. Conclusion

Human rights are recognised internationally and nationally of which most significant and relevant issue of our discussion is the right to fair trial and role of media in the context of administration of justice. Two rights are significant in this perspective, these are right of suspects or accused and freedom of media. Both are also inalienable and integral for the protection of life, liberty and pursuit to happiness in a democratic country. In the contemporary era of communication convergence technology, media play very significant role for the progress of society through access to important information which is required for socio-economic and cultural development with protection of civil and political rights. With traditional mode of publications recent media publications are more depend on digital and electronic publications through Internet, WiFi, Cloud Computing and Smart Mobile Applications. Social network includes facebook, twitter, whatsapp, blogs, shareit etc. with groups or public. These are playing the role of publication and awareness for which there is no requirements of essential qualifications, e.g., Journalism, Mass Communications etc.

The Indian Constitution guaranteed freedom of speech and expression to citizens. Though, the freedom of press or media is not specifically mentioned, according to the pronouncements of the judiciary in number of judgments the freedom of press in Indian democracy has been recognised under article 19(1)(a) with article 19 (2) and also media became the forth pillar of government in the contemporary welfare society. The media shall not be guilty of contempt of court for publication of any fair comment or fair criticism on the merits of any case which has been heard and finally decided by the judiciary.

We should be appreciated that media play very important role even to unearth the corruptions and to bring actual facts to the lime light in society and accordingly actions are also taken by appropriate authorities. Most of the issues are found out by the media which contribute in speedy justice. For that reason, trained journalists must be credited for reporting of information which is typically inaccessible for the top vigilance teams. However, at the same time media should not act in a manner and should not reach to such extent by making comments on pending trials which possibly will cause conflicts with powers, independence of judiciary.

The competitions within the media houses to publish and take most of the coverage about certain issue also origin of creating tendency to interfere with administration of justice. It needs to be prevented and controlled by Judiciary, Legislature, Executive and the Press by making Law, legal reforms and guidelines, if required. However, Madrid Principles of 1994 may also be followed by media and administration of justice in this situation.

There should not be inaccurate and unfair publication of court proceedings. However, the Supreme Court of India referred Indian Constitution, Statutes and Foreign Judgments for resolving the issues of individual's rights, role of media and power of judiciary. Open justice is the core of our judicial system though it is not absolute rather it may be maintained by the judiciary by means of their inherent power on the basis of the necessities, proportionality and demand of justice. The prohibition of media publication for temporary period during the trial procedure is permissible for the interest of justice and fair trial.

However, to determine individual's freedom, freedom of media and judicial process with craftsmanship are not very easy task though not impossible. Role of media in democracy is significant when it will act for public interests with due regards to free and fair trials protecting right to privacy as well as confidentiality. Independence of judiciary with honour cannot be ignored as it is also essential for

the end of justice. So, due protections should be given to both the rights with due respect to administration of justice.

Indian judiciary expanded the scope of the Contempt of Court Act to ensure their functions and to provide due remedies to individuals in cases where genuine privacy and confidentiality are required though it may cause restrictions to media publications. Consequently, the judiciary has to follow principles of natural justice in every steps of their process and they are not expected to be influenced even by media criticism and publications consciously or subconsciously as they are the most prudent body in our country. So, reasonable balance can be achieved through judicial prudence, neutrality and craftsmanship with the application of principles of natural justice, rule of law and basic structures<sup>24</sup> of our constitution.

The right to negotiate and settle confidential issues is also right of the accused to defend him in a criminal trial. Right to privacy includes right in trade secrets, business and communications in confidential matters. Integrity in consideration of person, family, practice of religion, profession, occupation, business as well as fair and accurate publications of judicial decisions and judicial proceedings with dignity to justice are momentous of the day. Media also play the role to assist judicial system with transparency and public awareness but it will be appreciated when it is not contempt of court. As a consequence, people will really on media with hope for impartial social justice and their faith to temple of justice will gradually increase.

There is need of check and balance system between right to know, right to information and right of accused to be presumed as innocent till the guilty is proved and established along with honour to administration of justice. Therefore, in contemporary social phenomena, there is also a great need of co-operation and cordial relations between four pillars of the State to achieve balance of powers and functions for socio-economic and cultural developments with social justice for future progress. Because, human society is not only to develop but also to progress with safety, security, humanity and fair play within due restrictions.

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