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FREE SPEECH V. FAIR TRIAL: A CONUNDRUM OF COMPETING CONSTITUTIONAL CLAIMS

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Abstract:-The present day popular democracy is enshrined not only on the traditional three pillars of Legislature, Executive and Judiciary but is also dependent for its survival upon the Media which has thus rightly been hailed as the Fourth Estate of democracy that keeps the other three estates in check. However in its overzealous pursuit to discharge this sacrosanct duty, the media sometimes reincarnates itself as a 'public court' (Janta Adalat) which causes undue interference in the criminal adjudication system. This paper seeks to analyse this dichotomy between the two competing claims of constitutional rights, i.e. free speech vis a vis fair trial and attempts to analyse whether in the modern era media has assumed the role of both the judge, jury and the executioner.

Keywords: Freedom of Speech and Expression, Right to Fair Trial, Freedom of Media.

INTRODUCTION

The demi-world of journalism is like the fun house of mirrors that one finds in carnivals. The difference is, however, that unlike the fun house of mirrors, the distortions of the media are rarely a joke. -From -Two or Three Things I Know About Journalism

An informed citizenry is the bedrock of a democracy. It holds the government accountable through voting and participation. In its quest to inform, Media indulges in the process of, "investigative journalism" to unmask people, institutions and transactions. But in its overzealous pursuit to uncover truth media has now reincarnated itself into a 'public court' (Janta Adalat) and has started interfering into court proceedings. It totally disregards precepts of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. This amounts to unwarranted interference with the "administration of justice", making the media liable to contempt of court. Unfortunately, rules designed to regulate journalistic conduct are inadequate to prevent the encroachment of civil rights.

The Camera Conundrum in the Indian Court Rooms:

"The great tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judges by". – J. Cardozo With the advent of media in every sphere of human life, the last bastion of protection from prying eyes, the judiciary, seems to have fallen. Trial by media made famous or infamous by the Simpson case has arrived in full regalia in India with a virtual retrial in Jessica Lal case, where intense outpour of protest after a not guilty verdict had forced the hands of Government to order a retrial. Quite similar trend has been observed in other recent cases, viz, the Nitish Katara murder case, the rape cum murder of Priyadarshini Mattoo and most importantly the Nirbhaya rape case which evoked great sympathy and outrage from the Indian masses.

Though the role played by media in bringing the accused of these heinous crimes to justice is certainly applaud able, the question remains that how far the doctrines of free speech can be stretched to subvert free and fair trial. In the Indian context the question becomes even more volatile as due to years of judicial backlog our country men seem to rely more on instant media justice than the reasoned verdict by law court. It is in this situation that Barkha Dutt is asking on "We the People" on NDTV 24x7, "do you believe in the judiciary, or do you believe judiciary needs a push from the media?" Rajdeep Sardesai is haranguing his audience on "Verdict" on CNN-IBN: "Does it require public pressure for the wheels of justice to move?"

This Section highlights the inherent conflict between free trial and free speech.
Trial by Media and its Effects on Criminal Adjudication System: A Critical Analysis

A pliable press and subservient judiciary are the first step in the process of extinguishing democratic light. - Justice A.P. Shah, Chief Justice of the Madras High Court on Freedom of Expression and the Judiciary.

'Trial by Media' as a term refers to the role of Media acting as a Judge overriding the official "justice delivery system" thereby distorting, prejudicing, sensationalizing, instigating the public and ultimately derailing the 'justice delivery processes' and steamrolling the right to fair trial of the accused.

In its commonly understood meaning, the expression covers all occasions where the media provokes public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but also drastically affects the reputation of a person regardless the result of the trial.

Criminal trials are under the spotlight for many reasons. Interest in crime news is generally high and attracts public curiosity, especially if prominent persons, sex, and mystery are involved. Yet a criminal trial, with all its rituals, taboos, and symbols, easily turns into a spectacle, which has entertainment value and therefore gives newspapers and broadcasters strong commercial incentives to cover it.

Article 6 of the UN Basic Principles on the Independence of the Judiciary states that the judiciary is entitled and required "to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected." Similarly, International Covenant on Civil and Political Rights (ICCPR), also provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal" in the determination of any criminal charge or in a suit at law.

On the other hand, freedom of speech and expression and consequently the freedom of press also finds place in International Charters like Article 19 of ICCPR and Article 10 of the European Convention on Human Rights.

In India the 'Right to fair trial' of the accused is granted under Article 20 and 21 of the Constitution while Freedom of Press which, though not separately and specifically guaranteed, has been covered under 'Freedom of speech and expression' which is a fundamental right under Article 19(1)(a) of the Constitution and the basic structure. Also Article 38 of the Indian Constitution clearly advocates the 'right to impart and receive communication'.

Impact of Media Investigation and Publicity on Right to Fair Trial:

"For free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them".

The Apex Court while exploring the nexus between 'Freedom of speech and expression' and 'Fair trial' held that a trial by press, electronic media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice. In *MP Lohia v. State of West Bengal*, the Supreme Court, admonished the media for publication of issue which was sub-judice. Similar was the judgement of the Hon'ble Apex Court in *State vs. Mohd. Afzal & others*. The Former Chief Justice of India Hon'ble Justice K. G. Balakrishnan while addressing the final session of a two-day workshop on "Reporting of Court Proceedings by Media and Administration of Justice" at New Delhi, warned the media to refrain from attempts to "prejudice the trial".

It might be enlightening to examine how other countries combat the ramifications of 'trial-by-media'. Most countries admit that such practices undermine the authority of courts and result in loss of confidence in the judicial system.

As the Sheppard case, the Hauptmann case, and others indicate, many American newspapers handle crime news so unfairly and sensationally that they deprive the accused of an impartial jury. Thus the American view appears to be that Jurors and Judges are not liable to be influenced by media publication, while the Anglo-Saxon view is that Judges, at any rate may still be subconsciously (though not consciously) influenced and members of the public may think that Judges are influenced by such publications under such a situation.. In such cases the accused is without adequate means to combat it... Therefore, Lord Denning stated in the Court of Appeal that Judges will not be influenced by the media publicity, a view which was not accepted in the House of Lords. Cardozo, one of the greatest Judges of the American Supreme Court, referring to the "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".

Hon'ble Justice D. M. Dharmadhikari, Chairman, M. P. Human Rights Commission while maintaining the view that judges are generally immune to media influence even in sentencing, is concerned that media comment about the sentencing of particular proceeding may "embarrass" the sentencing judge. Most law reform bodies have tended to take the view that judicial officers should generally be assumed capable of resisting any significant influence by media publicity.

In this backdrop one needs to appreciate the relevance of a constitutional wing like judiciary and the informal estate like media to synergize for effective realization of 'truth'.

Sting Operations: A Potent Tool of Investigation by Media

Sting operations are deceptive measures specifically committed to catching and collecting evidences against persons who commit crimes.

Admissibility of Evidence Received through Sting Operations: In the celebrated judgment of Pushpadevi M. Jatia v. M.L. Wadhawan, the Hon'ble Supreme Court observed that court need not concern itself with the method by which the evidence in question was obtained. Thus evidences collected through sting operations are admissible in the court of law but with certain limitations.

Admissibility of Confessions during Sting Operations: Further any confessions made by the accused during the operation are admissible as evidence under the Evidence Act as these can be treated as extrajudicial confessions made to a third party. Only confessions made in police custody are not admissible owing to the possible use of coercion, whereas the statements made to an undercover journalist can stand legal scrutiny if made voluntarily and not under any threat or inducement.

Media Investigation and Defamation: Media often in its zeal of overzealous reporting to expose illicit, unjust or scandalous conduct makes unjustified attacks on individuals which greatly diminishes their reputation and good will. Unjustified media intrusion and exposing of intimate details of individuals in the media is unethical because there are things which people would "want to hide because these would discredit them in the eyes of others". "We shouldn't be writing about anybody's private life at all unless there is some really powerful public need."

Media Investigation and Entrapment: The function of law enforcement is the prevention of crime and the apprehension of criminals. However "A different question is presented when the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." In criminal law, when a law enforcement agent induces a person to commit an offence that the person would otherwise have been unlikely to commit it is known as entrapment. Sometimes media also through the mechanism of sting operations sometimes acts as "Agent Provocatur" and indulges in illegal entrapment. In such scenarios the role of media transforms from one to investigate the crime but to manufacture the same simply for the purpose of generating cheap sensationalism. In all such cases media induces the defendant to commit the crime by playing upon the basic human instincts of fear or greed. Even if the predisposition and intention to commit the crime is absent the "undercover journalists" provide ample opportunities to entice the defendant.

Media Investigation and Right to Privacy:

"When it comes to privacy and accountability, people always demand the former for themselves and later for everyone else" - David Brin

The most objectionable and unfortunate part in this entire scenario is that the media in its overzealous pursuit of uncovering the "truth" sometimes fails to respect the privacy of the victims and the witnesses involved, especially in Rape and Sexual Assault cases, in which often, the past sexual history of a prosecutrix may find its way into newspapers. Secondly, the media treats a convicted seasoned criminal and an ordinary accused, who may later even be acquitted by courts, alike as a 'television item', without any reasonable discrimination.. Such kind of exposure provided to them not only greatly compromises their right to privacy and reputation is likely to jeopardize all these cherished rights accompanying liberty.

Article 12 of Universal Declaration of Human Right enunciates, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." The Supreme Court in R. Rajagopal v. State of Tamil Nadu also highlighted the necessity of the restrictions on freedom of press in light of the right to privacy.

Constraints on Freedom of Press: So the question now is whether the freedom of press/ media should be absolute or their should be some rider on this freedom.

The Apex Court in Re. Hari Jai Singh in Re.- Vijay Kumar expressed serious concern about freedom of press being misused, while holding that the freedom of press is indispensable for the functioning of democracy.

(i) Reasonable Restriction under Article 19: This right to freedom of press under Article 19(1)(a) is not absolute though it is fundamental.. Clause(2) of Article 19 clearly permits restrictions on the freedom of speech and expression when such restrictions are imposed by a law.

(ii) Criminal Contempt of Media under Contempt of Courts Act, 1971: On the freedom of speech and expression, the law of contempt imposes a significant limitation by prohibiting publication of any matter which prejudices a fair trial and a reckless and scurrilous attack against judge imputing oblique motive amounts to criminal contempt of court. The law of contempt aims to prevent interference with the administration of justice. Criticism, which undermines dignity of court, cannot be permitted under cloak of freedom of speech.

The powers of contempt conferred on the Supreme Court and High Courts by Articles 129 and 215 are constitutional powers. In addition we have Section 15(1) of the Contempt of Courts Act, 1971 which provides that the power of a court of record to punish for contempt of itself is to prevent any unlawful interference with the administration of justice and to preserve the dignity of the legal system in the interest of the general public.

So anything that prejudices the court against any party before the cause is heard is contempt. The Law Commission of

India categorizes ten type of publications in the media as prejudicial to a suspect or accused: (1) Publications concerning the character of accused or previous conclusions; (2) Publication of Confessions; (3) Publications which comment or reflect upon the merits of the case; (4) Photographs; (5) Police activities; (6) Imputation of innocence; (7) Creating an atmosphere of prejudice; (8) Criticism of witnesses; (9) Premature publication of evidence; (10) Publication of interviews with witnesses. The publication expressing opinions as to the sentence to be passed on any specific convicted offender.

There are certain laws that specifically preclude access to courts/ government-held information:

- (i) Disclosure of identity of the victim of an offence of rape or sexual assault under sections 376, 376A, 376B, 376C and 376D of the Indian Penal Code, 1860 is prohibited and punishable under section 228A except with the permission of the court.
- (ii) Report of inquiry held under the Children Act, 1960, with particulars leading to the identification of the child; (s 36).
- (iii) Proceedings under the Hindu Marriage Act, 1955, (s 22); The Family Courts Act, 1984 (s 11); The Special Marriage Act, 1954 (s 33); The Indian Divorce Act, 1869 (s 53) held in camera.
- (iv) Details relating to identity of minors involved in the proceedings under the Juvenile Justice Act 1986; (s 36).

The Law Commission of India in its 198th report on 'Witness Identity Protection and Witness protection Programmes' (August 2006) has recommended not disclosing witness identity during investigation, inquiry and trial.

Article 19 of the Universal Declaration of Human Rights, 1948 declares the freedom of press and so do Article 19 of the International Covenant of Civil and Political Rights, 1966 and Article 10 of the European Convention on Human Rights.

In State of Maharashtra vs. Jalgaon Municipal Council the Apex Court observed that an accused cannot be convicted merely because anybody including press so desire. The press has right to publish court proceedings but this right is not absolute one and is subject to two limitations. Firstly, it should not be contempt of court and secondly, it should not prejudice the accused.

(iii) Law Commissions 200th Report: The most reckoning research on the positive and negative aspects of media trial has been elaborated in 200th report of the Law Commission entitled Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971) that has made recommendations to address the detrimental impact of sensationalized media coverage on the administration of justice. Although the report has yet not been made public, it has been indicated by the news reports that the Commission has restricted publication of any prejudicial material immediately after the time of arrest and not from the time of filling the charge sheet as is the present position under Section 3 (2) of the Contempt of Court Act. The 17th Law Commission Report has also made similar recommendations to the Centre.

Media an Efficient Watchdog of the Modern Democracy-The other Side of the Coin:

“Freedom of Media is the Freedom of People.”

Media scrutiny of criminal proceedings is everywhere considered essential to democracy as it fosters effective safeguards against miscarriages of justice. Moreover, it is beneficial to democracy because it provides an external check on police, prosecutorial, and judicial authorities.

Media is an effective surveillance mechanism and a communication link between the public and all the three estates of states especially the judiciary. The media's role is not just to influence public opinion but also to reflect it. If candlelight vigils are held at India Gate to demand justice for Nirbhaya, Jessica or Priyadarshini Mattoo, it isn't because a media-inspired SMS campaign has brought them there, but also because there is genuine belief among a vast number of right-thinking citizens that their sense of outrage must resonate in the face of a blatant abuse of the law.

Sure, there is a danger of the media whipping up a lynch mob but that alone cannot be reason for the media not to play their role as watchdog against injustice. To push for a retrial in the Jessica case, to point out the flaws in the police investigation, to show how the witnesses have lied — why should these be seen as attempts to 'influence' the judiciary? They should be seen for what they are: the media exposing the rot within. The media, after all, are not concentrating simply on Manu Sharma, the individual, but on the systemic failures down the line in India's criminal justice system.

This is neither 'mob justice' nor is this a media trial. In a way, this symbolizes the 'coming of age' of the Indian citizenry, and with it, the resurgence of the Indian media too. For much too long, a substantial section of the media has chosen to snuggle up to the establishment, thereby abandoning its inherently adversarial role. In its own small, and at times maddeningly competitive way, the 24-hour news channel has brought back some of the energy and enterprise of news-gathering. Yes, the camera may seem an 'activist' weapon, it may appear 'interventionist', but it is also remarkably empowering in its ability to give a face and a voice to millions of anonymous Indians.

Conclusion: As beautifully remarked by the first Prime Minister of independent India Pandit Jawaharlal Nehru - “I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press.” But that great man could not foresee the danger involved in the 'administration of justice' which is the very essence of the natural justice and the rule of law or rather he would not have expected the press to get involved into something which is beyond its limit and ethics too.

When it comes to the conflict between freedom of media and the corruption of judicial process the view taken by the Punjab High Court in *Rao Harnarain v. Gumori Ram* stated that “Liberty of the press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases.”

This is a remarkable example of judicial craftsmanship since the loss of freedom of press is not absolute but merely temporary. The loss of immediacy is the lesser evil of the two. There is a strong need for harmonizing a commitment to freedom of the press and principles of fair trial in this era of “saturation coverage.” The media can print its critique of the judicial process with wild abandonment after the trial, as Justice Katju has rightly remarked, “Our shoulders are broad enough and we will ignore it [the criticism]. We are for media freedom.”

¹Investigation and Trial by Media : Legal Relevance in Criminal Offences, Pragma Mishra, Criminal Law Journal, December 2013, Vol 119, Part 1368, pg. 177-182

²Nature of the Judicial Process', Lecture IV, Adherence to Precedent. The Subconscious Element in the Judicial Process, 1921, Yale University Press.

The full text of the passage in the above essay of Cardozo reads thus:

“Even these forces are seldom fully in consciousness. They lie so near the surface, however, that their existence and influence are not likely to be disclaimed. But the subject is not exhausted with the recognition of their power. Deep below consciousness are other forces, the likes and the dislikes, the

predilections and the prejudices, the complex instincts and emotion and habits and convictions, which make the man, whether he be litigant or Judge There has been a certain lack of candor in much of the discussions of the theme or rather perhaps in the refusal to discuss it, as if Judges must lose respect and confidence by the reminder that they are subject to human limitations .. .”

Cardozo then stated in a very famous quotation, “None the less, if there is anything of reality in my analysis of the Judicial Process, they do not stand aloof on these chill and distant heights; ... The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the Judges by”.

³<http://www.thehoot.org/story.asp?storyid=Web591771273Hoot115348%20AM2387&pn=1> on 12/12/06

⁴<http://www.hindu.com/2006/04/23/stories/2006042307740400.htm> as on 13/12/2006

⁵Giddens, „Introduction to Sociology?”

⁶http://en.wikipedia.org/w/index.php?title=Trial_by_media&oldid=66125060 as on 13/12/06

⁷Media interference with the judicial process is by no means limited to the reporting of criminal cases; it may affect other areas of law as well. See Winfried Hassemer, *Vorverurteilung durch die Medien?*, 38 NJW 1921, 1925 (1985) (F.R.G.). One of the most important decisions on freedom of speech by the European Court of Human Rights, *Sunday Times v. United Kingdom*, arose out of the publication of an article focusing on the civil litigation resulting from the thalidomide tragedy. App. No. 6538/74, 2 Eur. H.R. Rep. 245 (1979), available at

<http://cmiskp.echr.coe.int/tpk197/viewbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=165&sessionId=14267936&skin=hudoc-en&attachment=true>.

⁸Robert Reiner, Sonia Livingstone & Jessica Allen, *From Law and Order to Lynch Mobs: Crime News Since the Second World War*, in *CRIMINAL VISIONS: MEDIA REPRESENTATIONS OF CRIME AND JUSTICE* 13, 13 (Paul Mason ed., 2003) (“Deviance is the quintessential element of newsworthiness.”).

⁹For insightful descriptions of trial rituals, see FRANCO CORDERO, *RITI E SAPIENZA DEL DIRITTO* 310–672 (1981). See also ANTOINE GARAPON, *DEL GIUDICARE: SAGGIO SUL RITUALE GIUDIZIARIO* 7–169 (2007) (translating *BIEN JUGER: ESSAI SUR LE RITUEL JUDICIAIRE* into Italian) (Italy).

¹⁰See Bill Loges & Sandra Ball-Rokeach, *Mass Media and Crime*, in *ENCYCLOPEDIA OF CRIME AND JUSTICE*

¹¹UN Basic Principles on the Independence of the Judiciary, G.A. Res.146, U.N. GAOR, 40thSess.(1985) art.6

¹²Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 23 March 1976 in accordance with article 49.

¹³Art. 14(1), ICCPR, (1966) 999 UNTS 171, 1976 Can. T.S. No. 47, in force, including Canada, 1976.

¹⁴Article 14(1) of the ICCPR provides that “[t]he Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interests of the private lives of the Parties so requires, or to the extent necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

¹⁵*I R Coelho vs State of Tamilnadu*, (2007) 2 SCC 737 at para 106.

¹⁶*Bridges v. Cali-fornia*, 314 U.S. 252, 260 (1941)

¹⁷*State of Maharashtra v. Rajendra Jawanmal Gandhi* 1997 (8) SCC 386.

¹⁸2005 (2) SCC 686.

¹⁹*Ibid.*, para 10.

²⁰2003(3) JCC 1669

²¹Hindustan Times, New Delhi, March 31, 2008 at 11.

²²In *Sunday Times v. U.K.*, 1979(2) EHRR 245, the House of Lords' view that 'trial by newspaper' was not permissible was a concern in itself 'relevant' to the maintenance of the 'authority of the judiciary'. However, the European Court accepted that: "If the issues arising in litigation are ventilated in such a way as to lead the public to form its own conclusion thereon in advance, it may lose its respect for and confidence in courts." See also 200th Report of the Law Commission of India on "Trial by Media-Free Speech and Fair Trial Under Criminal Procedure Code, 1973 (Amendments to the Contempt of Court Act, 1971), August 2006, 154.

²³Supra note 32

²⁴*State of New Jersey v. Bruno Richard Hauptmann* 68 UMKC L. Rev. 585

²⁵[Nebraska Press Assn. v. Stuart](#) 427 U.S. 539

²⁶*United States v. T Dellinger* 472 F. 2d 340

²⁷Pretrial Publicity Criminal cases of National Notoriety: Constructing a Remedy for the Remediless Wrong; Robert Hardway & Douglas B. Tumminello, *The American University Law Review*, Vol. 46:39

²⁸*Attorney General v. BBC* : 1981 AC 303 (CA), p. 315.

²⁹*Gisborne Herald Co. Ltd. V. Solicitor General*, 1995 (3) NZLR 563 (CA)

³⁰*Nature of the Judicial Process*, Lecture IV, Adherence to Precedent. *The Subconscious Element in the Judicial Process*, 1921, Yale University Press.

³¹The full text of the passage in the above essay of Cardozo reads thus: "Even these forces are seldom fully in consciousness. They lie so near the surface, however, that their existence and influence are not likely to be disclaimed. But the subject is not exhausted with the recognition of their power. Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex instincts and emotion and habits and convictions, which make the man, whether he be litigant or Judge ... There has been a certain lack of candor in much of the discussions of the theme or rather perhaps in the refusal to discuss it, as if Judges must lose respect and confidence by the reminder that they are subject to human limitations ...". Cardozo then stated in a very famous quotation, "None the less, if there is anything of reality in my analysis of the Judicial Process, they do not stand aloof on these chill and distant heights; ... The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the Judges by"

³²Ibid, para 7.75

³³Ibid, para 4. 50.

³⁴AIR 1987 S.C. 1748 : 1987 Cr. LJ. 1999 : (1987) 3 SCC 367

³⁵*Barindra Kumar Ghose v. Emperor I.L.R.* (1910) 37 Cal. 467., *Kuruma v. Reginam*(1955) 1 All E.R. 236 at 239 P.C. : (1955) 2 W.L.R. 223

³⁶*Piara Singh v. State of Punjab* (1977) 4 S.C.C. at p. 459

³⁷Gerstein, 1984, p.265

³⁸Davies (2008, p.3)

³⁹*Sherman v United States*356 US 369 (1958).

⁴⁰*Sloane* (1990) 49 A Crim R 270.

⁴¹*Sherman v United States*356 US 369 (1958).

⁴²*ABC v O'Neill* [2006] 229 ALR 457)

⁴³*Sorrells v. United States*, 287 U.S. 435, 457 (1932).

⁴⁴*State v. Doran*, 449 N.E. 2d 1295 (Ohio 1983)

⁴⁵*Jagannadha Rao*, *Fair Trial and Free Press: Law's Response to Trial by Media*, p. 26.

⁴⁶AIR 1995 SC 264

⁴⁷(1996) 6 SCC. Page 446

⁴⁸19(2) "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence".

⁴⁹AIR 1970 SC 1015

⁵⁰1985 Cri. LJ 1963 (1967) (DB)

⁵¹New South Wales Law Reform Commission, Discussion Paper 43, July 2000, para 1.9. Most of the countries like UK, Canada, Australia, and Ireland etc. have law of contempt of court.

⁵²AIR 2002 SC 1375 (1380).

⁵³The Law Commission of India, 200th report on 'Trial by Media: Free Speech and Fair Trial, Under Criminal Procedure Code, 1973' (August 2006).

⁵⁴See New South Wales Law Reform Commission, Discussion Paper 43, on "Contempt by Publication" July 2000, Paras 7.62 and 7.75.

⁵⁵AIR 2003, S.C. 1659

⁵⁶Kapil Sibal, *The Hindustan Times*, New Delhi, May 4 2001.

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