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# TRAIL BY MEDIA: AN INFRINGEMENT OF THE INDIAN JUDICIAL ADMINISTRATION

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## ABSTRACT

The media, once a conduit for disseminating information, is now metamorphosing into a unique agency with a dual allegiance to the public and the courts. This transformation is exemplified by a consistent portrayal of biased and agenda-driven debates in the public sphere, especially those pertaining to issues pending in courts. The normative and constructive role of media in a democratic society is ideally restricted to public awareness with an inevitable social responsibility. However, the misuse of the flexibility assured by the constitutional provisions has resulted in infringing the judicial administration. The absence of clarity can be observed while exercising the freedom of the press, which is impliedly guaranteed under Article 19(1)(a) of the Indian constitution, in accordance with section 2(c) of the Contempt of the Courts Act, 1971. The media is turning into a special agency to the public and to the courts by consistently portraying and publishing biased and agenda-driven debates pertaining to the issues pending in courts. A key concern highlighted in the discourse is the issue of contempt of court, a legal concept that seeks to preserve the dignity and authority of the judiciary. The media's penchant for sensationalism, coupled with the absence of clear guidelines, has led to instances where judicial proceedings are prejudiced or obstructed. This necessitates a recalibration of media governance, focusing on monitoring and amending existing frameworks to mitigate the risk of contempt.

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## KEYWORDS

Media, Judiciary, Courts, Sensationalism, Governance, Democratic System

## I.Introduction

In the contemporary landscape, the media has undergone a transformation, assuming the role of a 'public court'. This shift sees the media actively inserting itself into ongoing court proceedings, blurring the crucial distinction between an accused individual and a convicted one. The foundational principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt' are at risk as the media conducts parallel investigations, constructing public opinions against the accused even before the formal court process begins. This phenomenon, often referred to as a "media trial," creates a troubling scenario where excessive media coverage prejudices not only the public but sometimes even influences judges. The consequences are profound, as the accused, who should be presumed innocent, is prematurely deemed a criminal, compromising their rights and liberty without due process.

In the past, journalism operated without the pressure to boost TRP ratings or sales, allowing journalists to approach their work with sincerity, courage, and integrity. They diligently investigated charges before forming conclusions, steering clear of blindly echoing law enforcers, bureaucrats, or politicians. This approach fostered trust. However, a concerning shift has occurred, giving rise to the phenomenon of 'media trials,' where the media's self-assumed role diverges from its traditional responsibilities. Media manipulation for personal interests has become commonplace, eroding the public's confidence. While exposing flaws in investigations or the performance of civil servants is within the media's purview, the line is crossed when it ventures into areas it shouldn't. The issue arises when the media, in its pursuit, compromises the sanctity of judicial procedures and the 'right to life with dignity' of accused individuals and suspects, transforming from a medium of information to a dispenser of media verdicts and punishments. This misuse of freedom goes beyond the established legal boundaries. There is a growing need to address this prejudicial publicity surrounding matters before the court. Introducing legal provisions that allow for restraining orders on the media becomes essential to

prevent the overstepping of bounds and uphold the integrity of the legal process.<sup>2</sup>

Beyond the impact on suspects and accused individuals, excessive media coverage also takes a toll on the privacy rights of victims and witnesses<sup>3</sup>. The media's portrayal often casts the police in a negative light, affecting their morale. Following the initial crime report, the media swiftly shifts to stating that the police are clueless. The information gathered by the media about official investigative efforts is then publicized in a manner that allows the actual perpetrator to escape to safer locations. This continuous media pressure on the police reaches a point where law enforcement feels obligated to make public statements to defend their reputation. Another significant concern and prominent accusation against the concept of a 'media trial' is its potential to bias the judges overseeing a specific case.<sup>4</sup> The American perspective suggests that jurors and judges are not susceptible to influence from media publications, whereas the Anglo-Saxon viewpoint argues that judges, at least subconsciously if not consciously, may be affected. Furthermore, there's a fear that members of the public could perceive judges as being influenced by such media coverage in such circumstances.

## II. Diverse Perspectives Through Theories

Reception theory by Stuart Hall offers a framework for understanding media texts by focusing on how audiences interpret and engage with them. Scholars who employ reception studies are primarily interested in the way people experience and make sense of cinema and television, and how meaning is derived from this interaction. A key idea in reception theory is that media texts, such as individual movies or TV shows, don't possess inherent meaning by themselves. Instead, meaning is constructed through the dynamic relationship between the audience and the text, specifically as the viewer watches and processes the content. Reception theory emphasizes that the context in which a viewer engages with a film or TV program plays a more significant role in shaping their interpretation than the text itself. This context includes elements of the viewer's identity, the circumstances in which they watch the content, their preconceived notions about the

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<sup>2</sup> Imrich, D.J., Mullin, C., & Linz, D. (1995). Media, trials and echo effects: Media and criminal justice policy. National Criminal Justice Reference Service. Retrieved October 29, 2023, from <https://www.ojp.gov/ncjrs/virtual-library/abstracts/media-trials-and-echo-effects-media-and-criminal-justice-policy>

<sup>3</sup> Das, N. (2020, November 12). *Media trials in India: An unwritten carve-out to the right to privacy?* International Association of Privacy Professionals. Retrieved from <https://iapp.org/news/a/media-trials-in-india-an-unwritten-carve-out-to-the-right-to-privacy/>

<sup>4</sup> Resta, G. (n.d.). *Trying Cases in the Media: A Comparative Overview*. Jstor.org. <https://www.jstor.org/stable/27654683>

genre and production of the media, and broader societal, historical, and political influences. In essence, reception theory situates the viewer within a specific context, considering all the diverse factors that can impact how they perceive and create meaning from the text.<sup>5</sup>

The Uses and Gratifications theory examines how individuals interact with the media and how it impacts them. It delves into how people utilize the media to fulfill their specific needs and experience satisfaction when those needs are met. In essence, this theory focuses on what people do with the media, rather than what the media does to people. It stands in contrast to the Magic Bullet theory, which posits that the audience is passive and easily influenced by the media. The Uses and Gratifications theory takes a user-centric approach, emphasizing the active role of the audience. Even in interpersonal communication, individuals turn to the media as a source of topics to discuss, expanding their knowledge and gaining exposure to the world beyond their immediate surroundings.

In the book "Four Theories of the Press" by Siebert, Peterson, and Schramm, it is asserted that the concept of pure libertarianism is outdated and no longer relevant. This shift led to the replacement of the Libertarian theory with the Social Responsibility theory. The Social Responsibility theory allows for a free press without censorship while emphasizing the importance of public discussion regarding the content of the media. It suggests that the media should be open to public scrutiny and should willingly accept any obligations stemming from public input or professional self-regulation, or both. This theory occupies a middle ground between the authoritarian theory and the libertarian theory, as it grants the media significant freedom while also imposing external controls. In this framework, media ownership remains in private hands. The Social Responsibility theory extends beyond simple "objective" reporting (which focuses on conveying facts) to embrace "interpretative" reporting, which involves investigative journalism. Under this theory, news remains grounded in complete facts and truthfulness. However, the essence of press freedom shifts from merely providing unadulterated facts to presenting a necessary and analyzed interpretation of facts, accompanied by clear explanations.

The Cultivation Theory, formulated by George Gerbner, is a foundational concept in the field of media effects. This theory posits that individuals who regularly watch television are more

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<sup>5</sup> Quality Research International. (n.d.). Reception theory. Social Research. Retrieved October 29, 2023, from <https://www.qualityresearchinternational.com/socialresearch/receptiontheory.htm>

susceptible to the influence of the messages presented on television. This influence can be so profound that it shapes their worldview and perceptions, causing them to align with the recurring themes and messages portrayed on television. Consequently, television is seen as having the capacity to autonomously contribute to how people construct their understanding of social reality. Television serves as a source of a wide range of ideas and perspectives concerning various aspects of society and culture, including race, gender, and sexuality. With continued exposure, viewers gradually internalize and adopt these ideas as a kind of framework for navigating their lives. This continuous immersion in media content instills specific values, beliefs, attitudes, and desires within individuals. These preconceived notions then shape their perception of the world and, in turn, influence how they are perceived by others. As a result, people often find themselves unconsciously molding their thought processes and behavior based on the content they consume. In today's society, television has become increasingly pivotal as the primary medium through which individuals seek to comprehend the intricate web of societal norms, values, and prevailing attitudes.<sup>6</sup>

### **III.Intent of the Constituent Assembly**

Before India gained independence, there was no constitutional or statutory assurance of individual or media freedom. At best, the press could claim some common law freedom, as noted by the Privy Council in *Channing Arnold v. Emperor*. The Privy Council asserted that the freedom of the journalist is essentially a part of the broader freedom of the subject. Without statutory law, the journalist's privilege is no different or higher, and their range of assertions, criticisms, or comments is as extensive as any other individual's. During the Independence movement, leaders recognized the paramount importance of freedom of speech and expression for both individuals and the media. In alignment with this vision, the Constitution of India, in Article 19(1)(a), guarantees every citizen the fundamental human right of freedom of speech and expression. Other rights for individuals were also guaranteed under Articles 19(1)(b), (c), (e), and (g), as well as Articles 20, 21, and 22. Notably, Article 19(1)(a) could only be suspended during a state of emergency declared by the President under Articles 352 and 358.

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<sup>6</sup> Shrum, L. (2017). Cultivation theory: Effects and underlying processes. In P. Rössler, C. A. Hoffner, & L. van Zoonen (Eds.), *The international encyclopedia of media effects* (Vol. 1, pp. 1–12). John Wiley & Sons. <https://doi.org/10.1002/9781118783764.WBIEME0040>

When drafting the Constitution of India, the members of the Constituent Assembly were well aware of the governance challenges and societal shifts anticipated in the future. The extensive three-year debates in the Constituent Assembly resulted in formulating a set of rights applicable to individuals of various castes and creeds, transcending national, social, and cultural boundaries. The framers of the Constitution demonstrated remarkable statesmanship and foresight. Upon the conclusion of the debates, Dr. B. R. Ambedkar, the Chairman of the Constitution Drafting Committee, expressed confidence in the workability, flexibility, and strength of the Constitution. He believed it was capable of holding the country together during both peacetime and wartime. Dr. Ambedkar even suggested that if issues arose under the new Constitution, the fault would lie with the flawed nature of men rather than any shortcomings of the Constitution itself.<sup>7</sup>

The Constituent Assembly extensively deliberated on whether a distinct provision should be included for the freedom of the press. Drawing inspiration from the first amendment to the Constitution of the United States of America, it was ultimately decided that a separate provision was unnecessary. This decision stemmed from the belief that the guarantee of freedom of speech and expression, as outlined in Article 19(1)(a), inherently covered the press. Dr. B. R. Ambedkar encapsulated this perspective by stating that the press is essentially a manifestation of an individual or citizen. According to him, the press possesses no special rights beyond those available to individual citizens. Editors and managers of the press are regarded as ordinary citizens, exercising their right to expression when contributing to newspapers. Hence, in Dr. Ambedkar's view, there is no need for a distinct mention of the freedom of the press, as it is inherently encompassed within the broader right of expression.<sup>8</sup>

The significance of freedom of the press was underscored by India's first Prime Minister, Pandit Jawaharlal Nehru, who expressed a preference for a completely free press despite the inherent risks, rather than a suppressed or regulated one.<sup>9</sup> The judicial recognition of the importance of press freedom in a parliamentary democracy has been reiterated by superior courts, even though Article 19(1)(a) of the Constitution does not explicitly enumerate this freedom. Courts have

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<sup>7</sup> Legal Service India. (n.d.). Constitution of India: Freedom of speech and expression. Retrieved October 29, 2023, from <https://www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html>

<sup>8</sup> Berkley Center for Religion, Peace and World Affairs. (2021, June 21). In Modi's India, press freedom is curbed and journalists are under threat for doing their jobs. Berkley Center for Religion, Peace, and World Affairs. <https://berkeleycenter.georgetown.edu/responses/in-modi-s-india-press-freedom-is-curbed-and-journalists-are-under-threat-for-doing-their-jobs>

<sup>9</sup> Ramchandani, S. (2020, 5 10). "The Constitutionality of Media Trials in India – A Critique". Pen Acclaims. <http://www.penacclaims.com/wp-content/uploads/2020/06/Srishti-Ramchandani.pdf>

consistently invalidated legislative and administrative measures that encroach upon press freedom, acknowledging its crucial role in the envisioned system of parliamentary democracy. A review of various judgments reveals that the Supreme Court has acknowledged diverse aspects of the freedom of speech and expression. This recognition extends to both the content of speech and expression, as well as the means through which communication occurs. The encompassing nature of this freedom includes the right to express oneself through spoken words, writing, printing, pictures, or any other mode. It involves the rights to circulate, criticize, receive information, express beyond national boundaries, report court and legislative proceedings, advertise, and engage in rebuttal. The communication of ideas is recognized through any medium, be it newspapers, magazines, or movies.<sup>10</sup>

#### **IV. Law Commission of India**

In its 200th report, titled "Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)," the Law Commission has proposed the enactment of a law that would prohibit the media from reporting anything that could prejudice the rights of the accused in criminal cases, starting from the time of arrest through the investigation and trial stages. According to the commission, such reporting would be considered criminal contempt of court. If these provisions within the Act impose reasonable restrictions on freedom of speech, the commission argues that these restrictions would be legally justifiable. The recommendation includes an amendment to Section 3(2) of the Contempt of Courts Act. In the current provision, these publications would only be classified as contempt after the chargesheet is filed in a criminal case, but the commission suggests that such restrictions should be applicable from the moment of the accused's arrest. The report suggests the importance of providing training to media professionals in specific legal areas. This training should encompass a clear understanding of the extent of the rights granted under Article 19(1)(a) and the boundaries defined by Article 19(2), which dictate what can and cannot be published. Media personnel should also be well-versed in various aspects of constitutional law, human rights, the protection of life and liberty, and the legal framework concerning contempt of court.<sup>11</sup>

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<sup>10</sup> Das, D. (2016). Right to speech and Freedom of Media– A Critical Analysis. *Paripex - Indian Journal of Research*, 5(3).

<sup>11</sup> Sanchez, J. (2019). Media framing and changes in public opinion concerning immigration legislation. (Publication No. 22619472) [Doctoral dissertation, Walden University]. ScholarWorks. <https://scholarworks.waldenu.edu/dissertations/8084>

## V. Divergent Interpretations to Media Democracy

In a democratic system, the legislature, the executive, and the judiciary are often called the three pillars of governance, while the press is commonly regarded as the fourth pillar. The press is an institution with significant power and influence, and as such, it must uphold a sense of responsibility and be held accountable for its actions. In 1927, Bhagat Singh expressed his concerns about the deteriorating quality of journalism in an article published in *Kirati*. He lamented that a profession once held in high esteem had, in his view, lost its integrity. Singh observed that some journalists were sensationalizing stories and inciting conflicts by publishing provocative headlines that pitted people against each other. Riots had even erupted in multiple places due to such articles. The underlying issue is the erosion of the media's credibility, which raises the question of how facts are being presented.

“The need for Independent Judges and a Free Press in a Democracy” by Lord Neuberger, a former President of the UK Supreme Court and Chair of the High-Level Panel of Legal Experts on Media Freedom, along with Ms. Amal Clooney, a Barrister and Deputy Chair of the same panel, Baroness Helena Kennedy QC, Director of the IBA Human Rights Institute, and a Member of the High-Level Panel, and Mr. Can Yeginsu, a Barrister and a panel member, are individuals with extensive legal expertise. The High-Level Panel is supported by the International Bar Association's Human Rights Institute, which serves as its Secretariat. Their article claims that judicial independence is critical for ensuring that judges have the freedom to determine when government actions or decisions, and actions by others, violate the law, especially concerning individual rights, including fundamental or human rights. They are also responsible for deciding on appropriate remedies. Procedures like judicial review and tools such as statutory interpretation empower the judiciary to rectify instances of government overreach and to ensure that the government operates within the boundaries set by the law. Courts often serve as the primary avenue for achieving this because of their unique authority and institutional separation from the legislative and executive branches. Safeguarding judicial integrity and independence is paramount in the effort to protect human rights at the national level. This is why many countries implement anti-corruption measures to prevent powerful and affluent individuals from undermining the rule of law.

The rule of law is widely recognized as a fundamental requirement for any civilized society. Central to the rule of law is the presence of an independent judiciary that is accessible to all

citizens. In addition to this, freedom of expression is a cornerstone in a democratic society, where both the courts and the media play crucial and complementary roles. These institutions work together to ensure transparency, hold those in power accountable, protect individual rights, and shed light on matters of public interest. They also serve as checks and balances for each other. The media is often called the watchdog of democracy, as it identifies shortcomings in democratic processes and demands responsibility from elected officials. Similarly, judges play a vital role in holding the government accountable when it deviates from the law and in safeguarding individual rights. Freedom of expression is considered one of the most essential rights in this context.<sup>12</sup>

In recent years, the freedom of the media and the legitimate work of journalists have been threatened by populist leaders, even in ostensibly democratic nations. Journalists and media organizations have been accused of disseminating "fake news" and other unfounded charges. Authoritarian leaders worldwide have a history of attacking, and in some cases, criminalizing or even, regrettably, harming journalists who offer alternative perspectives, reveal corruption and misconduct, and strive to establish accountability. Unfortunately, leaders in countries that have traditionally championed freedom of expression have made statements that embolden these authoritarian leaders to intensify their attacks. Both the judiciary and the media share a common feature: unless they are undermined or silenced, they represent a genuine challenge to corrupt and undemocratic regimes and strike fear in those regimes that seek to maintain or strengthen their hold on power.

Governments that claim to support and uphold media freedom, including members of the Media Freedom Coalition in the United Kingdom, should make concerted efforts to preserve the independence and credibility of their own judiciaries. They should also demonstrate a commitment to the principle of open justice. These governments should function as a "Coalition of the Committed," setting an example through concrete actions and encouraging other nations to follow suit. The High-Level Panel of Legal Experts on Media Freedom will continue to offer guidance to these governments and monitor their responses to its recommendations. When the media is silenced and journalists are restricted in their work, a crucial element of a functioning democracy is stifled. This means that an institution vital to an open society, one that aims to ensure accountability, expose injustices, inform the public about issues of interest, and act as a

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<sup>12</sup> Hindustan Times. (2023, February 27). In 3 months, prepare guidelines to check media trial: Top court to govt. Hindustan Times. Retrieved October 29, 2023, from <https://www.hindustantimes.com/india-news/in-3-months-prepare-guidelines-to-check-media-trial-top-court-to-govt-101694629671649.html>

bridge between the people and their representatives, is effectively incapacitated. The loss of a free and independent media essentially signifies the loss of democracy.<sup>13</sup>

In the case of *Zahira Habibullah Sheikh v. State of Gujarat* (2004), the Supreme Court elucidated the detrimental impact of the State's undue influence on trial proceedings. The Court outlined five fundamental components of a fair and unbiased trial: the presence of an impartial judge, a fair prosecutor, a courtroom atmosphere characterized by judicial composure, the absence of prejudice against the accused, victim, or the cause of the case, and, importantly, the assurance that witnesses are not subjected to coercion, bribery, threats, or any other form of undue influence. It can be strongly argued that media trials neglect all five of these essential elements, thereby undermining the integrity of the legal process.<sup>14</sup>

In the case of *Shashi Tharoor v. Arnab Goswami* (2017), the plaintiff filed a lawsuit against the defendants, seeking compensation and damages for making defamatory statements about the plaintiff. The plaintiff also requested a permanent injunction to prevent the defendants from reporting on or broadcasting any content related to the death of Mrs. Sunanda Pushkar until the investigation was complete. Additionally, the plaintiff sought to prevent the defendant from maligning or defaming them in any way. The Delhi High Court in this case recognized the importance of balancing the right to free speech with the right to a fair trial. The court acknowledged that the defendants had the right to present their stories but emphasized the need for this right to be exercised in a restrained and balanced manner. The court refrained from issuing any further orders in the case after receiving assurances from the defendant that they would exercise restraint in their future reporting.<sup>15</sup>

In 2012, the arrest of Indrani Mukerjea in the Sheena Bora murder case revealed a shocking twist – Sheena was not Indrani's sister, as initially claimed, but her daughter. The media extensively covered the case, shedding light on the sensational details. Despite her arrest, Indrani never admitted to having two children, consistently maintaining that Sheena was her sister. The murder case also exposed the dubious financial dealings of Indrani Mukerjea and her husband, Peter Mukerjea. Their manipulation of facts allowed them to evade legal action for three years. The media played a significant role in exposing the personal life of Indrani Mukerjea, prompting a

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<sup>13</sup> Press Freedom. (n.d.). Homepage. Retrieved October 29, 2023, from <https://pressfreedom.co.uk/>

<sup>14</sup> *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (India)

<sup>15</sup> *Shashi Tharoor v. Arnab Goswami*, (2017) SCCOnLine Del 12286 (India)

fresh debate on the ethical boundaries in the murder trial. The intense scrutiny by the media extended beyond the investigation, delving into Indrani's character and personal life. This intrusion sparked controversy and raised questions about journalistic ethics, as the media seemed to overstep boundaries by meddling in the private matters of the accused.<sup>16</sup>

## VI. Conclusion

Any institution, whether it's the legislature, executive, judiciary, or bureaucracy, is prone to misuse when it exceeds its rightful jurisdiction and functions. Occasionally, these activities beyond established boundaries can be a hidden blessing, as seen in the case of judicial activism. Similarly, media trials, along with groundbreaking sting operations, play a commendable role in closely monitoring police administration and executive actions. However, there's a crucial need for reasonable self-restraint, with a focus on ensuring fair trials and respecting court procedures responsibly. It's imperative for the media to recognize the profound impact of its publications on the audience. Thus, there exists a moral obligation for the media to convey the truth, considering the right timing. While the print media has reached a stage of awareness regarding legal guidelines and ethical limits, the electronic media is in an experimental phase, relying on a 'trial and error' approach to determine what to broadcast and, more importantly, what not to. Eventually, a time will come when the electronic media, too, will be well-regulated by self-censored guidelines, allowing us to achieve the vision of a 'completely free press,' as envisioned by our first Prime Minister, without compromising on ethical considerations.

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<sup>16</sup> Anderson, R., & Killenberg, G. M. (1992). Journalistic listening and “slanted empathy”: Ethical implications of the Janet Malcolm accusations. *Journal of Mass Media Ethics*, 7(2), 66-82.  
<https://doi.org/10.1080/10904018.1992.10499109>