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Media Trial And Its Effect On Judges Vis-À-Vis Contempt Of Court:

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➢ **Abstract-**

The most fundamental condition of liberty is the freedom of speech and expression. As a result, it has a desirable and necessary place in the hierarchy of liberty in diverse democracies. It has developed so much over time that it now encompasses press freedom as well. A free and independent press is a crucial component of democracy since it serves as a conscious keeper, a watchdog of the nation's institutions, and endeavours to respond to the wrongs in our framework by bringing them to light in the hope of a repair.

➢ **Keywords-**

Media, Defamation, Slander and Libel, Contempt of court, Press council..

➢ Trial by Media and its effect on Judges-

Major issue that arises from media trials is their potential effect on judges. It is a highly debatable issue, and there are many views on it. Most prominent among these are the American view and the Anglo-Saxon view. The American viewpoint claims that jurors and judges are not susceptible to being affected by media publications, but the Anglo-Saxon viewpoint holds that Judges may nevertheless be unconsciously (though not consciously) influenced, leading the public to believe that such media articles influence the judges.[1] Lord Denning, one of the most famous jurists of the twentieth century, said unequivocally in the Court of Appeal that media attention will not guide judges, but the House of Lords did not agree.

In **John D. Pennekamp vs. State of Florida**[2], it was observed by ***Justice Frankfurter*** that *"No Judge*

[1] 200th Law Commission of India Report, Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure (amendments to the Contempt of Court Act, 1971), 46 (2006), http://lawcommissionofindia.nic.in/reports/rep200.pdf

[2] (1946) 328 US 331

fit to be one is likely to be influenced consciously, except by what he sees or hears in court and by what is judicially appropriate for his deliberations. However, Judges are also human, and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process is—and since Judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print."[3] According to Justice Frankfurter, the judiciary cannot operate effectively if the press continues to interfere with the judge's responsibility and competence to act only on what is before the Court. The judiciary will not be independent until Courts of Justice are competent to administer legislation in the absence of outside pressure or the existence of disfavour. The Indian Supreme Court has also accepted the Anglo-Saxon jurisprudence after examining some English cases. In the **Reliance Petrochemicals case**[4] the Supreme Court referred to **Attorney General vs. B.B.C.**[5] and quoted ***Lord Dilhorne*** as follows: *"It is sometimes asserted that no Judge will be influenced in his Judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a Judicial Office does his utmost not to let his mind be affected by what he has seen or heard or read outside the Court, and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experience in the discharge of Judicial duties. Nevertheless, I think it should be recognized that a man may not be able to put what he has seen, heard, or read entirely out of his mind and that he may be subconsciously affected by it. It is the law, and it remains the law until it is changed by Parliament, that the publications of matter likely to prejudice the hearing of a case before a court of law will constitute contempt of court punishable by fine or imprisonment or both."*[6]

The New South Wales Law Commission, in its Discussion Paper (2000) (No.43) on ***'Contempt by Publication'*** stated that most law reform bodies *"tends to take the view that Judicial officers should generally be assumed capable of resisting any significant influence by media publicity"*

A study conducted by Walden University's Dr. V.V.L.N. Sastry revealed some interesting results. The study's participants (practising lawyers in India) were asked whether they believed public media may impact judges' perceptions of a case under trial. Out of the 450 advocates polled, 430 "strongly agreed" and 12 "agreed" that public media can impact judges' perceptions of a case under trial. In comparison, seven supporters "agreed" and one "strongly disagreed" with the proposal. Another important finding from the survey is that 312 of the 450 advocates "strongly agreed" and 82 "agreed" that they have seen a criminal receive a heavier penalty than necessary by law because to Indian public demand generated

[3] Ibid
[4] Supra
[5] 1981 A.C. 303 (H.L.)
[6] Ibid

by excessive publicity. However, 50 advocates "strongly disagreed" and 6 advocates "disagreed" with the proposition.[7]

A poll done in the United Kingdom in 2010 yielded some intriguing results as well. The poll comprised 688 jurors who served in 62 different cases, including high-profile trials with extensive media coverage that lasted more than two weeks and typical cases with limited media coverage that lasted less than two weeks. The recollection of media coverage in high- profile cases was 70%, as opposed to 11% in normal instances. In high-profile cases with media attention, 89% of jurors recognized the defendant as guilty, and 20% confessed that it was difficult for them to keep these reports out of their thoughts while acting as juries. Furthermore, in high-profile cases, 26% of jurors acknowledged to seeing material about the trial on the Internet and 12% admitting to seeking for information online. In typical situations, the percentage was 12% and 5%, respectively.[8]

Thus, these studies show that media frequently infiltrates the courts and their high walls, and that the judiciary is not as indestructible as it is assumed to be.

- **Contempt of Court**

It is commonly acknowledged that the right to freedom of speech and expression granted by the Indian Constitution is not definite, and that constraints can be imposed on it for a variety of reasons, including 'contempt of court.' According to the Contempt of Courts Act of 1971, if a publication interferes or threatens to have an impact on the administration of justice, it may result in criminal contempt. Section 2 of the Act defines criminal contempt as "publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
(ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."[9]

A cursory examination of this clause reveals that it does not meant to overrule the basic right to Free speech and expression, but rather to preserve the administration of justice from harm.

Section 3 of the Act is also relevant as far as the interference with the administration of justice is concerned. This section provides that if a person publishes or disseminates any information without

[7] Supra

[8] Cheryl Thomas, Are juries fair? Ministry of Justice (2010), https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf (Last visited Aug. 31, 2021, 7:20 PM)

[9] Apurva Rathee, *Article 19 (2) : "Reasonable Restrictions on Article 19 (1) (a)",* Law School Notes, (Sept.6, 2021, 6:48 PM), https://lawschoolnotes.wordpress.com/2017/04/13/article-19-2-reasonable-restrictions-on-article- 19-1-a/

any reasonable ground to believe that the proceeding was pending before the court and if the material published is interfering with or obstructing the course of justice, that person would not be liable for contempt of court. Further, the explanation appended to this section states that the starting point in a pending criminal trial is only after filing of the *charge-sheet* or *challan* or after the issuance of summons or warrant by the court. As a result of reading this section, it is clear that the pre-trial phase has received little attention in the context of criminal contempt. There is minimal control on the media since 'pre-trial publications' are exempt from criminal contempt of court punishment. Thus, the publications would be constituted criminal contempt only after the charge-sheet was filed. However, the question is whether this norm should be allowed to stand or if such publications dealing with the accused or suspected should be regulated.

The **17th Law Commission**, under the chairmanship of ***M. Jagannadha Rao*** in its **200th report**, It is proposed that the starting point of a pending trial be from the moment of arrest rather than after the filing of the charge-sheet, so that publications during the pre-trial stage do not impair the rights of the accused. The argument behind this advice was that because such publications unconsciously influence judges, they may bias the accused's case even during the bail procedure. Such releases may potentially have an impact on the trial, which will take place later. The commission substantiated this recommendation by referring to the case of **A.K. Gopalan vs. Noordeen**[10] It found that a publication published after a person's 'arrest' might be considered contempt if it was damaging to the suspect or accused. In this case, the Supreme Court drew an arrangement between the rights of the accused and the rights of the media to publish.

It should also be mentioned that the U.K. Contempt of Courts Act, 1981, views the date of arrest as the beginning point of a current criminal prosecution. The New South Wales Law Commission argued in the Bill of 2003 that if a person is arrested or criminal proceedings are imminent, prejudiced publications will result in criminal contempt. This viewpoint has been supported by several case laws in Scotland, Ireland, and Australia, as well as the Law Commission Reports of these nations.

The authoritative judgment in **Hall vs. Associated Newspaper**[11] is adopted in other countries as well, and serves as the foundation for the clause in the United Kingdom Act of 1981 that establishes 'arrest' as the beginning point for a pending criminal prosecution. According to this judgment, when a person is arrested, he enters the 'care and protection of the Court' because he must be presented before the Court within 24 hours. This is also guaranteed by Article 22(2) of the Indian Constitution. The justification for making arrest the starting point of a trial is that if a prejudicial publication is made after arrest referring to the person's character, previous convictions, or confessions, the person's case will be biassed even in bail proceedings when the issues of whether bail should be granted or denied,

[10] 1969 (2) SCC 734
[11] 1978 SLT 241 (Scotland)

what conditions should be imposed, and whether there should be police custody or judicial custody arise. This kind of information may potentially harm the accused's case in general. Based on this, 'arrest' and 'imminent proceedings' are considered as the beginning of an ongoing criminal trial in England and other nations.

Keeping these points in mind, the Law Commission[12] has made some recommendations to regulate the uncontrolled publication by media. Some of the recommendations are-

(i) The arrest should be the beginning point of any ongoing criminal procedure, not the submission of a charge-sheet. As a result, the explanation for Section 3 should be revised. Furthermore, even if such a modification is adopted, it is not as if no publications are permissible following arrest. Only writings that are detrimental should be prohibited.

(ii) Section 10A of the Act of 1971 is to be amended so that if a subordinate court is in contempt, there is no requirement for a reference by the subordinate courts, and the High Court can be addressed immediately without the approval of the Advocate General.

(iii) Section 14A of the Act of 1971 will be amended to allow High Courts to issue 'postponement orders relating to publication' along the lines of Section 4(2) of the UK Act of 1981. Furthermore, a delay order should be granted only when a'real danger of substantial prejudice' is proven in court.

(iv) Journalists must be drilled on specific parts of the law pertaining to freedom of speech in Article 19(1)(a) and the limitations permitted under Article 19(2) of the Constitution, human rights, defamation law, and contempt of court.

- **Conclusion-**

This discussion has led to the conclusion that, while the media is considered the fourth pillar of democracy, and has a right to freedom of speech under Article 19(1)(a) of the Indian Constitution, the media cannot be allowed to go beyond its domain under the guise of free speech and expression to the point of jeopardising the trial. As a result, when equal-weight rights collide, courts should devise balancing approaches or measures based on re-calibration to ensure that both rights are given equal place in the constitutional structure.

[12] 17th Law Commission (16th. Sept. 2003)