

## **CAMERAS IN INDIAN COURTROOMS: A BLISS OR A MISERY? – LEARNING FROM THE AMERICAN EXPERIENCE**

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*The debate surrounding the Indian Judicial System has been deliberating on the means and ways that can be employed to improve its efficiency and functioning. In a new development, the theme of these debates has focused on the feasibility of having cameras in courtrooms. This proposal can be traced to the United States of America, where camera access to court room proceedings has been in place for the last three decades with the objective of promoting fairness and public awareness about the judicial system. It is envisaged that by adopting a similar approach in India, the justice delivery mechanism would be improved, the masses would be educated about the working of the Indian Judicial System, thereby promoting rule of law in the society. In the United States of America, there exists no Constitutional Right to broadcast courtroom proceedings, and whenever such broadcasts have been made concerns have been voiced regarding their impact on the citizen's right to a fair trial and due process of law. In India also, there is no constitutional right to televise court proceedings, however the same is not expressly prohibited either. The possibilities arising from this juxtaposition is fertile ground for academic debate, which shall form the subject matter of this paper.*

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We wish to thank Prof. M.P. Singh, Prof. U.R. Rai, Mr. N Konar and Mr. Sarfaraz Ahmed Khan for giving valuable suggestions on the subject matter. A note of gratitude is also extended to Mr. Harssh Adithya Poddar, Mr. Madhuryya Arindam, Mr. Ashwini Chawla, Mr. Anu Tiwari, and Mr. Sashwat Tewary for giving valuable comments and reviewing the draft of this article. We would also like to thank our colleague Ms. Medha Marathe. All shortcomings, however, remain ours.

*Through this paper we seek to do a cost-benefit analysis of introducing cameras in Indian courtrooms and thereby establish that the existing set up would not be able to sustain such an arrangement.*

## I. INTRODUCTION

The Preamble of the Indian Constitution embodies the “ideals and aspirations”<sup>1</sup>, which the framers intended to realize. The degree of achievement of these noble objectives is dependent on the efficient functioning of the three organs of the State, namely, the Legislature, the Executive and the Judiciary. The judiciary is bestowed with the arduous responsibility of upholding and promoting the estimable constitutional values. An independent, impartial and fearless judiciary is imperative to protect the people, ensure fairness in administration of justice and bring peace and prosperity to the nation.<sup>2</sup>

However, off late there has been a spurt of allegations of inefficiency, delay, and corruption against the judicial system, thereby eroding the faith of the common man in the justice delivery system.<sup>3</sup> Therefore to ensure judicial accountability and provide opportunity to the public to become better educated<sup>4</sup> about the judicial process, there have been debates for introducing cameras in courtrooms in order to televise court proceedings to the general public.<sup>5</sup> This debate finds its basis in the American legal system wherein several States have allowed televising of trials in an endeavour to promote fairness, public awareness about the judicial system and facilitate judicial accountability.

But it is of utmost importance to realize that historical and legal differences render it impossible to promulgate the same solutions for every country.<sup>6</sup> Even in America, concerns have been voiced regarding the citizen’s right to a fair trial and due process of law which may be jeopardized due to the physical disturbances, psychological impact created on the parties, witnesses, lawyers and judges and miseducation and distortion of trial through a one-sided presentation.

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<sup>1</sup> D.D BASU, SHORTER CONSTITUTION OF INDIA 5 (2003)

<sup>2</sup> M Rama Jois, *Improving Efficiency of and Ingraining Idealism into the Judiciary System*, in LAW AND CHANGE TOWARDS 21<sup>ST</sup> CENTURY 60 (K.L Bhatia ed., 1995)

<sup>3</sup> B.L ARORA, LAW OF SPEEDY TRIAL IN INDIA 12 (2006)

<sup>4</sup> ‘One of the cherished objects of our Constitution is to secure to all its citizens the liberty of thought, expression, belief faith and worship. Nothing provokes and stimulates thought and expression in people more than education.’ JAGADISH SWARUP, CONSTITUTION OF INDIA 40 (Dr. L.M. Singhvi ed., 2006)

<sup>5</sup> *Government Mulls Live Telecast Of Select Court Proceedings*, THE ECONOMIC TIMES, Mar 15, 2007

<sup>6</sup> Stephen A. Metz, *Justice Through The Eye Of A Camera: Cameras In The Courtrooms In The United States, Canada, England And Scotland*, 14 DICK. J. INT’L L. 673 (1996).

Indeed law has to grow in order to satisfy the needs of the fast changing society, keeping abreast with the developments taking place in the society,<sup>7</sup> but the circumstances existing in the country, the socio-political concerns arising with respect to such an arrangement must be considered in order to ensure that the costs do not outweigh the benefits.

The second part of this paper will deal with the American approach, which allows camera access to courtrooms. It discusses the constitutional foundation and the existing legal set-up that facilitates televising and broadcasting of courtroom proceedings. Thereafter, a critical analysis of this approach brings into focus the inadequacies that have gripped it. The third part of the paper establishes that a right to televise courtroom proceedings cannot be read under the Indian Constitution. The concluding part puts forth that in light of the American experience and the conditions prevailing in our country, any such exercise if sought to be carried out would be counter productive.

## II. CAMERAS IN COURTROOMS IN THE UNITED STATES OF AMERICA

### A. CONSTITUTIONAL PERSPECTIVE

The First Amendment<sup>8</sup> to the Constitution of the United States of America explicitly guarantees freedom of the press. A corresponding rights that implicitly flows from the freedom of press is the public's right to know. This 'right to know' accompanies with it the right of the citizens to know about the functioning of the judicial system, as on it rests the responsibility of adjudicating on matters that determine the liberty of individuals.<sup>9</sup> This first amendment value seeks to promote public awareness about the functioning of the justice system and in this way inspire confidence about the fairness with which the system works. Further the Sixth Amendment<sup>10</sup> guarantees to the accused a right to a public trial, so that the trial is conducted in an unbiased and a fair manner. This right gives to the

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<sup>7</sup> M.C Mehta v Union of India AIR 1987 SC 1086.

<sup>8</sup> US Const. First Amendment - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<sup>9</sup> Harvey J Sepler, *Criminal Law: Where Do We Stand On Cameras In The Courtroom*, 70 FLA. BAR J. 113 (1996).

<sup>10</sup> US Const. Sixth Amendment - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

public, access to court proceedings in criminal matters, albeit in a limited manner.<sup>11</sup> Moreover, this right to a public trial has been held to be one that is personal to the accused, which takes precedence over all other incidental rights and hence, it does not bestow upon the public an independent right to attend trials.<sup>12</sup>

Camera access to courtroom proceedings rests on the premise that the Sixth Amendment allows the public an access to courtrooms in criminal cases, and therefore this right flows to the media<sup>13</sup> as they are the surrogates for the public<sup>14</sup>. The cases dealing with the public's right to access courtrooms under the sixth amendment have held that this limited public right to access does flow to the print media,<sup>15</sup> but nowhere have these cases held that this authorizes the electronic media to bring cameras in the courtrooms and broadcast those proceedings nationwide. Moreover, it has been observed that the presence of cameras in the courtrooms is capable of casting an influence that can be detrimental to the right of the defendant to a fair trial to a greater extent, than the print media. Hence, it necessitates drawing up of meaningful distinction between the right of access on behalf of the public that the print media possesses on one hand and the electronic media on the other<sup>16</sup>.

The landmark cases decided by the United States Supreme Court which discuss the existence non-existence of a constitutional right of camera access to court proceedings are *Estes v Texas*<sup>17</sup> (hereinafter '*Estes*') and *Chandler v. Florida*<sup>18</sup> (hereinafter '*Chandler*').

In 1965, the US Supreme Court in *Estes* ruled that there exists no constitutional right under the first and the sixth amendment that permits camera access to courtrooms. Setting aside the order of conviction because of legal adversity caused by the broadcasting of the trial, the Court held that when trial proceedings are televised and broadcasted it can be presumed that prejudice will be caused to the defendant in having a fair trial. Though, it did not per se impose a constitutional ban on the use of cameras in courtrooms nevertheless it placed the sixth amendment right to a fair trial over the media's first amendment right to access court proceedings.

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<sup>11</sup> *Richmond Newspapers v Virginia* 448 US 555 (1980).

<sup>12</sup> *Gannett Co v De Pasquale* 443 U.S. 1368 (1979).

<sup>13</sup> The word Media is to be understood as Electronic Media and not Print Media.

<sup>14</sup> Robert D. Nelon, *The Peculiar Case of State v Terry Lynn Nichols: Are Television Cameras Really Banned From Oklahoma Criminal Proceedings?*, 3 VAND. J. ENT. L. & PRAC. 4, 5 (2001).

<sup>15</sup> *Richmond Newspapers v Virginia* 448 US 555 (1980).

<sup>16</sup> Robert D. Nelon, *The Peculiar Case of State v Terry Lynn Nichols: Are Television Cameras Really Banned From Oklahoma Criminal Proceedings?*, 3 VAND. J. ENT. L. & PRAC. 4 (2001).

<sup>17</sup> 381 US 532 (1965).

<sup>18</sup> 449 US 560 (1981).

Many states in the mid-1970 started experimental pilot programs to determine the viability of broadcasting court proceedings primarily as a medium to educate the public about the functioning of the justice system. Some States like Florida went a step further by incorporating the program permanently, thereby permitting cameras in courtrooms subject to the consent of the trial judge.

Thereafter in 1981 in *Chandler*, the US Supreme Court while upholding the Constitutionality of Canon 3(A)7 of the Florida Code of Judicial Conduct promulgated by the Supreme Court of Florida ruled in favor of electronic media's right to attend and inform the public about public trials. The Canon permitted media and still photographic coverage of trials. Although the court did consider the risks that accompany the defendant's right to a fair trial, but it placed an unwarranted burden on the accused to show that prejudice was caused by the presence of cameras thereby depriving him of his right to a fair trial. Further, it was held for the first time that broadcasting a criminal trial did not violate the due process rights guaranteed to the accused by the Fourteenth Amendment. The parameters that were laid down in order to determine the violation of due process placed an additional burden on the defendant to show that the media coverage compromised with the jury's ability to judge fairly or it had an adverse impact on any of the trial participants.

Just as in *Estes*, the decision in *Chandler* also categorically rejected that the First and Sixth Amendments to the United States Constitution mandates the entry of electronic media into judicial proceedings. But it can be said that *Chandler* gave the electronic media more leeway to access the courtrooms and broadcast the trials as it derived the legal justification of right to access courtrooms through cameras on the policy decision taken by the Supreme Court of the respective states in exercise of their supervisory authority over their courts, which is reserved to the states under US federalism.<sup>19</sup>

The law, as it stands now, is that media broadcast of courtroom proceedings is neither permitted nor allowed under the first amendment or the sixth amendment, which is elucidated in a number of appellate decisions<sup>20</sup>. The only jurisdiction in the United States that completely prohibits access to cameras in courtrooms is District of Columbia. Apart from this right to access does not exist in Federal Courts as it is proscribed by Rule 53 of the Federal Rules of Criminal Procedure.

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<sup>19</sup> *Courtroom Television Network LLC v State of New York* 5 N.Y. 3d. 222, 833 N.E. 2d 1197 citing *Chandler v. Florida*, 449 U.S. 560 (1981).

<sup>20</sup> *U.S. v. Edwards*, 785 F.2d 1293, 1295 [5th Cir.1986] *Conway v. United States*, 852 F.2d 187, 188-189 [6th Cir.1988] *Combined Communications Corp. v. Finesilver*, 672 F.2d 818, 821 [10th Cir.1982] *United States v. Hastings*, 695 F.2d 1278, 1280 [11th Cir.1983].

## *B. AN ANALYSIS OF THE US EXPERIENCE OF TELEVISIONING AND BROADCASTING COURT ROOM PROCEEDINGS.*

The Supreme Court of the respective states in United States justify their decision to allow camera access based on the results of experimental programs conducted either in their own state or in other states. These surveys that study the impact of the presence of cameras in courtrooms on the trial participants, invariably come to the conclusion that camera presence does not substantially alter the behavior of trial participants in such a manner that it adversely affects the defendant's fair trial and due process rights.

However, the outcomes of these surveys are inherent with flaws. To list a few, those surveyed, say the jurors and the judge will obviously not accept the fact that the presence of cameras altered their conduct as it would tantamount to a presumption being drawn that the defendant did not get a fair trial. Moreover, the fact that the camera's presence did have an affect on the conduct of the trial participants is often not highlighted in these surveys and is relegated to fine print. Apart from this, these surveys fail to take into consideration the "Hawthorne Effect", a term coined by behavioral scientists to describe the change in behavior of their subjects as a result of the latter being watched. This effect was observed in trial participants during an experiment carried out in televised trial proceedings in Arizona, where alteration in behavior was noted, in order to meet what the trial participants imagined to be the expectations of the viewers.<sup>21</sup>

The right of the defendant to have a fair trial is paramount and cannot be compromised with even if one goes by these reports, which show that there is always a minority that can exhibit bias due to the presence of cameras<sup>22</sup>. The evolution of law in *Chandler* and later in *Caribbean International News Corp. v Puerto Rico*<sup>23</sup> shows a liberal inclination towards the rights of the press. It has unnecessarily encumbered the accused to prove with substantial findings to the satisfaction of the court that televising and broadcasting of his trial would prejudice his fair trial and due process rights.

Adopting such a standard entails proving of something that is nascent or cannot be determined when the defendant seeks to remove the camera which usually happens at the stage of preliminary hearing or first hearing. This involves proving of the jury's inability to give a fair verdict even if sequestering of jurors takes place. Furthermore, televising trials jeopardizes the constitutional right of evidence<sup>24</sup> as it inadvertently affects the witness's demeanour who might not be

<sup>21</sup> Bill Delmore, *Media & The Law: Camera In The Courtroom : Limited Access Only*, 67 TEX. B. J. 782 (2004).

<sup>22</sup> Audrey Winograde, *Cameras In The Courtroom: Whose Right Is It Anyway?*, 4 SW. J.L. & TRADE AM. 23, 33 (1997).

<sup>23</sup> 508 U.S. 147, 113 S. Ct. 2004 (1993).

<sup>24</sup> See, *Davis v. Alaska*, 415 U.S. 308 (1974) and *Chambers v. Mississippi*, 410 U.S. 284 (1973) – Right To Evidence exists under the Sixth Amendment's "Compulsory Process Clause" and the Fourteenth Amendment's "Due Process Clause".

able to testify freely and accurately or might not come forward at all to depose. One of the important aspects of a fair trial is that the defendant should not be deprived of effective assistance from his counsel.<sup>25</sup> Cameras in courtrooms could affect the performance of the defense counsel, as they would not want to appear insensitive on the national television while cross-examining prosecution witnesses who might be children, women or elderly persons.<sup>26</sup> It becomes quite difficult to prove the aforementioned inherent problems of televising court proceedings as the ordinary standards of proof that the criminal justice system follows are not suited to establish these abstractions.

Prior to 1991, court proceedings were broadcasted by news channels, wherein viewers were shown snippets of actual proceedings. In 1991, Steven Brill a Yale Law School graduate launched Court T.V. that started airing court proceedings gavel to gavel. The State's that allowed televising and broadcasting of trials envisaged that it will educate the public about the functioning of the justice system. Other benefits that were to accrue from this endeavour were the promotion of judicial accountability and inspiring public confidence in the trial process.<sup>27</sup>

However, this was all done at the expense of administration of justice which was evidenced during the coverage of the infamous O.J. Simpson trial in 1995. According to many the Simpson trial was no less than a media circus, as the jurors, lawyers and judge attuned themselves to cater to the expectations of T.V. audience. The first such after-effect was felt in the state of California itself, where many courts refused to allow trials to be televised in their courtroom. The most prominent being the order of Judge Stanley Weisberg, who prohibited televising the trial of Menendez brothers for murdering their parents and the Susan Smith Murder Trial in South Carolina.<sup>28</sup>

It has been observed that the broadcasting of trials has in a way promoted the media's objective of entertaining the public and not educating them. First and foremost, only those trials are broadcasted that generate a considerable public interest. Public Interest according to the broadcasters is public curiosity which can be cashed upon, and not value of the information to the public that promotes confidence in the judicial system and keeps them well informed on issues of public concern. This serving of public interest according to many is already being catered to by the print media quite well.<sup>29</sup>

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<sup>25</sup> Chandler v Florida 449 U.S. 560, 578 (1981).

<sup>26</sup> Audrey Winograde, *Cameras In The Courtroom: Whose Right Is It Anyway?*, 4 SW. J.L. & TRADE AM. 23, 43 (1997).

<sup>27</sup> George Parnham, *Media And The Law: Cameras In The Courtroom: Whenever Possible*, 67 TEX. B. J. 783 (2004).

<sup>28</sup> Jennifer J. Miller, *Cameras In Courtrooms: The Lens Of The Public Eye On Our System Of Justice*, 13 S. CAROLINA LAWYER 24, 28 (2002).

<sup>29</sup> Melissa A. Corbett, *Lights, Camera, Trial: Pursuit of Justice Or The Emmy?*, 27 SETON HALL. L. REV. 1542, 1575 (1997).

The channels broadcasting court proceedings, whether the news channels or Court T.V, have failed to give any practical insight into the actual working of the justice system. This is evidenced by a 1994 evaluation of the pilot program in federal courts conducted by the Federal Judicial Center which found that most courtroom footage was used merely to illustrate news reports which provided basic information about the case and not about the legal process that was involved.<sup>30</sup>

Independent surveys evaluating the performance of Court T.V. have, with near unanimity concluded that it has so far succeeded only in entertaining the masses, and have failed in its primary objective of educating them. Court T.V. has always focused on sensational trials involving celebrities to satiate the public's appetite of knowing about the personal, intimate and scandalous details about other peoples' lives. After its coverage of the notorious O.J. Simpson trial, an independent public survey revealed that nearly 76% of respondents felt that cameras should be kept outside the courtrooms and 68% of respondents said that it did not improve their understanding about the working of the criminal justice system.<sup>31</sup>

What can be garnered from the American experience is that the function of the court is to adjudicate upon the dispute at hand in accordance with constitutional requirements that mandate procedural and substantive fairness. It is not within the Court's realm of functions to educate the public about the justice system<sup>32</sup> as extending its functions to such an extent may compromise effective administration of justice.

### III. CAN CAMERA ACCESS TO COURT PROCEEDINGS BE JUSTIFIED UNDER ARTICLE 19(1) (a) OF THE INDIAN CONSTITUTION.

Article 19(1)(a)<sup>33</sup> of the Constitution of India which provides all citizens the right to freedom of speech and expression is a bulwark of a democratic government, ensuring the proper functioning of the democratic process.<sup>34</sup> It is a right which individuals should possess in public interest<sup>35</sup> subject to such restrictions as may be placed by the State under Clause (2)<sup>36</sup> of the aforementioned

<sup>30</sup> Dolores K. Sloviter, *If Courts Are Open, Must Cameras Follow?*, 26 HOFSTRA. L. REV. 873, 887 (1998).

<sup>31</sup> Angeliqne M. Paul, *Turning The Camera On Court T.V.: Does Televising Trials Teach Us Anything About the Real Law?*, 58 OHIO ST. L. J. 655, 680 (1997).

<sup>32</sup> *Estes v Texas* 381 US 532 (1965).

<sup>33</sup> Indian Const. Article 19(1)(a) - All citizens shall have the right to freedom of speech and expression.

<sup>34</sup> M P JAIN, INDIAN CONSTITUTIONAL LAW 986 (2003).

<sup>35</sup> *Khushwant Singh v Maneka Gandhi*, AIR 2002 Del 58.

<sup>36</sup> Article 19(2) - Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.



Article.<sup>37</sup> In pursuance of the democratic ideals underlying Article 19(1)(a), the Supreme Court of India at various instances has read freedom of press as a part of the right to free speech and expression.<sup>38</sup>

The press has now assumed the role of the public educator making formal and non-formal education possible on a large scale particularly in the developing world<sup>39</sup>. Article 19(1)(a) also guarantees the right to receive and impart information which can be achieved through word of mouth, in writing or in print, in the form of art or through television, radio etc.<sup>40</sup> There is little doubt that broadcasting freedom is implicit in the freedom of speech and expression.<sup>41</sup> However Article 19(1)(a) does not confer any right on the press to have an unrestricted access to means of information.<sup>42</sup> From the standpoint of Article 19(1)(a), what is paramount is the right of the listeners and viewers and not the right of the broadcaster-whether the broadcaster is the State, public corporation or a private individual or body.<sup>43</sup> The Supreme Court has further emphasized that the freedom of press is not so much for the benefit of the press as for the benefit of the general community because the community has a right to be supplied with information.<sup>44</sup> Freedom of press extends to include a right to publish a faithful report of courtroom proceedings witnessed and heard by the journalist.<sup>45</sup> Thus when it comes to televising of courtroom proceedings the effective right to be considered is the right of the general public of India, who are to be the viewers of these proceedings.

However there can be instances wherein the attendance of the press is banned in the courtrooms or the press may be prohibited from publishing the trial or any part of it thereof in order to ensure a fair trial. The question that arises for consideration is whether the public has an absolute right to know about the proceedings of a trial and therefore, the press has the right to televise courtroom proceedings?

Televising of courtroom proceedings is considered to be a means of ensuring open justice. Cameras in courts, it is believed, would prevent the abuses that can take place in closed proceedings, provide opportunity to the public to

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<sup>37</sup> The US Constitution does not impose any restrictions on the Freedom of Press.

<sup>38</sup> *Sakal Newspapers v Union of India* AIR 1962 SC 305; *Bennett Coleman & Co. v Union of India* AIR 1973 SC 106.

<sup>39</sup> *Indian Express Newspaper (Bombay) Private Ltd. Ors v Union of India and Ors* AIR 1986 SC 515.

<sup>40</sup> *Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal* AIR 1995 SC 1236; *Association for Democratic Reforms v Union of India* AIR 2001 Del 126.

<sup>41</sup> Broadly speaking, broadcasting freedom can be said to have four facets, (a) freedom of the broadcaster, (b) freedom of the listeners/viewers to a variety of view and plurality of opinion, (c) right of the citizens and groups of citizens to have access to the broadcasting media, and (d) the right to establish private radio/TV stations.

<sup>42</sup> *Smt Prabha Dutt v Union of India* AIR 1982 SC 6.

<sup>43</sup> *Supra note* 41.

<sup>44</sup> *Supra note* 35 at 991.

<sup>45</sup> JAGADISH SWARUP, *CONSTITUTION OF INDIA* 684 (Dr. L.M. Singhvi ed., 2006).

become better educated about the judicial process and ensure the level of public access needed to build genuine public support for the justice system. Section 327<sup>46</sup> of The Code of Criminal Procedure Code, 1973 and Section 153B<sup>47</sup> of The Code of Civil Procedure prescribe open courts for criminal proceedings and civil proceedings respectively. Public trials in open court subject to public scrutiny and gaze naturally act as a check against judicial caprices or vagaries, and serve as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice.<sup>48</sup>

The Supreme Court of India in *Naresh Shridhar Mirajkar v State of Maharashtra*<sup>49</sup> observed that the public has a right to be present in court and to watch the proceedings conducted there, however the same is a right given to the public at large only in the interests of the administration of justice and is not a fundamental right of the public. The court observed that, as a judicial decision purports to decide the controversy between the parties before the court and nothing more, a judicial verdict pronounced by the court in relation to a matter brought before it for its decision would not affect the right of citizens under Article 19(1).<sup>50</sup> Though this observation would hold water with regard to civil suits, in criminal trials the justification would differ to a great extent because crime is considered to be an offense against the whole society and not against one individual alone.<sup>51</sup> Hence, it might be argued that the citizens would have right to know and right to receive information<sup>52</sup> about a criminal trial which is a matter of public concern. But even in criminal trials, the citizen's right to know is not absolute.

In the past, Courts have excluded the public in order to safeguard a witness against possible reprisal or prevent embarrassment and emotional disturbance to the witness and such orders have been upheld as valid discretionary decisions made in part to ensure that the courtroom atmosphere does not inhibit a witness from fully disclosing his or her information. The primary purpose of criminal

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<sup>46</sup> The Code of Criminal Procedure, 1973 Section 327. Court to be open - The place in which may Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

<sup>47</sup> The Code of Civil Procedure, 1908 Section 153 B. Place of trial to be deemed to be open Court. - The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them.

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

<sup>48</sup> *Naresh Shridhar Mirajkar v State of Maharashtra* AIR 1967 SC 1.

<sup>49</sup> AIR 1967 SC 1.

<sup>50</sup> *Supra* note 36 at 995.

<sup>51</sup> B L ARORA, LAW OF SPEEDY TRIAL IN INDIA 17 (2006).

<sup>52</sup> *State of U.P. v Raj Narian* AIR 1975 SC 865.

trials is to provide an impartial forum to the parties in a trial. Moreover, it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.<sup>53</sup> Thus the paramount concern in any trial ought to be the administration of justice enabled by emergence of truth and truth will emerge only if the witnesses are forthcoming in their testimony, the judge has control over the courtroom and the integrity of the trial is maintained. The presence of cameras in courtrooms could cause serious threats to the emergence of truth.

A public trial is a means of ensuring a fair trial, wherein the accused is not prosecuted or convicted in secret proceedings. It is an endeavour to protect the right of the accused and not to provide a spectacle to the community. The operative right in the judicial system is the right of the accused to a fair trial<sup>54</sup> and not that of the public to see it on television. Therefore an open court implies that there ought to be an opportunity with the public to attend the trial, and such opportunity is enough to avert any danger of an unfair trial, further whether or not the opportunity is taken by the public is irrelevant.<sup>55</sup> Although cameras in courtrooms would imply that more people would have access to judicial proceedings, but such access rather than ensuring a fair trial, might just endanger the right to fair trial. Even in the absence of any unambiguous scientific proof of imminent danger to a fair trial, in the event of televising courtroom proceedings, the mere knowledge from the American experience that presence of cameras could detract from the business of the trial and jeopardize a fair trial should be sufficient to warrant the exclusion of cameras from Indian courtrooms. To assure the impartial accomplishment of justice would not lead to an abridgement of freedom of speech and expression or the freedom of the press.<sup>56</sup>

The Fundamental Rights provided in Part III of the Indian Constitution occupy a transcendental position and are necessary for the development of human personality.<sup>57</sup> However, at times the enjoyment of these articulated rights entails bringing into effect certain other rights which may be deeply connected with the former. The Supreme Court has recognized that a peripheral or concomitant right which facilitates the exercise of a named fundamental right or gives it meaning and substance or makes it effective, is not itself a guaranteed right included within the named fundamental right.<sup>58</sup> Fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience.<sup>59</sup> Whenever a concomitant right is read into a named fundamental right, it must be ensured that the former can be adjusted with the society at the existing stage of development.

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<sup>53</sup> R v Sussex (1924) 1 KB 256.

<sup>54</sup> Nancy T. Gardner, *Cameras in the Courtroom: Guidelines for State Criminal Trials*, 84 MICH. L. REV. 475 (1985).

<sup>55</sup> JOSEPH JACONELLI, OPEN JUSTICE - A CRITIQUE OF THE PUBLIC TRIAL 23 (2002).

<sup>56</sup> Reliance Petrochemicals Ltd. v Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Ors AIR 1989 SC 190.

<sup>57</sup> I.C. Golak Nath v Union of India. AIR 1967 SC 1643.

<sup>58</sup> All India Bank Employees Association v National Industrial Tribunal, AIR 1962 SC 171.

<sup>59</sup> Keshavananda Bharti v State of Kerala (1973) 4 SCC 225.

The broadcaster's right to inform the public through televising of courtroom proceedings could be derived from Article 19(1)(a) provided the time is right for its sustenance and it is not leading to a violation of a higher right. In India it might not work so well because even in a developed country like America there are still repentances about the right.

Fair trial has been recognized as a fundamental right under Article 21 of the Constitution and the first imperative in the dispensation of justice.<sup>60</sup> An open court occupies one spot in a constellation of requirements for a fair trial. The primary values and interest addressed while holding a public trial is fairness in the administration of justice. Now in certain circumstances if a public trial itself creates certain damaging effects on the trial, then conducting of such trials should be precluded. In India there are statutory provisions<sup>61</sup> wherein the court can conduct trials *in camera*, that is, when the hearing takes place with closed door, at the exclusion of the public. This is also a way of ensuring a fair trial and is inactive of the fact that if there is a conflict between the right of the public to know and the right of the press to inform about a trial's proceedings on the one hand and the right of the accused to a fair trial on the other hand, then the latter should be given precedence over the former.

Recently, even Chief Justice K.G. Balakrishnan, the Chief Justice of India, speaking at a Workshop on "*Reporting of Court Proceedings by Media and Administration of Justice*"<sup>62</sup> commented that no matter to what extent the fourth estate while covering the court proceedings tries to be accurate, the margin for a slip-up creeping in cannot be discounted. Since, administration of justice is regarded to be one of the most sanctimonious jobs ever undertaken, such slip-ups, however small, can dilute the faith that an ordinary Indian reposes in the Judiciary.

The Chief Justice laid stress on the fact that with the advent of mass media, trials by media instead of giving a helping hand to the Judiciary's endeavour to ensure justice for all are impinging upon the elementary right of the accused to get a fair trial. These media trials always ride on the wave of public sentiment and usually pronounce the guilt of the accused in *sub-judice* matters. This acts as a prejudice to the accused who has a right to a fair trial. As an offshoot to this, there arises a possibility that general public could feel let down by the institution of judiciary when a determination going against the media verdict is made by the court.<sup>63</sup>

<sup>60</sup> Commissioner of Police Delhi v Registrar, Delhi High Court, New Delhi, AIR 1997 SC 95.

<sup>61</sup> Section 14 of the Indian Official Secrets Act, 1923; Section 22(1) of the Hindu Marriage Act, 1955, Section 327 (proviso) of The Code of Criminal Procedure, 1973; Section 153 B (proviso) of The Code of Civil Procedure, 1908.

<sup>62</sup> This Workshop was held at Vigyan Bhawan, New Delhi on 29<sup>th</sup> March and 30<sup>th</sup> March 2008. This workshop was jointly organized by the Supreme Court Legal Services Committee, Press Council of India, Indian Law Institute, National Legal Services Authority and Editors Guild of India.

<sup>63</sup> *CJI for Caution against Trial by Media*, THE HINDU, Mar. 31, 2008, [http://www.thehindu.com/holnus/000\\_200803310305.htm](http://www.thehindu.com/holnus/000_200803310305.htm).

It is pertinent to note that May 2, 2008 proved to be a landmark day in the annals of Indian Judiciary, when TV Cameras were allowed in Lok Adalat's held within the premises of the Supreme Court, which were presided over by the Chief Justice of India K.G. Balakrishnan, Justice Ashok Bhan, Justice Arijit Prasayat and Justice Aftab Alam. This was the first instance in India, wherein Cameras were allowed to record court proceedings. Nevertheless the Chief Justice K.G. Balakrishnan commenting on whether TV Cameras would be allowed to cover the proceedings of the Supreme Court stated that at the given juncture, it would not be feasible to do the same and in fact Lok Adalat<sup>64</sup> proceedings could not be termed as court proceedings. Elaborating further Chief Justice stated that given the sensitivity of the matters that the courts have to adjudicate upon, the not so uncommon acrimonious exchanges that take place between the lawyers coupled with the embarrassing moments that arise during court proceedings, necessitate that TV Cameras should not be allowed in Courtrooms.<sup>65</sup>

#### IV. CONCLUSION

As has been established in the foregoing parts, it is clear that there exists a hierarchy of rights, with the right of the accused to have a fair trial taking precedence over the right of the public to know and then comes the media's right to broadcast court proceedings. Consequently, even if the domain of Article 19(1)(a) is extended to include the broadcaster's right to inform by televising courtroom proceedings it can never hold more value than the right of the accused to a fair trial.<sup>66</sup>

In India, the law of the press relating to judicial proceedings is still at a nascent stage and there have been times when the media has been accused to unduly influencing the judicial process<sup>67</sup>.

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<sup>64</sup> Lok Adalat is an Alternative Dispute Resolution Mechanism that has been evolved for speedier dispensation of Justice and many Jurists are of the opinion that Lok Adalat proceedings are of a different nature that expend with the necessity of procedural requirements and formalities of a regular court.

*See generally* JUSTICE JITENDRA N. BHATT, *A Round Table Justice Through Lok Adalat (People's Court) – A Vibrant ADR In India* (2002) 1 SCC (Jour) 11; JUSTICE K.A. ABDUL GAFOOR, *The Concept of Permanent Lok Adalat And The Legal Services Authorities Amendment Act, 2002* (2003) 5 SCC (Jour) 33.

<sup>65</sup> *SC Lets Camera Crew Film Lok Adalat Session*, The Times of India, 4 May 2008.

<sup>66</sup> *Supra* note 55 at 1.

<sup>67</sup> It has been observed that in case of media trials, there is mostly an overwhelming presumption of guilt as against the accused and this public sentiment may even result in victimizing the defense counsels. This may deter lawyers from defending the high profile cases, thus stifling the criminal justice system.

Television has still not become a part of our lives as is the case in America, therefore the charisma associated with occupying screen space would definitely entail judges, lawyers and other trial participants to respond positively to the prevailing public sentiment, which would prove detrimental to the rights of the accused who deserves a fair trial and not a trial by a motley of spectators glued to their television sets.

There is a fear that broadcast of court proceedings in India, which follows an adversarial criminal justice system, would be another escape route from conviction provided to the accused as it would be open for the accused to challenge his conviction on grounds of adverse publicity caused by broadcasting his trial and thus, increasing the pile of cases.

Right to fair trial cannot be compromised to satisfy the curiosity of the viewing public. This right to fair trial has to be kept at a higher pedestal and should not be put at stake to achieve other objectives that aim at educating the public and making the judiciary accountable. It has to be realized that the paramount function of the judiciary is to ensure that administration of justice is done fairly. In a developing country like India, this type of model whose credibility is impeached upon as is evident in the United States of America, should not be incorporated as its fallibilities outweigh its benefits. The right of the people to know about the trials is not foreclosed by prohibiting cameras in courtrooms. One can know through the print media which does its job quite efficaciously. Therefore in the existence of a medium which can achieve a result more efficaciously, there should not be any requirement to attempt achieving the same result through another which creates unfavourable conditions.