

**HAWASSA UNIVERSITY**



**TRIAL BY MEDIA THROUGH PREJUDICIAL REPORTING  
AND THE INFLUENCE ON THE ADMINISTRATION OF  
CRIMINAL JUSTICE AND FAIR TRIAL RIGHTS OF THE  
ACCUSED**

**LLM THESIS**

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**HAWASSA UNIVERSITY,**

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**TRIAL BY MEDIA THROUGH PREJUDICIAL REPORTING AND ITS  
IMPACT ON THE ADMINISTRATION OF CRIMINAL JUSTICE AND  
FAIR TRIAL RIGHTS OF THE ACCUSED**

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## **DECLARATION**

I hereby declare that — **TRIAL BY MEDIA THROUGH PREJUDICIAL REPORTING AND THE INFLUENCE ON THE ADMINISTRATION OF CRIMINAL JUSTICE AND FAIR TRIAL RIGHTS OF THE ACCUSED** is my original work and has not been presented for a degree in any other university, and all sources of material used for this thesis have been duly acknowledged.

Name: FUAD ABDUREHIM HUSIEN

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## **DEDICATION**

I dedicate this thesis to my father Abdurehim Husein and my mother Inaya Abdulahi, for nursing me with affection and love and for their dedicated partnership in the success of, my life.

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Glory to the Almighty

Fuad Abdurehim Husen

October, 2023

HAWASSA UNIVERSITY; ETHIOPIA

## **ACRONYMS AND ABBREVIATIONS**

ABA	American Bar Association
ACHPR	African Charter on Human and Peoples' Right
A-G	Attorney-General
EBA	Ethiopian Broadcasting Authority
EBC	Ethiopian Broadcasting Corporation
ECtHR	European Court on Human Rights
EMA	Ethiopian Media Authority
FBC	Fana Broadcasting Corporation
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Right
IBA	International bar Association
ILC	Indian Law Commission
MetEC	Metal and Engineering Corporation
No.	Number (of an Act, Report etc)
NSW	New South Wales
OHCHR	Office of the High Commissioner for Human rights
SNNPRS	Southern Nation Nationalities and Peoples Regional State
UDHR	Universal Declaration of Human Right
UK	United Kingdom
UNCHR	the United Nation Commission for Human Right
US	United State

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## **ABSTRACT**

*The current era sees a transformation in news publication due to extensive TV, and cable use. This, under the guise of freedom of expression, could prejudice suspects, accused, witnesses, and judges. Consequently, this could impact the administration of justice. This thesis aims to explore the driving forces necessitating a criminal justice administration capable of safeguarding fair trial rights against 'trial by media'. The concept can be traced back to discussions balancing freedom of speech and expression, as asserted by the media, and the right to a fair trial, as upheld by the judiciary. The study employs a qualitative research approach featuring both doctrinal and non-doctrinal aspects. It examines the Ethiopian criminal justice system's legal framework, documentary films, press statement analyses, and interviews with legal professionals from the former Southern Nation Nationalities and Peoples Regional State (SNNPRS), Hawassa City High Court. The findings show that the Ethiopian Constitution does not limit freedom of expression and press to administer justice or protect fair trial rights. Moreover, 'trial by media' publications are not addressed in the Ethiopian criminal justice system. The Criminal Code of Ethiopia's contempt of court law is ineffective in mitigating media trials' impact. Media proclamations lack significant protections for an accused fair trial rights against media trials. Case studies on press statements released by then attorney generals, an analysis of the documentary film entitled Minabawi (illusion), and interviews with legal professionals indicate that trial by media is practiced in the Ethiopian criminal justice system. The researcher concludes, despite existing legal frameworks addressing some issues related to trial by media, the legal frameworks are not resembles adequate and effective in guaranteeing judicial proceedings and fair trial rights of the accused against the influence of trial by media. Therefore, prejudicial reporting by media trials is practiced. Given the legal and practical problems associated with this issue, this thesis proposes potential recommendations, through legislative adjustments and practices.*

**Key Words:** *Accused, Administration of Justice, Criminal Justice, Ethiopia, Fair Trial Rights, Freedom of Expression, Prejudicial Reporting, Trial by Media.*

# CHAPTER ONE

## 1. INTRODUCTION

### 1.1. Background of the study

There is today a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have prejudicial impact on the suspects, accused, witnesses and even Judges and in general, on the administration of justice.<sup>1</sup> The subject of 'Trial by Media' is discussed by civil rights activists, constitutional lawyers, judges and academics almost every day in recent times.

With the coming into being of the television and cable-channels, the amount of publicity which any crime or suspect or accused gets in the media has reached alarming proportions. Innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved.<sup>2</sup>

Although the Constitution of the Federal Democratic Republic of Ethiopia (Hereinafter, FDRE Constitution) provides for the right to freedom of press, and expression, it does not include the principle of trial by media.<sup>3</sup> On the other hand, the right to a fair trial is one of the fundamental principles of a democratic society.<sup>4</sup> It is a key element of human rights protection.<sup>5</sup> It serves as a procedural means to safeguard the rule of law and the proper administration of justice.<sup>6</sup>

The right to public hearing is an essential safeguard of the fairness and independence of the judicial process, and a means of protecting public confidence in the justice system.<sup>7</sup> The guarantee of the right to a public hearing includes the media and the public.<sup>8</sup> The openness of the justice system has to be guaranteed for the democratic values of transparency and accountability, and the realization of

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<sup>1</sup>Law Commission of India, 200th Report on Trial by Media Free Speech and Fair Trial under Criminal Procedure Code, 1973 (August 2006)1

<sup>2</sup>Ibid, 11

<sup>3</sup>Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1 of 1987, Art 29

<sup>4</sup>The European Parliament and the Council of the European Union, 'Directive (EU) 2016/343 on the Strengthening of Certain Aspects of the Presumption of Innocence and the Right to be Present at the Trial in Criminal Proceedings' (9 March 2016) L65 Art 6(1) para 33

<sup>5</sup>Office of the High Commissioner for Human Rights (OHCHR), 'General Comment no 32' (2007) UN Doc CCPR/C/GC/32, para 2

<sup>6</sup> Ibid

<sup>7</sup> Amnesty International, Fair Trial Manual (2nd edn, Amnesty International Publications 2014) 121

<sup>8</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art 14(2)

fair trial rights.<sup>9</sup> The media has a right to gather and deliver information and comment on criminal trials.<sup>10</sup> Such an act of the media has to respect the rights of individuals and the independence of the judiciary.<sup>11</sup> Fairness of proceedings necessitates the need for protection from any direct or indirect influence, pressure, or interference.<sup>12</sup>

A literature indicates that trial by media is a dynamic process through which people are exposed to public opinion where they are condemned without being heard.<sup>13</sup> Trial by media, a popular term in the early 21st century and late 20th century is used to define the impact of newspaper and television coverage on the reputation of a person after (most of the time) before a verdict in court.<sup>14</sup>

This phenomenon has been defined as “a market-driven form of multidimensional, interactive and populist justice in which individuals are exposed, tried, judged and sentenced in the ‘court of public opinion’”.<sup>15</sup> The domestic literature available dealing with media coverage of criminal cases vis-a-vis fair trial rights is, L.L.M thesis submitted by Kalkidan Dereje<sup>16</sup> Titled “Courtroom Journalism and Fair Trial Rights: Ethiopian Law and Practice”.

The writer provides that; Concerning the Ethiopian legal regime for regulating courtroom journalism, the Constitution does not make the ground of administration of justice or protecting the judiciary or protection of fair trial rights in particular as a legitimate ground to limit freedom of expression.<sup>17</sup>

However, he concludes that, it is safe to say that the protections afforded by the law in the ambit of general media publications have the potential to protect.<sup>18</sup> Accordingly, the thesis only discussed on the issue of courtroom journalism and fair trial rights, by focusing on the impact of journalism during the proceeding or highly emphasized on the trial stage.

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<sup>9</sup> FDRE Constitution (n 3) Art 12; Art 20(1)

<sup>10</sup> Center for the Independence of Judge and Lawyers, ‘The Madrid Principles on the Relationship between the Media and Judicial Independence’ (Seminar held in Madrid, Spain, from 18 to 20 January 1994) preamble

<sup>11</sup> Ibid

<sup>12</sup> OHCHR ‘General Comment no 32’ (n 5) para 25

<sup>13</sup> Greer, & Mc Laughlin, This is not justice: Ian Tomlinson, *institutional failure and the press politics of outrage*,’ 6 British Journal of Criminology ((2011) 52

<sup>14</sup> Richard Nobles and David Schiff, *Understanding Miscarriages of Justice: Law, the Media, and the Inevitability of Crisis* (Oxford University Press 2000) 38

<sup>15</sup> Ibid

<sup>16</sup> Kalkidan D, ‘Court Room Journalism and Fair Trial Rights: Ethiopian Law and Practice’ (LLM Thesis, University of Addis Ababa 2020) 47

<sup>17</sup> Ibid

<sup>18</sup> Ibid

Hence, the issue on the influence of trial by media on the administration of criminal justice system and fair trial right of the accused is not discussed, especially on trial by media which are mostly happens prior to trial stage, this creates literature gap.

## **1.2.Statement of the problem**

In a democracy, press freedom is vital, like the air we breathe. But it shouldn't infringe on individual freedoms, just as a wind gust shouldn't uproot a tree. Free speech is fundamental in liberal democracies. However, 'trial by media' has led to increased scrutiny of the media's role, especially in prejudicial publicity or criminal case reporting.

The media often sensationalizes news and distorts facts to grab public attention, similar to a magician performing tricks to captivate an audience, all to stay competitive. The FDRE constitution acknowledges two fundamental human rights that serve as the pillars of democratic systems: the right to freedom of expression and the right to a fair trial.<sup>19</sup>

These rights often work in tandem, like two sides of a coin, each safeguarding the proper exercise of the other. However, there can be instances where these rights may clash, much like two waves colliding in the ocean. This conflict underscores the delicate balance required in upholding democratic principles. Conflicts between rights, like two powerful winds clashing, can occur when one is exercised without considering the other.

The FDRE constitution lacks clarity on how freedom of expression and fair trial can coexist without one overshadowing the other. For instance, if press freedom is absolute and allowing media to publish damaging information about an accused, the promise of a fair trial becomes as hollow as a drum. Similarly, if media coverage of criminal cases is banned to ensure a fair trial, it compromises press freedom and freedom of expression. Therefore, the FDRE Constitution needs to be fixed to balance these competing rights (freedom of expression and fair trial right), and to identify which right should be more weighed in the scale of justice, especially when media trial adversely affects the right to a fair trial.

Everyone has the right to a fair trial,<sup>20</sup> a principle upheld by various laws globally and specifically in the FDRE Constitution.<sup>21</sup> However, biased media coverage of criminal cases can jeopardize this

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<sup>19</sup>FDRE Constitution, (n3) Art.19, 20 and 29

<sup>20</sup>ICCPR (n 8) art 14; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) 1950, art 6; African Charter on Human and Peoples' Rights(ACHPR) (adopted 27 June 1981, entered into force 21 October 1986) art 7; FDRE Constitution (n 3), Art 19ff

right, potentially leading to unjust deprivation of other fundamental rights and freedoms.<sup>22</sup> This situation is akin to a seesaw where the weight of media influence can tip the balance, disrupting the equilibrium of justice.

Media trials can run parallel to court trials, often sharing public statements or judicial decisions that imply guilt before proven, violating the principle of ‘innocent until proven guilty’.<sup>23</sup> Media revealing an accused confession before trial and without verifying whether the confession was voluntary can risk self-incrimination rights.<sup>24</sup> ‘Media verdict’ of guilt infringes on the fair trial principle.

Due to that, lawyers may feel intimidated and refuse such cases, leaving clients without defense representation at trial, which contradicts the principle of natural justice.<sup>25</sup> Media trials can also undermine public trust in the judicial system. This happens when a court’s decision doesn’t match the media’s narrative, leading to public dissatisfaction.<sup>26</sup> To control or mitigate the impacts of media trials on the criminal justice system and the accused right to a fair trial, it’s necessary to identify types of broadcasts or publications recognized prejudicial. This is as suggested by the 200th report of the Indian Law Commission (Hereinafter, ILC)<sup>27</sup> and the American Bar Association (Hereinafter, ABA).<sup>28</sup> However, in Ethiopia criminal justice system, broadcasts or publications that seriously prejudice criminal proceedings and fair trial rights of the accused, which require restrictions on freedom of expression are not identified or not illustratively listed.

After all, different countries have different laws or approaches to mitigate the impact of media trials. For instance, the European Union restricts adverse extrajudicial statements by public officials.<sup>29</sup> The United States (Hereinafter, US) court uses techniques like gag orders, continuances, voir dire, jury

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<sup>21</sup>Ibid; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR) art 10; American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948) reprinted in Basic Documents Pertaining to Human Rights in the Inter American System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992) art 8; The Arab Charter on Human Rights ( ACHR ), adopted by the Council of the League of Arab States on (22 May 2004) Art 7.

<sup>22</sup>J Pejic, 'What Is A Fair Trial? A Basic Guide to Legal Standards and Practice' (Lawyers Committee for Human Rights, New York 2000) 5

<sup>23</sup>European Parliament (n 4)

<sup>24</sup>ABA Standards for Criminal Justice Fair Trial and Free Press (3rd edition) approved by ABA House of Delegates (11 February 1991) at 17.

<sup>25</sup>Ariana Tanoos, '*Shielding the Presumption of Innocence from Pretrial Media Coverage*' (2017) 50 *Indiana Law Review* 1012-1013

<sup>26</sup>'Cultivation Theory in Media', *Simply Psychology* (7 September 2023) <https://www.simplypsychology.org/cultivation-theory.html> accessed 12 March 2023

<sup>27</sup>Law Commission of India (n 1)

<sup>28</sup>American Bar Association ( n 24)

<sup>29</sup> European Parliament ( n 4)

instructions, and change of venue,<sup>30</sup> The United Kingdom (Hereinafter, UK) regulates media trials through contempt of court laws.<sup>31</sup>

However, existing legislation like; Media Proclamation No.1238/2021 (Hereinafter, media proclamation) and the Criminal Code of the Federal Democratic Republic of Ethiopia (Hereinafter, FDRE Criminal Code), appear problematic and unsatisfactory to mitigate impact of trial by media. Accordingly, this study addresses the issues with current legal mechanisms and their effectiveness in mitigating the impact of media trials on criminal justice administration and fair trial rights, compared to standards in other countries.

The concept of trial by media, which can undermine judicial proceeding and the accused fair trial rights, emerges under the guise of exercising freedom of expression.

Balancing this freedom with the rights of the accused and identification of which should be more weighed in the scale of justice presents, a significant challenge. In confirmation of the assertion states; problem well provided is half solved, this research aims to address these complexities and contribute to a better understanding of media trials' impact on justice administration

### **1.3.Research questions**

- In the context of the FDRE Constitution, how can we balance the right to freedom of expression and press freedom with the right to a fair trial? Which should take precedence in scale of justice, when these rights are in conflict?
- What types of media publications can be considered as 'trial by media' in Ethiopia, in light of the standards adopted by other countries?
- What are the current legal mechanisms in Ethiopia's criminal justice system, and how effective are they in reducing the impact of trial by media in light of standards developed by other countries?
- Is trial by media currently practicing in Ethiopian criminal justice and what are the perspective or view points of legal professionals on the concept?

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<sup>30</sup>Early K, 'The Impact of Pretrial Publicity on an Indigent Capital Defendant's *Due Process Right to a Jury Consultant*' 16 Roger Williams University Law Review, (2011) 699

<sup>31</sup>The Judicial College, the Media Lawyers' Association, the Society of Editors, the News Media Association, 'Reporting Restrictions in the Criminal Courts' (Revised, Judicial College, the Media Lawyers' Association, the Society of Editors, the News Media Association (2016) 11

## **1.4.Objective of the study**

### **1.4.1. General objective**

This research aims to examine the impact of media trials on criminal justice and the fair trial rights of the accused, identify media publications that constitute ‘trial by media’, and assess the efficacy of Ethiopian legal frameworks in regulating such trials.

### **1.4.2. Specific objectives**

- To analyze how the FDRE Constitution balances the right to freedom of expression and press freedom with the right to a fair trial, and to determine which right should take precedence when these rights are in conflict.
- To identify types of media publications in Ethiopia, that can be classified as ‘trial by media’, and to compare these with the standards adopted by other countries.
- To identify the existing legal mechanisms under the criminal justice system of Ethiopia, and their effectiveness in mitigating the impact of trial by media, in light of the standard developed by other countries.
- To evaluate the practice of media trials and comprehend the viewpoints of legal professionals.

## **1.5.Research method and methodology**

### **1.5.1. Research methodology**

This study employs a qualitative research approach, chosen for its flexibility and suitability in addressing the research questions and gathering information from respondents. It concentrates on the reasons, justifications, and logical arguments when scrutinizing the issues. As a legal research, this study features both a doctrinal and a non-doctrinal type. The doctrinal aspect involves accessing, analyzing, and determining the effectiveness of various Ethiopian laws scattered in our criminal justice system, in managing the impact of media trials.

The non-doctrinal aspect includes interviews with legal professionals to understand their perspectives on the influence of media trials on justice administration. Many authors emphasize that most qualitative studies use a comparative approach in some way.<sup>32</sup> This method involves comparing different conditions or cases to understand the desired outcome. Accordingly, the

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<sup>32</sup> Ytayew, A. &Wendemagegn, T. „A Practical Guidebook on Methodology and Methods“ (Human Rights Research, Addis Ababa University Press, (2013) 15

researcher conducts a comparative assessment to establish a benchmark and learn from countries that have made progress in defining media trials or adverse media publicity.

Hence, the study looks at the approaches these countries use to protect justice administration and the right to a fair trial from the impacts of media trials. The researcher chooses a qualitative method for data collection and uses semi-structured interviews as the technique. The researcher initially prepares well designed questions, but additional and in time questions were raised based on the information obtained from the interviewees.

### **1.5.2. Sampling technique**

In qualitative research, the goal isn't statistical representation but rather purposive sampling.<sup>33</sup> Thus, this study uses purposive sampling methods. This technique is chosen because it allows researchers to gather quality information from participants based on their experience, profession, education, expertise, and other attributes required by the study. Interviews are conducted with legal professionals from the former Southern Nation Nationalities and Peoples Regional State (SNNPRS), specifically those who have served at the Hawassa City High Court.

The rationale for selecting these professionals is their involvement in a case that experienced significant prejudicial reporting of media trial. This case, known as the trial of the Sidama Ejeto youth group, was handled by the Hawassa City High Court. The interviews are not conducted with all staff members, but specifically with those who have been involved in the case or parties of that case as a prosecutor, presiding judge, and attorney and consultant at law representing the accused.

The interviewees include seven federal and regional attorneys and consultants at law, two judges, and five high prosecutors, totaling 14 respondents. Indeed, the focus of these interviews is to gain a deeper understanding of the interviewees' perspectives on the impact of media trials. The emphasis is not on analyzing the specific cases they were involved in, but rather on understanding the broader implications of media trials in the justice system.

This approach provides a comprehensive view of the subject matter, contributing to a more nuanced understanding of the interplay between media trials, criminal justice administration, and fair trial rights.

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<sup>33</sup> Michael Q. Patton and Michael Cochran, "A Guide to using qualitative Research Methodology", *Medecins Sans Frontiers*, (2002) 9

### **1.5.3. Source of data**

This study utilizes both primary and secondary data sources. For the most, the concept of trial by media, which can undermine criminal justice administration and the accused fair trial rights, emerges under the guise of exercising freedom of expression. So, primary data are collected from various laws governing freedom of expression and press rights. These laws, including the FDRE Constitution, Media Proclamation, and FDRE Criminal Code, may limit the adverse exercise of these rights to protect the accused fair trial rights.

Additionally, interviews with legal professionals provide first-hand insights into the real-world implications of media trials. Secondary data, collected from sources such as books, articles, reports, conference papers, newspapers, internet resources, research papers, and legal documents, are used to substantiate and triangulate the primary data. This includes, the case analysis of documentary film aired for a damning indictment before trial and press statements of public officials to assess the practice of media trials and its impacts. The study employs descriptive content analysis, a common technique in qualitative research. Data is analyzed using analytical and logical reasoning.

The opinions of legal professionals on the impact of media trials are analyzed in relation to both primary and secondary data. This comprehensive approach ensures a robust understanding of the subject matter.

### **1.6. Significance of the study**

By examining the impact of media trials on the rights of the accused, the study can contribute to efforts to protect these fundamental rights and ensure that all individuals receive a fair trial. The study can provide valuable insights into how prejudicial media coverage can shape public perception of criminal trials and potentially influence the administration of justice. The findings of the study can inform policy-making and practice in the fields of media regulation, criminal justice, and legal rights. The study can contribute to academic knowledge in the fields of media studies, law, and criminal justice. It can provide a basis for further research on the topic and help to fill any gaps in the existing literature. The study can also help to raise public awareness about the potential impacts of media trials, and about the importance of fair trial rights.

### **1.7.Scope of the study**

The study's is limited by subject matter and geography. With regard to subject matter, it focuses on analyzing the adequacy of laws regulating media trials, with the FDRE Constitution as the base. This is due to the balance needed between freedom of expression and fair trial rights. The study covers Media Proclamation, Ethiopian Broadcasting Corporation (EBC) editorial policy of 2006, and Ethiopian Broadcasting Authority (EBA) editorial policy of 2008; which is currently branded to Ethiopian Media Authority (EMA), under new Media Proclamation. It also assesses, the FDRE Criminal Code regarding to effectiveness to regulate prejudicial media reporting. It also assesses media trial practices and legal professionals' views.

Geographically, it's limited to the former SNNPRS Hawassa City High Court, where data is collected.

### **1.8.Limitations of the study**

The difficulty in finding literature on the topic in the Ethiopian context, as media trials are a new concept in Ethiopian criminal justice system, limits the amount of secondary data the researcher can draw upon for the research. The interpretation of what constitutes a 'media trial' and its 'influence' on the administration of criminal justice and fair trial rights could vary among different stakeholders. This subjectivity may limit the study's objectivity. Different jurisdictions may have different laws and regulations regarding media trials, which could complicate comparisons and generalizations. Legal and ethical considerations limit the researcher ability to fully explore and discuss certain aspects of media trials, particularly when it involves sensitive information and politicized.

### **1.9.The Structure of the study**

The study is divided into five chapters. Chapter One introduces the research topic, including its background, problem statement, research questions, objectives, methods, scope, limitations, and significance. Chapter Two defines key terms and discusses the legal implications of media trials. Chapter Three explores the right to freedom of expression and the fair trial rights of the accused

under the FDRE Constitution, identifying publications recognized as trial by media and analyzing Ethiopian legal regimes.

Chapter Four assesses the practice of media trials and their impact on the fair trial rights of the accused, including perspectives from legal professionals. Chapter Five presents findings, conclusions, and recommendations. The study concludes with a bibliography.

## CHAPTER TWO

### 2. TRIAL BY MEDIA

#### 2.1. INTRODUCTION

In this chapter, the researcher explores the concept of media trials, including its definition, etymology, and early usage. It delves into the historical perspectives and legal implications of media trials. The latter part of the chapter examines the impacts of media trials on justice administration, focusing on their effects on the accused right to a fair trial, their influence on judges and defense lawyers, and their impact on public expectations.

#### 2.2. DEFINITION OF FUNDAMENTAL TERMS AND CONCEPTS

##### 2.2.1. Etymology and early use

The concept was popularized for the first time as Trial by Television in response to the 3 February 1967 television broadcast of The Frost Program, hosted by Sir David Frost, a veteran broadcaster who started out in the 60s satire boom and found worldwide fame with his TV interviews. Although guests on The Frost Program included many controversial political figures the show was most significant for Frost's combative interview in 1967 with Emil Savundra in which he angrily challenged the insurance fraudster before a studio audience that included Savundra's victims.

The interview was criticized as trial by television and ITV managers worried that the interview compromised Savundra's right to a fair trial. Here, too, it could be said that Frost was astutely appropriating what others did better.<sup>35</sup>

##### 2.2.2. Historical origin of trial by media and notions of media trial

Historically, in the late 20th and early 21st centuries, the idea of media trials came across Western countries, especially in the UK and the US to grab the attention of scholars.<sup>36</sup> In effect, the phrase 'Trial by Media' or 'Media Trial' started to be very conversant to the people of these countries, during the spread of Television news coverage in the 1960s.<sup>37</sup> Trial by media is a phrase popular in

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<sup>34</sup> [Sir David Frost obituary | David Frost | The Guardian](#) accessed on 10 March 2023

<sup>35</sup> Ibid.

<sup>36</sup> Furqan Ahmad, 'Human Rights Perspective of Media Trial' 1 Asia Law Quarterly [2009] 47- 48

<sup>37</sup> Dwight T and Bill Loving, Law of Mass Communications: Freedom and Control of Print and Broadcast Media (University Casebook Series, 6 June 2011) 503-506.

the late 20th century and early 21st century to describe the impact of prejudicial media coverage on a person's dignity by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law.<sup>38</sup> It is particularly relevant in cases where high-profile individuals stand trial, with the concern that the impartiality of the judge may be compromised by extraneous information, disrupting due process and resulting in an unfair trial.<sup>39</sup>

Media trials can be described as the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law. The Indian Supreme Court explained media trial in the following manner:

The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law is media trial. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.<sup>40</sup>

Besides, the term "Trial by Newspaper" can be defined as such "[w]hen any report indulges in siding with one of the parties to the cause; derides one party, witness, or counsel; misrepresent Court proceedings by screaming headlines with a view to prejudicing the Court and public; publishes only one side of the case to the detriment to the opposite party; brings out articles on a matter pending in the Court and in diverse ways carry on what has been so aptly called a trial by newspaper.<sup>41</sup> To be precise, when the media creates any intuition on any event(s) or accused person(s) that might have a notorious impact on the person's name, character and reputation<sup>42</sup>, and presumption of innocence or

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<sup>38</sup> Middleweek, Belinda "Dingo media, The persistence of the 'trial by media' frame in popular, media, and academic evaluations of the Azaria Chamberlain case, *Feminist Media Studies* 17(4 May 2017) 3 [doi:10.1080/14680777.2016.1235054](https://doi.org/10.1080/14680777.2016.1235054). [hdl:10453/123672](https://hdl.handle.net/10453/123672). [S2CID 151827061](https://doi.org/10.1080/14680777.2016.1235054) accessed march 5 2023)

<sup>39</sup> Phillipson, Gavin, "*Trial by Media: The Betrayal of the First Amendment's Purpose*". 71 *Law and Contemporary Problems*, Duke Law scholarship repository 4 ((2008) 15–29

<sup>40</sup> R.K Anand v. Registrar (2009) 8 SCC 106

<sup>41</sup> V.G. Ramachandran, *Contempt of Court* (6th edn, 2002) 857; *R.K. Anand v. Registrar*, Delhi High Court (2009) 8 SCC 106

<sup>42</sup> Karen Yeung, 'Does the Australian Competition and Consumer Commission Engage in "Trial by Media"?' 27 *Stanford Law & Policy Review* [2005] 549, 555

guilt, before or even after, the Court takes into account of the matter to give a verdict, then this spontaneous action of the media can be depicted as media trial.<sup>43</sup>

Sometimes, the media misrepresents evidences or facts, and provides misinformation about laws.<sup>44</sup> Through its inflammatory headings and misrepresentation, media creates potentially flawed views, judgments, and ideas about our judicial system and legal process even before a matter goes into trial which is often considered as a consequence of yellow journalism as well.<sup>45</sup>

The responsibility of the press to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher standards.

### **2.3. Legal Implications of Media Trial: Freedom of Speech and Expression**

Freedom of speech is an individual's right to express ideas without undue interference from the government.<sup>46</sup> As regards, the right to freedom of expression, the Universal Declaration of Human Right (Hereinafter, UDHR),<sup>47</sup> which has become a part of the customary International law,<sup>48</sup> provides in Article 19 that 'everyone has the right to freedom of opinion and expression ... [including the] freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.'<sup>49</sup> Ensuring this right to both the natural and legal person is a precondition of a democratic country.<sup>50</sup> This right facilitates the citizens of a democratic country to express their constructive criticism about the administration of justice in the country<sup>51</sup>, and to enjoy the right to be informed.<sup>52</sup> The FDRE Constitution states

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<sup>43</sup> Ted Gest, 'Indictment & Trial of Media's Crime Coverage' 2 *Journal of the Institute of Justice and International Studies* [2003] 1; 'Trial by Newspaper' 33(1) *Fordham Law Review* (1954-1965] 61, 70

<sup>44</sup> Brad J. Bushman and Craig A. Anderson, 'Media Violence and the American Public: *Scientific Facts versus Media Misinformation*' *Iowa State University Law review* [2001] 477, 481.

<sup>45</sup> Rank Luther Mott, *American Journalism: A History* (3rd edn, 1962) 539; Hussain Mohmmad Fazlul Bari, '*Legal Aspects of Media Trial in Bangladesh*' 13 *Bangladesh Journal of Law* [2013] 1, 91.

<sup>46</sup> Geoffrey Robertson, Andrew G. L. *Media Law* (5<sup>th</sup>edn penguin, London 2008), p.23

<sup>47</sup> UDHR (n 21); Ian Brown lie, *Principles of Public International Law* (6th ed., Oxford ; New York, Oxford University Press 2008) 532

<sup>48</sup> Olivia Ball; *the Nonsense Guide to Human Rights* (Oxford: New Internationalist, (October 2006) 144.

<sup>49</sup>UDHR (n 21) art 19; ICCPR (n 8) art 19; ACHPR (n 20) Art 9; ACHR (n 20) Art 13; ECHR (n 20) Art 10; *Chaplin sky v New Hampshire*, 315 U.S. 567 (1942)

<sup>50</sup> *Inspector General of Police v All Nigeria Peoples Party and Others* [2007] AHRLR 179 NgCA 2007; *Regina v Secretary of State for Education* [2005] 2 WLR 590; *Lange v Australian Broadcasting Corp* [1997] 189 CLR 520; *Lange vs Atkinson* [2000] 1 NZLR 257 (PC); *AbdusSamad Azad v Bangladesh* [1992] 44 DLR 354

<sup>51</sup>*R v Secretary of State for the Home Department, ex p Simms* [1999] 3 W.L.R 328, 337

<sup>52</sup> Peter A. Joy and Kevin C. Mc Muniqal, '*Trial by Media: Arguing Cases in the Court of Public Opinion*' 19 *American Journal of Criminal Justice* (2004) 47.

“everyone has the right to hold opinions without interference”;<sup>53</sup> that all citizens have the right to freedom of expression without any interference.

This right shall include “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing in or print, in the form of art, or through any media of [her]/his choice”<sup>54</sup> states freedom of the press and other mass media, and freedom of artistic creativity is guaranteed.<sup>55</sup> However, no right is absolute. Article 29 (6) of the Ethiopian Constitution imposes some reasonable restrictions on freedom of speech and expression visa-a-visa freedom of the press.

With this expanded job and significance joined to the media, the requirement for its responsibility and demonstrable skill in reportage can’t be accentuated enough. In common society, no right to freedom is supreme, limitless, or unfit in all conditions. However, the opportunity of the media, similar to some other opportunity perceived under the constitution must be worked out inside sensible limits. With regard to prejudicial publicity, In *Anukul Chandra Pradhan v. Union of India*, the Indian Supreme Court observed that:

“No occasion should arise for an impression that the publicity attached to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial”<sup>56</sup>.

Trial by media, electronic press and public opinion sabotages the very essence of rule of law. It straightaway hinders the administration of justice.

#### **2.4. Administration of Justice and the Media**

The term justice here does not mean justice in the abstract sense as a moral virtue of ideal but it means justice according to law, or in other words, enforcement of rights as they are defined by law.<sup>57</sup> Administration of justice is one of the essential functions of the State. The law and order within the State is maintained through the administration of justice and the citizens are made to realize the existence and the importance of the State. The judiciary through protection and

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<sup>53</sup>FDRE Constitution (n 3), Art. 29 (1)

<sup>54</sup>Ibid, Art. 29 (2)

<sup>55</sup>Ibid, Art. 29 (3)

<sup>56</sup>*Anukul Chandra Pradhan v. Union of India* 1996(6) SCC 354

<sup>57</sup>Nilanchala Sethy, “Role of the Media in Reporting of Court Proceedings and Its Impact on the Administration of Justice”, 5 International Research Journal of Management Sociology & Humanity (2014) 236

enforcement of the rights of the individuals and by punishing wrong-doers plays an important role in the administration of justice.<sup>58</sup>

Together with an independent judiciary the existence of a free press is essential in a constitutional democracy. The press and media have to mainly supply information to the readers of current and contemporaneous events. However, it must observe proper ethical standards in presenting unbiased and factually objective news as also balanced and mature comments. But, while doing so the press has to be fearless and courageous particularly in matters of national policies and such executive and other actions as involve public interest.<sup>59</sup>

The judiciary and the media share a common bond and play a complimentary role to each other. Man is the centre of their universe. While the media explores, discovers, and reveals the achievements and follies of man, the judiciary deals with the legal problems created by him. Both the judiciary and the media are engaged in the same task: to discover the truth, to uphold the democratic values and to deal with social, political and economic problems.<sup>60</sup>

However, at times, these two pillars of democracy are at loggerheads. In recent years, with the advent of cable television, local radio networks and the internet the reach and the enhancement of the impact of the mass media, the latter's role in reporting of court proceedings is a subject of every day discussion in the circles of constitutional lawyers, judges and academics. With the advent of the television and cable-channels, the amount of publicity which any crime or suspect or accused gets in the media has reached alarming proportions.<sup>61</sup>

As a result of this, innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved. The restraint in the media appears to be very little, so far as the administration of criminal justice is concerned.<sup>62</sup>

## **2.5. Effects of media trial on the administration of justice**

There is no doubt that freedom of expression is one of the hall-marks of a democratic society, and has been recognized as such for centuries. However, freedom of speech cannot be absolute.<sup>63</sup>

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<sup>58</sup> *ibid*

<sup>59</sup> *Ibid*, 237

<sup>60</sup> *Ibid*

<sup>61</sup> *ibid*

<sup>62</sup> *ibid*

<sup>63</sup> *Theophanous v. Herald Weekly Times Ltd* [1994] 182 CLR 104; *Lange v. Australian Broadcasting Corpn* [1997] 189 CLR 520

In legal, political and philosophical contexts, it is always regarded as liable to be overridden by important countervailing interests. One such countervailing interest is due process of law.

Freedom of speech ought not to take precedence over the proper administration of justice, particularly in criminal trials where an individual's liberty and/or reputation are at stake, and where the public have an interest in securing the conviction of persons guilty of serious crime. Indeed, the belief that the public interest in a fair trial will always outweigh the public interest in freedom of expression generally goes unchallenged.<sup>64</sup>

Media is often criticized, that it affects the administration of criminal justice system to a large extent and prejudices the psyche of our learned judges. It is common knowledge that high-profile cases attract the attention of the most common people. This is probably because news hungry people are keener to know something exciting.<sup>65</sup> It appears; high-profile cases are akin to “looking-glass world” where witnesses routinely sell their stories to the press, every scrap of evidence, admissible or not is leaked to the media which try to feed the insatiable public appetite for sensational criminal trial. There has been no legal system where the media is given the power to try a case.

Thus, one can say that the concept of media trial encroaches upon the fundamental rights of the accused, victims, judges, defense lawyers, and other parties concerned with the case.<sup>66</sup>

### **2.5.1. Media trial & rights of the accused**

If media exercises an unrestricted or rather unregulated freedom in publishing information about a criminal case and prejudices the mind of the public and those who are to adjudicate on the guilt of the accused and if it projects a suspect or an accused as if he has already been adjudged guilty well before the trial in court, there can be serious prejudice to the accused. In fact, even if ultimately the person is acquitted after the due process in courts, such an acquittal may not help the accused to rebuild his lost image in society.<sup>67</sup>

The principle of criminal law and criminal jurisprudence are based on the premise that the guilt of any person charged in a court of law has to be proved beyond reasonable doubt and that the accused

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<sup>64</sup> Ibid

<sup>65</sup> Shubham S, Anubhav Kumar, Media and Trial: Administration of Criminal Justice System in India, THE NUSRL JOURNAL OF LAW AND POLICY ISSN 2349-9982, Vol. V, [www.nusrlranchi.in/journal](http://www.nusrlranchi.in/journal) accessed on 20 may 2023

<sup>66</sup> Ibid

<sup>67</sup> Indian Law Commission (n 1) 20

is presumed to be innocent unless the contrary is proved in public, in a court of law, observing all the legal safeguards to an accused. Not only that, the accused has a basic right to silence.

That right stems from the constitutional right of the accused common to several constitutions that the accused cannot be compelled to incriminate against them. That is also the reason why confessions to the police are inadmissible in a court of law.<sup>68</sup>

### **2.5.2. Media Trial and Contempt of Court**

It is well understood by now that the right to freedom of speech & expression guaranteed by the modern principle of law is not absolute, and restrictions could be imposed on it on various grounds. In some countries includes UK and India, restriction is imposed on the right to freedom of speech and expression for contempt of court. For example the Indian Contempt of Courts Act, 1971 provides, if a publication interferes or tends to interfere with the administration of justice, it may result in criminal contempt.

Section 2 of the Indian Contempt of court 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.<sup>69</sup>

A bare reading of this section explains that this provision does not intend to override the fundamental right to freedom of speech & expression, but it tends to protect the administration of justice from being injured. In *A.K. Gopalan vs. Noordeen*<sup>70</sup> the Indian Supreme Court held that; a publication made after the 'arrest' of a person could be contempt if it was prejudicial to the suspect or accused. Through this case, the Supreme Court balanced the rights of the accused and the rights of the media for publication.

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<sup>68</sup> Ibid, 11

<sup>69</sup> Indian Contempt of Courts Act, 1971, section 2.

<sup>70</sup> Indian Supreme Court *A.K. Gopalan vs. Noordeen* Delhi High Court (2009) 8 SCC 106

### **2.5.3. Media Trial & public opinion**

The impact of the media upon the community's perception of the justice system is one which requires deep consideration. As noted by Martin CJ in an eminent speech:

“The difficulty is that people will take the cases about which they read or hear as representative of the justice system as a whole when, in fact, they are only representative of cases which have this character of newsworthiness”.<sup>71</sup>

The choice of media outlets of which cases to report can greatly shape expectations of the public, with only a small number of judgments reported upon. As such:

“They might read or hear about, say, 50 cases each year in which it might be suggested that a sentence imposed upon an offender was lenient. They will not hear or read of the 90,000-odd cases in which there is no such suggestion. But they will take the 50 cases of which they know to be representative of the justice system as a whole, when in fact they are anything but”.<sup>72</sup>

Trial by media can also polarize public opinion against the functioning of the judicial system by terming it as flawed or biased towards the accused. Most importantly, the appreciation of the evidence by the public and the judiciary may differ. While the people are convinced of the guilt of the accused, the court, after meticulous examination of the evidence may acquit him. Such differences in perception weaken the faith of the public in the criminal justice system. This shows how media trials can have a massive impact on the mindset of the people and can break their trust in the judiciary.

### **2.5.4. Media trial & potential effect on judges**

Another 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 view is that Jurors and Judges are not liable to be influenced by media publications, while the Anglo-Saxon view holds that Judges may still be subconsciously (though not consciously) influenced, which makes the people think that such media publications influence the judges.<sup>73</sup>

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<sup>71</sup>The Hon Wayne Martin, Chief Justice of Western Australia, „Improving Access to Justice: The Role of The Media“ (Speech delivered at Curtin University, Western Australia, 15th October 2009).

<sup>72</sup> Ibid

<sup>73</sup> Indian Law Commission (n 1) 46

One of the most eminent jurists of the 20th Century, Lord Denning, clearly specified in the Court of Appeal that the media publicity will not guide judges, but the House of Lords did not accept this view and Justice Frankfurter stated “No Judge 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 and however, Judges are also human, and we know better than did our forbear 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.”<sup>74</sup>

According to Justice Frankfurter, the judiciary could not function properly if the press continues to disturb the judge in his duty and capacity to act solely based on what is before the Court. The judiciary will not be independent unless Courts of Justice are enabled to administer law by the absence of pressure from without or the presence of disfavor.<sup>75</sup>The Indian Supreme Court has also accepted the Anglo-Saxon jurisprudence after examining some English cases.

In the *Reliance Petrochemicals case vs. Proprietors of Indian Express Newspaper*<sup>76</sup> they provides that; Judges may still be subconsciously (though not consciously) influenced, which makes the people think that such media publications influence the judges. The Canadian Law Commission also took the view that, while Judges may generally be immune to influence, but the possibility of such influence could not be ruled out altogether.<sup>77</sup>

## **2.6. Conclusion**

The legal implication of media trial is the unbalanced claim of freedom of the press or expression. While media plays a crucial role in a democratic society, media trials often misuse their power to influence and freedom of speech and expression. So, the media cannot be allowed to go beyond its domain under the garb of freedom of speech and expression to the extent of prejudicing the trial.

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<sup>74</sup> *John D. Pennekamp v State of Florida* (1946) 328 US 331

<sup>75</sup> *Ibid*

<sup>76</sup> *Reliance Petrochemicals Limited vs. Proprietors of Indian Express Newspaper Bombay Pvt. Ltd* (1989) AIR 190

<sup>77</sup> *K. Anbazhagan v. Superintendent of Police* AIR (2004) SC 524

## CHAPTER THREE

### **3. FREEDOM OF EXPRESSION UNDER THE FDRE CONSTITUTION: PREJUDICIAL MEDIA REPORTING AND THE LEGAL FRAMEWORK TO REGULATE ITS IMPACT ON THE ADMINISTRATION OF CRIMINAL JUSTICE**

#### **3.1.Introduction**

The previous chapter covered the meaning of the key phrase, the historical and theoretical background of the idea of a media trial, its legal ramifications, and the impact of media trials on the administration of justice. Hence the FDRE Constitution is the ultimate law of the land and its provisions are the source of all things good, bad, and ugly, the researcher addresses fostering harmony in this chapter when the right to freedom of expression and the right to a fair trial compete. Furthermore covered are articles and reports that are likely to be picked up by the media. The legislative frameworks and how well they mitigate the effects of media trials on the administration of the criminal justice system and the accused person's right to a fair trial are discussed at the end of this chapter.

#### **3.2.Balancing Freedom of Expression and Press Freedom with the Right to a Fair Trial: An Analysis of the FDRE Constitution and Conflict Resolution**

Every time, when we talk about trial by media, we need to realize that often the right to freedom of expression and freedom of press<sup>78</sup> are in conflict with the right to a fair trial of an accused.<sup>79</sup> Here, the freedom of press to broadcast comprises the right of access to the information and right to know of the general people.<sup>80</sup> On the other hand, its intensive trial by media, by misrepresentation of the occurrence may prejudice the impartiality of the courts and undermines fair trial right of the accused.

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<sup>78</sup> The Constitution of the United States, Amendment I

<sup>79</sup> The Constitution of the United States, Amendment VI; Carolyn Jaffe, *The Press and the Oppressed-a Study of Prejudicial News Reporting in Criminal Cases*, 56 *Journal of Criminal law and Criminology & Police Science* (1965) 160

<sup>80</sup> Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85, November 13, 1985; William M. Ware and Gerard D. DiMarco, 'Journalistic Media and Fair Trial' 18 *Cleveland State Law Review* [1969] 440, 441.

At this instant, under the purview of the aforesaid rights, we observe two distinct institutions i.e. the press and Courts of law, which are mutually supporting but occasionally adversarial.<sup>81</sup> On one hand, the Constitution underscores the indispensable role of the media in a democratic society by serving as a channel for the dissemination of different ideas and viewpoints.<sup>82</sup> As such, it guarantees freedom of the press from interference and censorship. On the other hand, the Constitution also notes the dangers of an absolute right to freedom of expression.

Hence, the constitution states that legal limitation could be imposed on the freedom of the press to protect, the well-being of the youth, public morals, propagation of war, and statements capable of damaging human dignity or reputation.<sup>83</sup> Here, it should be noted that protecting the administration of justice or ensuring the fair trial rights of the accused is not stated as one of the legitimate grounds for restricting the right to freedom of expression under Article 29(6) of our FDRE Constitution.

However, in some countries, including Bangladesh, protecting the administration of justice is stated as one of the legitimate grounds for restricting the right to freedom of expression and press, since contemptuous publications are being restricted from exercising these rights.<sup>84</sup> And also, the ICCPR, besides listing national security, public order, public health, or morals, also incorporates the need to protect the other person's rights as a justification for restraining freedom of expression.<sup>85</sup>

The phrase 'other person's right' would include the right to a fair trial. Thus, promoting a fair trial is one of the legitimate grounds for limiting freedom of expression. Notably, the right to a fair trial incorporates a number of guarantees, ranging from the right to be informed of the charge one is accused of up to the right to appeal against the final judgment of a court.<sup>86</sup>

Trial by media in criminal cases will have the effect of undermining the fair trial rights of the accused, intended to safeguard the individual from arbitrary and unlawful deprivation of, his or her other fundamental rights and freedoms.<sup>87</sup> The rights to a fair trial include: the right to an independent and impartial tribunal; the defendants' right to a presumption of innocence; and the

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<sup>81</sup> FDRE Constitution, ( n3), Art.19, 20 and 29

<sup>82</sup> Ibid, Art. 29(4)

<sup>83</sup> Ibid, Art. 29(6)

<sup>84</sup> The Constitution of Bangladesh, 1972, Art, 39(2)

<sup>85</sup> ICCPR, ( n 8), Art.19(3),a

<sup>86</sup> FDRE Constitution, (n3), Art. 20.

<sup>87</sup> LAWYERS COMMITTEE FOR HUMAN RIGHTS, WHAT IS A FAIR TRIAL?, A BASIC GUIDE TO LEGAL STANDARDS AND PRACTICE (2000)1

prohibition on self-incrimination, which are particularly endangered by trial by media or prejudicial reporting or publications.<sup>88</sup>

Regarding the right to be tried by an independent and impartial court, it is guaranteed under the FDRE constitution, the ICCPR, and the Principles and Guidelines on Fair Trial and Legal Assistance in Africa adopted by the African Commission on Human and People's Right.<sup>89</sup> The ICCPR stresses that the media could be excluded from reporting the whole or part of the proceeding if the court is of the opinion that such publicity obstructs the administration of justice.<sup>90</sup>

The FDRE Constitution, under Article 78, provides for the establishment of an independent judiciary. The Constitution also elaborates the meaning of independent judiciary as freedom from "any interference or influence of any government body, government, officials, or from any other source".<sup>91</sup> However, the term "any other source" resembles vagueness and is not clear either; it indicates that the right to be tried by an independent and impartial court, which is one bundle of the fair trial right of the accused, would be more weighed against the right to freedom of expression, which may create a trial by media or not.

If the term "any other source", provided under Article 78 of the FDRE Constitution includes interference from the media, it is well that the Constitution affords the right to be tried by an independent and impartial court, against the right to freedom of expression, which may create a trial by media and impose difficulties on the judiciary to give a verdict impartially. Beginning with the Roman emperors, Justice White traced the presumption of innocence through English history.<sup>92</sup> He cited the great English jurist William Blackstone, who maintained that: "the law holds that it is better that ten guilty persons escape than that one innocent suffer."<sup>93</sup> The ICCPR guarantees the right to be presumed innocent.<sup>94</sup> Under Article 20, the FDRE Constitution also states that 'accused persons have the right to be presumed innocent until proved guilty'.<sup>95</sup> The Ethiopian media council code of ethics also states that media and journalists should respect the right to be presumed innocent until proven guilty by a court, and they should refrain from using and labeling the family or

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<sup>88</sup> Ibid, 13,15 &19

<sup>89</sup>FDRE Constitution (n 3), ICCPR (n8) ACHPR (n 20)

<sup>90</sup>ICCPR, (n 8), Art. 14(1)

<sup>91</sup>FDRE Constitution, (n1), Art. 79(2)

<sup>92</sup> *Coffin v. United States*, 156 U.S. (1895) 454

<sup>93</sup> Ibid, 456

<sup>94</sup>ICCPR, (n 8), Art. 14(2)

<sup>95</sup>FDRE Constitution, (n 3), Art. 20(3)

relatives of the offender as long as they are innocent and not mention the family or relatives of the offender as long as they are innocent.

And also, the protection afforded to the accused of not incriminating or testifying against themselves,<sup>96</sup> and ‘not to be compelled to testify against themselves,’<sup>97</sup> may be affected by adverse reports or publications of media trials, which occur on the claim of the right to freedom of expression and press. The fear here is that confessions transmitted by the media might be coerced, and result from illegal interrogation.<sup>98</sup> As decided by New Zealand courts of Appeal, freedom of expression and liberty, have to be balanced in such a way that there is no prejudice to the suspect or accused.

So far as possible, both values should be accommodated. But, in some cases, publications for which free expression rights are claimed may affect the right to a fair trial. It is, however, commented that there appears to be slight shift and in the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all other things being equal, the latter should prevail.<sup>99</sup> The present rule is that where on the conventional analysis, freedom of expression and fair trial both cannot be fully assured, it is appropriate in our free and democratic society to temporarily curtail freedom of media express so as to guarantee a fair trial.<sup>100</sup>

The New South Wales Law Commission also stated “When a conflict arises between fair trial and freedom of speech, the former prevailed because the compromise of fair trial for a particular accused will cause them permanent harm ...Whereas the inhibition of media freedom ends with the conclusion of legal proceedings.<sup>101</sup> The Indian Supreme Court judgment In A.K. Gopalan v. Noordeen is quite important with regard to determine which should weighed more, in case the right to freedom of expression and press are, in competition with the right to fair trial. In that case the court decides:

if a prejudicial publication is made regarding a person who has been arrested by the police, then the right to freedom of speech and expression under Article 19(1) (a) (Indian Constitution) must give way to the right of the person to a fair trial to be conducted without any prejudice and any

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<sup>96</sup>Ibid, Art. 19(2)

<sup>97</sup> Ibid, Art. 20(3)

<sup>98</sup>China’s latest tactic: Confessions on state TV, Carl Minzer, a professor at Fordham Law School in New York (2013), {Available at: <https://www.law.fordham.edu/faculty/21264.html> (Accessed 28 March 2023)}

<sup>99</sup>Indian Law Commission (n 1) 77

<sup>100</sup>Ibid, 78

<sup>101</sup>Ibid, 83

prejudicial publication in the press after arrest may cause substantial prejudice in the criminal proceedings, irrespective of whether the person is released later.<sup>102</sup>

Accordingly, the right to fair trial should be weighed more in scale of justice. About temporary deviation in a state of emergency, like the international instruments, fair trial rights are not listed, under the list of the non-derogable rights within the FDRE Constitution. The United Nation Commission for Human Right (Hereinafter, UNCHR) 'General Comment No. 29: Article 4: which discuss derogations during a state of emergency provides that; deviating from the fundamental principles of fair trial rights, at all times is prohibited.<sup>103</sup>

This also shows fair trial right is weighed more when, freedom of expression and right to press are, in competition of right to fair trials.

### **3.3. Identifying Report or Publications Recognized as prejudicial under Ethiopian Criminal Justice System: a Comparative Study with Standard Developed in United State (US) and India**

Even though the media has the right to disseminate or publish information for the public, certain broadcasts or publications may amount to adverse publicity for media trials and violate the fair trial rights of the accused. However, it is not simple to identify these types of reports or publications, which constitute prejudicial publicity, under the Ethiopian criminal justice system. Accordingly, the researcher chooses to discuss the experiences of the US. From what is provided by the ABA Standards for Criminal Justice, Fair Trial, and Free Press,<sup>104</sup> and taking the historical practice of considering and adapting Indian law, the researcher would like to discuss the particular interest in the report of the 200<sup>th</sup> ILC on Media Trial, Free Speech, and Fair Trial, on the amendment of the Criminal Procedure Code of 1973.<sup>105</sup>

In US and India, the publications or reports recognized as adverse publicity of trial by media are provided as follows: publications concerning the character of the accused or previous convictions, disclosures of confession, publications or reports that comment upon the merit of the case, the display of photographs when the issue is the identity of the suspect or accused, and the publication

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<sup>102</sup> Ibid, 52

<sup>103</sup> The United Nation Commission for Human Right (Hereinafter, UNCHR) "General Comment No. 29: Article 4: Derogations During A State Of Emergency" in Note By The Secretariat, A Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (1994) UN Doc HRI/GEN/1/Rev8, para 11.'

<sup>104</sup> American Bar Association (n24)

<sup>105</sup> Indian Law Commission (n 1)

of interviews with witnesses are the primary ones.<sup>106</sup> So, let's see these types of publications in detail.

### **3.3.1. Publication of Confession**

Despite the possible inadmissibility of the alleged confession of the accused given to the police in a criminal court of law, disclosures of such information by the media prior to trial are regarded as one of the most detrimental information threatening the fair trial rights of the defendant. The rationale for this is that the confession is the most incriminating kind of information that can be adduced against the accused.<sup>107</sup>

Furthermore, the confession is equally untrustworthy as evidence because there is no way to confirm if it was gained through coercion or other improper means. Furthermore, the judge's ability to render an impartial decision will be hampered by the publications' prolonged retention in their memory.<sup>108</sup>

While the police are the main source of confessions, the accused may also directly confess to the media through recorded or televised interviews conducted while they are in custody, under the police's supervision or agreement.<sup>109</sup> Therefore, the accused person's right to a fair trial is gravely violated anytime the media publishes their confession.

### **3.3.2. Publications concerning the character of accused or previous conclusions**

Sometimes, the media even goes so far as to assume that the accused is guilty by appropriating the right domain or role of the legal system. Media reports of this nature often incite animosity toward the accused.<sup>110</sup> The media mostly accomplish this by portraying the accused as a criminal, terrorist, or corrupt person, which goes beyond simply presenting the public with the facts. Additionally, because it questions the impartiality of the court's ruling on the issue, it causes more harm than good to the general population.

In a similar vein, the media also makes public details about the accused past convictions. The media disseminates these claims because they think it is more likely that an accused person committed.<sup>111</sup> However, at this point, it is irrelevant to determine whether the accused actually committed the

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<sup>106</sup>ABA,(n 24) 17 & Ibid (n 1)195-220

<sup>107</sup>American Bar Association (n 24) 17

<sup>108</sup>Ibid

<sup>109</sup>Ibid, 30

<sup>110</sup>Indian Law Commission (n 1) 195-199

<sup>111</sup>*Gisborne Herald Co. Ltd. v Solicitor General* 1995(3) NLLR 563 (569) (CA)

alleged crime. Their application is essentially limited to sentencing purposes. The ABA correctly pointed out that in this case, what matters is not the number of crimes the defendant has committed, but rather whether or not they have committed this particular crime.<sup>112</sup>

Indeed, the dissemination of information about the case's merits or the accused prior convictions is inherently biased and seriously jeopardizes the effort to have a fair trial. Because of this, the media should not violate the accused right to a fair trial by disclosing such information to the public.

### **3.3.3. Pretrial reports of evidence and interview of witnesses**

The presentation of evidence or spoken remarks made against the accused falls under the other category of gravely harmful statements made by the media and is frequently reason for alarm. Typically, this kind of information is obtained mostly when the accused is being searched and seized. The fact that there is no way to verify whether or not the legal requirements for conducting searches and seizures are being followed makes the evidence made public by the media much more dangerous.<sup>113</sup> Nonetheless, judges' objectivity may be adversely impacted by their exposure to such inadmissible material. The interviews with witnesses who testify against the accused that the media has released are concerning as well, for a variety of reasons. First off, such a media release just presents one side of the story, which is extremely detrimental to the accused because they are unable to defend themselves or cross-examine the witness.<sup>114</sup>

Second, since there is no way for the public to verify that the witness gave his assent, it's possible that he gave the media this testimony against his will.<sup>115</sup> Third, since the witness is always under pressure to maintain consistency in his comments, there is virtually little likelihood that testimony provided to the media in a court of law can be corrected.<sup>116</sup> Because of all these factors, the release of the witness interview compromises the accused right to a fair trial and ought to be restricted.

### **3.3.4. Displaying Photographs**

The accused right to a fair trial is also thought to be seriously threatened by the exhibition of their photos. Prejudice is likely to occur, especially if there is a question about the accused identification. This is due to the possibility that "witnesses who have not seen him may quite unconsciously be led

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<sup>112</sup> American Bar Association, (n 24) 31

<sup>113</sup> Ibid, 35

<sup>114</sup> Indian Law Commission 9n 1) 215

<sup>115</sup> Ibid

<sup>116</sup> Ibid

into the belief that the accused as photographed is the person they saw<sup>117</sup> and identify him as the suspect" when the accused photo is displayed across the media.

As a result, the witness recognizes the person in the photo rather than the person they had seen committing the crime. Additionally, the media's exhibition of the accused photos may encourage the public to assume the worst about the accused and feel hostile toward them, which could create an environment unsuitable for holding a fair trial for the defendant.<sup>118</sup> Publicizing images of the accused prior to their arrest is seen as biased, because; following the accused arrest, the witness identifying the accused may actually be identifying the person seen in the photograph, not the suspect and it is amount to phenomenon known as the displacement effect.<sup>119</sup>

### **3.3.5. Creating an atmosphere of prejudice**

This refers to the circumstance in which the accused is accused of a more serious crime, yet the matter at hand is one of a lesser offense, and the media refers to this as such. A man was charged with unauthorized possession of a firearm when it was found while the king was riding in a procession in London, as was the case, for instance, as stated in the case of *R v. Hutchison*,<sup>120</sup> the arrest was captured on camera under the headline "attempt on the king's life."

### **3.4. The concept of prejudicial reporting of trial by media under the Ethiopian criminal justice system**

Under Ethiopian criminal justice system, the report or publication recognized or amount to trial by media were not identified. However, in order to grasp little know how on this issue, the researcher selected, the Ethiopian Broadcasting Corporation (Hereinafter, EBC) editorial policy of 2008<sup>121</sup> and Ethiopian Broadcasting Authority (Hereinafter, EBA) community radio model constitution and structure editorial policy of 2006.<sup>122</sup>

Noteworthy here is the EBA is currently branded as Ethiopian Media Authority (Hereinafter, EMA) under new Media Proclamation. Though this model is not a law to bind the media it has very essential and far looking crime-related reporting provisions. That is why the researcher selects to

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<sup>117</sup> Ibid, at 203-204

<sup>118</sup> Ibid

<sup>119</sup> Indian Law Commission (n1) 204

<sup>120</sup> *R v. Hutchison ex p McMahon*: 1936 (2) All ER 1514

<sup>121</sup> Ethiopian Broadcasting Corporation Editorial Policy of 2008

<sup>122</sup> Ethiopian Broadcasting Authority, Community Radio Model Constitution and Structure, Editorial Policy, Human Resource Management Directive, and Finance and Property Management Directive, (2006).

discuss what is provided under this editorial policy among other laws, even if they are not binding force.

### **3.4.1. Ethiopian Broadcasting Corporation Editorial Policy**

EBC is a public broadcasting service that was founded to provide entertainment and educational events, as well as news and current affairs from both domestic and international sources. The goal is to raise public awareness of these issues and motivate people to take an active role in the nation's development.<sup>123</sup> The company has an editorial policy that acts as a thorough operational guideline and aids journalists in carrying out their duties in an efficient manner, enabling them to meet the quality and standard of service requirements.<sup>124</sup>

Most significantly, the company takes a strong stance based on the accuracy principle, refusing to utilize material that is implausible or lacks credibility and refraining from purposefully using or disseminating information that is misleading or distorts the truth.<sup>125</sup> The company must be fair, unbiased, and balanced in its information collection and reporting, and it must exercise all due prudence in selecting appropriate sources and using words, images, and sounds.<sup>126</sup>

The editorial policy has established standards for court reporting as a specialty field of reporting in addition to establishing the guidelines that all programs must adhere to.<sup>127</sup> The most important rule for journalists to abide by when covering court cases is respecting the court's independence.<sup>128</sup> Trial coverage is done with caution so as not to sway the outcome of ongoing cases or provide information that could persuade the court in a biased manner.<sup>129</sup>

The policy has viewed the moment the defendant is taken into custody or given an appearance order as the moment the court has issued a warrant as the moment the matter is in the court's hands and the rule is applicable.<sup>130</sup> The policy has allowed commenting on the outcome of the case and debating on the issue after the court has reached a verdict.<sup>131</sup>

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<sup>123</sup> Ethiopian Broadcasting Corporation establishment Proclamation, 2006.Art 3; Art 5, Proc, No 858,Neg.Gaz.Year20,no.79

<sup>124</sup>EBC, Editorial Policy (n21) 133

<sup>125</sup> Ibid,141

<sup>126</sup> Ibid,142

<sup>127</sup> Ibid,162

<sup>128</sup> Ibid

<sup>129</sup> Ibid

<sup>130</sup> Ibid

<sup>131</sup> Ibid

In other words, the policy prohibited, similar to the ABA and ILC, the release of information on the case's merits or the accused prior conviction, as this material is inherently biased and seriously jeopardizes the right to a fair trial.

The policy encourages reporting on crime-related concerns; it is important to take into account the fear they cause as well as the effect they have on the viewer, listener, and audience.<sup>132</sup> Although editorial policies are thought to be the foundation of all media, there isn't a single national editorial policy that governs all media players in the nation. Broadcasting service providers implement their editorial policies in compliance with current legislation in this regard.

### **3.4.2. Ethiopian Broadcasting Authority, Community Radio Model Constitution and Structure, Editorial Policy**

As we understand from article 89 of new media proclamation, the rights and obligations of the EBA, established under the Broadcasting Service Proclamation No. 533/2007 are transferred to the EMA.<sup>133</sup> EBA, which is currently branded to EMA, has made a model editorial policy for community radio broadcast service to serves as a guideline to help them establish their policy.<sup>134</sup> Though this model is not a law to bind the media it has very essential and far looking crime-related reporting provisions. The provisions manifest the authority understanding of the threats of the media in criminal reporting.

The model policy stresses that in reporting criminal cases journalists have to strictly understand the right to presumption of innocence.<sup>135</sup> The languages used in reporting such cases have to be cautiously chosen and have to avoid dramatic narrations. Accordingly, like ABA and ILC, the policy is restricting the media from reporting a prior criminal records or assuming the guiltiness of the arrested or accused persons, when it avoids dramatic narrations. The interview of witnesses has to be considerate of impact on the fairness of the trial.<sup>136</sup>

Accordingly, Like ABA and ILC this policy prohibits the dissemination of interviews of witnesses, due to its impact on the fairness of the trial. The policy has recognized the impact of trial publicity on the impact of the proceeding, thus defined a case in a trial means a case in which reports cannot be made on.<sup>137</sup> As a unique feature of this model policy, it strictly prohibits reporting of the case

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<sup>132</sup>Ibid,163

<sup>133</sup> Media proclamation No. 1238 of 2020, Art 89 (1)

<sup>134</sup> EBA editorial policy (n122)

<sup>135</sup> Ibid, 30

<sup>136</sup> Ibid, 31

<sup>137</sup> Ibid

held in court.<sup>138</sup> Accordingly, there is a concern given for the issue of prejudicial publicity or reporting and its adverse effects on the administration of criminal justice and the right of the accused under the above discussed policy.

Even if, the model policy is not a law that binds the media, it serves as a guideline and it gives a clue for the issue of trial by media. What is left was that, there are no specific laws that govern the issue in Ethiopia.

### **3.5.Evaluating Ethiopia’s Legal Mechanisms in the Criminal Justice System: Effectiveness in Mitigating Trial by Media in Comparison with Standards Developed by Other Countries**

Effective protection of the administration of justice and the rights of the accused from the dangers of trial by media posed by adverse publicity demands to have a legal regime to regulate this matter from the very beginning or to take measures if it is occurred.<sup>139</sup> Before discussing the legal regimes for combating prejudicial media publicity of criminal cases in Ethiopia, it is ideal to see the experience of other countries in the area to assess and analyze our laws, which govern the issue. Accordingly, the researcher would like to discuss the approaches followed in the European Union directive, US, and UK.

#### **3.5.1. The standard of European Union directive: Restriction on extra-judicial statements**

Most of the time, the media source of information to publicize trials can emanate from those involved in the criminal proceedings.<sup>140</sup> Such information can also be captured from public statements made by public officials. Thus, restrictions on the information actors in criminal proceedings provide to the media and the public are one approach that countries members of the European Union use to regulate prejudicial media reports or publications. In this regard, the European Union directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings is promulgated to enhance the fair trial rights of the accused.<sup>141</sup> The directive states that the presumption of innocence is violated by

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<sup>138</sup> Ibid

<sup>139</sup> Joanne Brand wood, ' You Say "Fair Trial" and I Say "Free Press": British and American Approach To Protecting Defendants' Rights in High Profile Trials, 75 The New York University Law Review '(2000) 1412-1414

<sup>140</sup> HM Courts and Tribunals Service, the News Media Association and the Society of Editors, “Jurisdictional Guidance to Support Media Access to Courts and Tribunals Criminal Courts Guide” (11 May2022) <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals> (accessed 5 March 2023).’

<sup>141</sup> European Parliament and European Union directive (n4)

public statements made by public officials or judicial rulings that express guilt before evidence of guilt is presented.<sup>142</sup>

The directive stresses that the manner and context in which information is disseminated to the media or the public should not create the impression that the person is guilty before proved guilty according to law.<sup>143</sup>

### **3.5.2. Standard developed in US**

In US, courts are equipped with a variety of procedural tools that may be used in order to combat pretrial publicity.<sup>144</sup> These techniques include gag orders, continuances (stay of proceeding), jury instructions and change of venue.<sup>145</sup> However, voir dire and jury instructions are not as such important under Ethiopian criminal justice system. Because, our criminal justice systems are not followed trial by jury, rather trial by judge and it is important to discuss gag orders, continuances and change of venue for comparisons.

#### ***3.5.2.1. Gag order***

When "there is a reasonable likelihood that prejudicial publicity may prevent a fair trial," gag orders may be granted.<sup>146</sup> Therefore, in cases where the exposure of a media trial jeopardizes a defendant's right to a fair trial, an appeals court may overturn a trial judge's decision to forgo the imposition of a gag order. Because of this, it appears that gag orders are seen as a useful tool for defending a defendant's right to a due process-compliant fair trial.

A gag order by itself won't keep the judge informed about pretrial publicity. This is due to the fact that requests for gag orders typically come after pre-trial publicity has started.<sup>147</sup> In order to stop trial participants—like the police and prosecution—from sharing information that could jeopardize the accused person's right to a fair trial, gag orders may be placed against them. Since law enforcement agencies are the primary source of most biased publications in the media, such directives are typically proven to be quite successful.<sup>148</sup>

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<sup>142</sup> Ibid, Para 19

<sup>143</sup> Ibid

<sup>144</sup> Early K. (n30)

<sup>145</sup> Ibid

<sup>146</sup> Ibid, 700

<sup>147</sup> Ibid

<sup>148</sup> Joanne A. Brandwood, (n 139).

### ***3.5.2.2. Continuance or stay of proceeding***

Courts employ continuances as a procedural tool in a number of situations, including ones in which there has been pretrial publicity.<sup>149</sup> Judges may adjourn trials until the publicity has subsided in an attempt to protect the rights of the accused. By definition cause a delay in the trial, and any delay can surely harm both sides. Continuances are not a perfect solution for pretrial publicity, as delays can be harmful to both parties. Furthermore, since the trial may reopen with renewed attention, continuances may not be very effective in mitigating bias.<sup>150</sup>

### ***3.5.2.3. Change of venue***

A change of venue is moving the defendant's case to a different court where there is less chance of the accused being exposed to potentially damaging information. A trial judge may move a trial to a district that has not had a lot of pretrial publicity if the trial is being held in an area that has.<sup>151</sup> The defendant may petition for a change of venue in a criminal case where there has been a lot of pretrial publicity. Should the motion be approved, the case will be moved to a different district where there hasn't been a lot of pre-trial publicity.<sup>152</sup>

The basic justification for the venue change is that the jury or judge will be better equipped to provide a fair decision since they have not been subjected to as much publicity by having the trial in a district where pretrial publicity is less prevalent. If the trial is moved to a location outside of the publicity radius and the publicity is localized, a venue shift is a fantastic solution.

### **3.5.3. Legal regime used in UK: Contempt of Court**

The United Kingdom's Contempt of Court Act 1981 establishes the guidelines for all criminal proceedings reporting in England and Wales.<sup>153</sup> According to the act, "in any such proceedings, the court may order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose, where it appears to be necessary; for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent." <sup>154</sup>

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<sup>149</sup>Early, Kate (n 30) 701

<sup>150</sup>Ibid

<sup>151</sup>Ibid, 702

<sup>152</sup>Ibid, 703

<sup>153</sup> United Kingdom Contempt of Court Act 1981 CHAPTER 49

<sup>154</sup> ibid

The U.K. Act of 1981 contains a provision that fixes "arrest" as the beginning of a pending criminal trial, and is based on the authoritative ruling in *Hall v. Associated Newspaper*<sup>155</sup> which states an individual who has been arrested is placed under the "care and protection of the Court" and must appear before the court within twenty-four hours.

The rationale behind fixing a "date of arrest" as the beginning of a pending criminal trial is that, should there be any negative publicity about the accused person's prior convictions, or confessions published after the arrest, the accused person's case will be prejudiced even during the bail proceedings, when decisions are made about whether to grant or refuse bail, what terms should be placed on it, and whether the accused should be placed under police or judicial custody.

Judges have the authority to impose prison terms of up to two years and limitless penalties for violating the Act through adverse and biased prejudicial publications.<sup>156</sup>

### **3.6. Evaluating Ethiopia's Legal Mechanisms and Effectiveness in Mitigating Trial by Media**

Finding and evaluating Ethiopian legal frameworks' capacity to control the effect of media trials on negative publicity or reporting is a primary goal of this study. As a result, the researcher addresses the topic from the perspectives of several laws in this section in order to determine whether or not those laws exist and whether or not they are sufficient to address the difficulties at hand.

Legal frameworks will allow law enforcement officials and the legal system to take the necessary action. Accordingly, the Media Proclamation No. 1238 of 202,<sup>157</sup> and FDRE Criminal Code,<sup>158</sup> is legal frameworks which could serve judicial organ, to safeguard the judicial proceedings and fair trial right of the accused against a threat of prejudicial media reports or publications.

#### **3.6.1. Media Proclamation**

The preamble makes it clear that the purpose of this new law is to provide a framework and set of laws that will guarantee the media operates responsibly by upholding conflicting rights and interests.<sup>159</sup> As a result, the proclamation's preamble, which reads, "The media operate responsibly

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<sup>155</sup> *Hall v. Associated Newspaper* 1978 SLT 241

<sup>156</sup> The Judicial College, (n 31), 11

<sup>157</sup> Media Proclamation, (n 133)

<sup>158</sup> THE CRIMINAL CODE OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, Proclamation, 414 of 2004

<sup>159</sup> Media proclamation, (n 133), preamble para 4

by respecting competing rights and interests”,<sup>160</sup> may refer to rights that are in conflict, such as the freedom of speech and the right to a fair trial.

That being said, the FDRE Constitution, like the rest, is the source of all issues and their resolution pertaining to the judicial system. Furthermore, it is unclear from this law how these rights are to be balanced or which should be given more weight in the event that they conflict. Given that the proclamation is the result of the constitution, the aforementioned issue is easily understood in light of the toxic tree theory.

Furthermore, the proclamation does not contain a specific clause that would assist a court in regulating negative, prejudicial media publicity, which could combine with negatively exercising the right to freedom of expression and the press. This is despite the fact that the media are required by law to operate responsibly by respecting competing rights and interests.

To a certain extent, under Article 68, the media may be fined no more than one hundred thousand (100,000) Ethiopian Birr for transmitting news or programs that infringe upon anyone's right to privacy and violate human dignity, subject to the demands of the public interest.<sup>161</sup> The requirement that "every news story shall be impartial, accurate, and balanced" follows naturally from this acknowledgment.<sup>162</sup>

When it comes to the legal framework that could regulate and mitigate, the influence of prejudicial media publicity on, justice proceedings and fair trial right of the accused person's; freedom of mass media and access to information proclamation No. 590/2008, which was repealed, is more suitable and comprehensive than the new media proclamation No. 1238/2021, which was issued later.

The protection provided to law enforcement and legal investigation processes under the revoked proclamation is significant. The proclamation stipulates that “a public relations officer may decline a request for information concerning an accused offender for whom the prosecution is preparing, has not yet begun, or is ongoing; the revelation or affirmation of the existence or nonexistence of the sought information would probably prejudice or impair the fairness or impartiality of the trial”.<sup>163</sup>

But the revoked proclamation doesn't specify or provide an example of the kind of material that could compromise the accused person's right to a fair trial. It would have been much easier for

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<sup>160</sup>Ibid

<sup>161</sup>Ibid, Art.68 (2) and Art, 75(1)

<sup>162</sup> Ibid, Art. 55/1/1

<sup>163</sup>Repealed Mass Media and Access to Information Proclamation 590 of 2008, Art, 21(2)

public relations officers to identify or comprehend the kinds of material that qualify as prejudiced information and to turn down requests for it, if the proclamation had included an example list of information that is inherently biased.

However, the restrictions under the aforementioned proclamation have similarities to the type of gag or injunction order frequently found in the United States, as well as the European Union regulation that prohibits law enforcement agencies from providing extrajudicial remarks that jeopardize an individual's right to a fair trial.

As a result, the media proclamation No. 590/2008 is revoked and rendered inapplicable. Additionally, the new media proclamation places public relations officers in a position of privilege, allowing them to divulge any information without fear of repercussions and without compromising the trial's impartiality or fairness.

Remarkably, the repealed mass media and access to information proclamation uses the general term "public relations officer," who is supposed to handle public relations for the public body, which may include police officers and prosecution institutions, rather than specifically mentioning trial participants, law enforcement bodies, or prosecutions when it grants such protections.

Therefore, in comparison to its replacement media proclamation No. 1238 of 2021, the repealed proclamation is the most effective and comprehensive in terms of minimizing the influence of prejudicial media publicity on judicial processes and accused right to fair trial.

### **3.6.2. FDRE Criminal Code**

It is common knowledge that the Ethiopian Constitution's protection of the right to freedom of speech and expression is not unqualified, and that it may be restricted for a number of reasons, including "contempt of court." In light of this, the FDRE Criminal Code has included a contempt of court charge, similar to the one found in the UK.

Consequently, under Article 449 it states that "anyone who, during a judicial inquiry, proceeding, or hearing, (a) in any way insults, holds up to ridicule, threatens, or disturbs the Court or a judge in the course of his duty; or (b) in any other manner disturbs the activities of the Court, is punishable with simple imprisonment not to exceed one year or a fine not to exceed three thousand Birr."<sup>164</sup> Article 449 sub clause (b) states that interfering with the Court's business in "any other manner" is equivalent to court contempt.

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<sup>164</sup>FDRE Criminal Code, (n 158), Art. 449

The court itself has the ultimate authority to determine whether a certain behavior disturbs the court. Because, the above provision does not provide an example list of acts or conducts that could cause disruptions. Thus, it appears that Article 449/1/b applies to situations in which actions are taken that may not be directed at the judge directly but nevertheless cause disruption to a procedure.

It is unclear from the provision's language, which reads, "In any other manner disturbs the activities of the Court," whether or not the goal is to control the negative effects of extrajudicial remarks or unfavorable publicity on criminal justice procedures. If an act is only done during a court investigation, hearing, or procedure, it is considered contempt. Beyond that, it is unclear what can be included in any other manner disturbs the activities of the Court and it is open to misuse.

The other issue is that our criminal statute does not specify the beginning point of an ongoing criminal prosecution. But based on the words found in Article 449(b), which specify that "during judicial investigation, hearing, or proceeding," the starting point of pending or active criminal proceeding is, seems only, after issuing of the charge-sheet when, publications would be considered criminal contempt.

For this reason, the statute of contempt, which is found in Article 449(1) of our FDRE Criminal Code, does not resemble a safeguard for court procedures against unfavorable publicity or extrajudicial statements that may be made before the trial stage or outside of the courtroom. The influence of adverse prejudicial publicity on the administration of criminal justice and the accused right to a fair trial is not given as much weight in Article 449 of our criminal code as it is in the UK contempt of court act.

If this is the case, there is not much of a check on the media because "pre-trial publications" are exempt from being held in criminal contempt of court. The question is, whether this norm should be left in place or if publications involving suspects or accused people need to be subject to regulation.

Consequently, the date of arrest does not serve as the beginning point of a pending criminal procedure under Article 449 of the FDRE Criminal Code; this is because the provision falls short of providing sufficient protection against unfavorable media coverage of the right to a fair trial. The FDRE criminal code, like the mass media proclamation that was repealed and the media proclamation that is currently in effect, did not seek to specify the kinds of publications or reports that could interfere with the proper function of the courts.

The Medias continence and the judge's ability to impose fines would have been aided by the clear designation of types of publications that are inherently biased, as permitted by the ABA and ILC.

Art. 449 stipulate that disrespect is punishable by a small fine of up to three thousand Birr or a simple jail sentence of no more than a year. Because of this, the crime of contempt is extremely little and unimportant in comparison to the millions of dollars that the media can profit from by disseminating any biased information they choose. As such, it is challenging to lessen the impact of media trials on the criminal justice system and the accused right to a fair trial because Ethiopian legal systems like the FDRE Criminal code and Media Proclamation No. 1238/2021 are problematic and unsatisfactory.

### **3.7.Conclusion**

After all of this discussion, it is clear that even though the media is regarded as the fourth pillar of democracy, it is still entitled to freedom of speech under Ethiopia's Constitution (Article 29). That being said, the media is not permitted to overstep its bounds in the name of free speech and expression to the point where it taints the legal process. The policies that the researcher discussed above take into account the unique requirements for reporting criminal court trials.

Nonetheless, the Ethiopian criminal justice system does not specify or provide examples of the kinds of publications or reports that could be considered bad press for media cases. Conversely, although our nation has many legal frameworks that might control the effects of media trials, those frameworks are insufficient and unsatisfactory in controlling the influence of media trials.

## **CHAPTER FOUR**

### **4. THE PRACTICE OF PREJUDICIAL MEDIA REPORTING vs. THE INFLUENCE ON CRIMINAL JUSTICE ADMINISTRATION AND FAIR TRIAL RIGHTS OF THE ACCUSED**

#### **4.1.Introduction**

In the previous chapter, the focus was on the exploration of the right to freedom of expression and press as stipulated in the FDRE Constitution. The discussion centered on how these rights could be harmonized in situations where they conflict with the fair trial rights of the accused.

This chapter delves into an analysis of press statements made by public officials and documentary film produced for a damning indictment before trial. Accordingly, their potential implications on the fair trial rights of the accused are addressed. It also examines the viewpoints of legal professionals concerning the influence of media trials on the administration of criminal justice and the preservation of the accused right to a fair trial.

#### **4.2.Evaluating the Impact of Law Enforcement Press Statements and Pre-Trial Documentary Films on the Fair Trial Rights of the Accused**

##### **4.2.1. The Impact of the Former Attorney General’s Press Statement on the Right to Presumption of Innocence in the Jawar et al Case**

In several high-profile cases, prejudicial media reporting has often violated the right to presumption of innocence and the right to defend oneself. As noted, two years ago in 2021, when public figures like Iskendir Nega, Jawar Muhamed, and Bekele Gerba were arrested and detained by government forces, there were media reports (press statement) that could have a potential to undermine their right to a fair trial, reputation, privacy, and public image. The media’s focus on these cases often overshadows, other important issues such as COVID-19, internal conflicts or tension, displacement and unemployment that should be covered.

On September 21, 2021 federal prosecutors charged Oromo Federalist Congress leaders Jawar, Bekele, and 22 Others with crimes including training a terrorist group in Egypt with the intention of toppling the government by force and attacking Amhara people and Orthodox Christian Church officials, as well as killing a police officer in the aftermath of the 29 June murders of Hachalu

Hundessa, an iconic Oromo singer and prominent voice in anti-government protests.<sup>165</sup> At a 24 September press conference Gedion Timothewos Hessebon had said:

“There were hundreds of people who have been directly affected by the violence these individuals have instigated and incited. He emphasized the need to differentiate between peaceful lawful political mobilization and the kind of rhetoric, the kind of ultranationalist militant violent political activism that results in death and injury of citizens”.<sup>166</sup>

However, such disclosures can be perilous as they prematurely presume the guilt of suspects before a court of law has had the chance to conduct a trial. The content of these press statements often overlooks the rights of the suspects and due process of law. Politicians and their lawyers complain that the government’s top legal officer undermined their right to a fair trial. Jawar Mohammed and Bekele Gerba, two on trial opposition politicians, said the intervention of attorney general assumed their guilt.<sup>167</sup>

Both Jawar and Bekele condemned Attorney General Comments, while their attorneys submitted a written complaint saying he violated fair trials rights under Article 14(1) of the International Covenant on Civil and Political Rights, which Ethiopia has ratified, as well as Article 20 of the Ethiopian Constitution regarding the right to be presumed innocent. “The statement endangers the defendants’ presumption of innocence and hinders the fairness and neutrality of decisions this court will render,”<sup>168</sup> they wrote.

Jawar said: “The statement of the Attorney General is one that discards our presumption of innocence. Politician and high government officials, especially the Attorney General, are making it seem like our guilt is already decided. He called us ‘ultra-nationalist and militant’. This doesn’t only interfere with the trial, it’s also threatening for my life. I ask the court to summon the Attorney General and hold him responsible for his action” Jawar said.<sup>169</sup>

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<sup>165</sup> Addis Standard, ‘Federal police accused Jawar Mohammed and others of attempts to repeat June 22 high level assassinations’ (Addis Standard, 2020) <https://addisstandard.com/news-federal-police-accused-jawar-mohammed-and-others-of-attempts-to-repeat-june-22-high-level-assassinations/> (accessed 10 June 2023)

<sup>166</sup> Dr Gedion Timothewos and Billene Seyoum, ‘September 24, 2020 Press Briefing’ (YouTube, 24 September 2020) <https://www.youtube.com/watch?v=ugC08Z9U4Uc> accessed 24 May 2023

<sup>167</sup> Ethiopia Insight, ‘Ethiopian Court asks Attorney General to explain comment after Jawar and Bekele accuse him of presuming their guilt’ (Ethiopia Insight, 2020) <https://www.ethiopia-insight.com/2020/10/03/ethiopian-court-asks-attorney-general-to-explain-comment-after-jawar-and-bekele-accuse-him-of-presuming-their-guilt/> accessed 4 July 2023)

<sup>168</sup> Ibid

<sup>169</sup> Ibid

Bekele called for Gedion’s resignation: “The Attorney General gave a defamatory statement to foreign media in a situation we cannot defend ourselves. This leads us to question his neutrality. He has committed a crime against the justice system. He has to resign and the court should hold him responsible” Bekele said.<sup>170</sup> As the researcher accessed, the statements are made to foreign media, leaving the defendants unable to defend themselves.

What makes this more serious is that the issue would be globally disseminated, since such press statement is given for some media, which they are given coverage for all over the world like China Global Television Network (CGTN).<sup>171</sup>

When the journalist questioned the press release concerning the complaint from Jawar and others, implying that the charges were politically motivated, the Attorney General responded. He stated, “There are no charges related to political affiliation. They were not arrested and accused because they are members or leaders of political parties. Instead, they have been charged for their act or conduct that has resulted in the death of hundreds of citizens”.<sup>172</sup>

This statement could be perceived as a presumption of guilt. This could potentially infringe upon the accused right to presumption of innocence and impact their right to a fair trial. Under the directive of the European Union, public authorities are restricted from making public statements that imply guilt before a defendant is proven guilty. Such statements violate the right to the presumption of innocence.<sup>173</sup> The case law of the European Court of Human Rights (ECtHR) supports this, stating that if a public official’s behavior can be interpreted as presuming a defendant’s guilt prior to a court’s binding guilty verdict, it infringes upon the presumption of innocence.<sup>174</sup> Jurisprudence reveals a dual rationale behind this aspect of presumption.<sup>175</sup> Firstly, state actors should refrain from swaying public opinion in a manner that could affect those involved in criminal justice proceedings. Secondly, they should avoid giving the impression that a defendant’s guilt has been predetermined before an official court decision is made.

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<sup>170</sup> Ibid

<sup>171</sup> (n 166)

<sup>172</sup> Ibid

<sup>173</sup> European Parliament and the council of the European Union, 'directive (n4), Art 4

<sup>174</sup> ECtHR, *Daktaras v. Lithuania*, No. 42095/98 (2000) 43; *Khodorkovskiy and Lebedev v. Russia* (2), Nos. 51111/07 and 42757/07, (2020), 540

<sup>175</sup> ECtHR, *Alenet de Ribemont v. France*, No. 15175/89, (1995) 39–41; *Khodorko vs kiy and Lebedev v. Russia* (2), Nos. 51111/07 and 42757/07, (2020) 539; *Turyev v. Russia*, No. 20758/04, (2016) 21

Similar to the case decided by the ECtHR, in our scenario, when attorney generals prematurely release press statements to the media, such as ‘There were hundreds of people directly affected by the violence these individuals have instigated and incited’, it can be interpreted as presuming a defendant’s guilt before a court’s verdict. This is particularly relevant if the statement faces complaints from the accused under the Jawar et al case. Such actions significantly infringe upon the right to be presumed innocent.

The ECtHR has also ruled that journalists, who enjoy freedom of speech, may make harsh comments, particularly when public figures are involved. To mitigate such harsh comments, the ECtHR stipulates that journalists should avoid publishing statements, either intentionally or unintentionally, that could diminish a defendant’s chances of receiving a fair trial or undermine public confidence in the courts’ role in administering criminal justice.<sup>176</sup>

In line with the ECtHR’s stance, the accused in the attorney general’s press statement, such as Jawar Mohamed and Bekele Gerba, are public figures and leaders of a political party. This makes them susceptible to harsh comments from journalists and the public. There is a heightened media interest in serious crimes, which the public finds intriguing. The severity of the crime, coupled with the characteristics of the victim, can amplify the influence of trial by media.

Particularly grave crimes, such as sexual offenses and terrorism cases, attract more media attention and are especially prone to trial by media.<sup>177</sup> In this context, the accused in the Jawar et al case have been charged with terrorism. This significantly increases the likelihood of their right to a fair trial, particularly the right to presumption of innocence, being compromised. As the researcher addressed under the preceding paragraphs, it’s clear that there are complaints and suggestions regarding the press statement of the then attorney general on Jawar et al case.

These revolve around the violation of their right to a fair trial, specifically the right to presumption of innocence. The attorney could be held accountable for disseminating statements that could be interpreted as presuming a defendant’s guilt before a court’s binding guilty verdict. If Ethiopia had protections similar to those provided under the European Union directive, which restricts extra-judicial statements by public authorities due to their impact on the accused fair trial rights, it would be crucial to mitigate such adverse press statements or comments.

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<sup>176</sup> ECtHR, *Craxi v. Italy* 1/97, (2002) 91; *Beggs vs. the United Kingdom*, 15499/10, (2012) 123

<sup>177</sup> European Union Agency for Fundamental Rights, ‘Presumption of Innocence and Related Rights’ (European Union Agency for Fundamental Rights, 2021) <https://fra.europa.eu/en/publication/2021/presumption-of-innocence><sup>34</sup> accessed 5 June 2023

Furthermore, it would be essential to hold the actors accountable for their actions.

#### **4.2.2. The Impact of the Attorney General's Dissemination of Confession Statements on the Fair Trial Rights of Those Accused in the Hachalu Hundessa Assassination Case**

From various YouTube videos, the researcher gathered, the then attorney general press statement to the media, following the assassination of prominent Ethiopian singer Hachalu Hundessa, and the subsequent arrest of various suspects.<sup>178</sup> This press statement was aired just after the arrest of the suspects.

The researcher chooses to discuss this in the thesis, as it is relevant to demonstrate, how trial by media through broadcasting press statements containing; extremely prejudicial information in highly publicized cases, such as the publication of a confession statement by the accused and comments on the merit of the case, can happen.

While watching the videos, the researcher felt that based on the media coverage of the case and the dissemination of the confession statement; there was a high likelihood of denying a fair trial to the arrested suspect. The Attorney General announced the arrest of two suspects identified as Tilahun Yami and Abdi Alemayehu.<sup>179</sup> Following this, the press statement reported the confessions of individuals arrested on suspicion of assassination, which is highly incriminating and prejudicial to them.<sup>180</sup>

According to the then attorney generals, the individuals who confessed were alleged to have admitted that, they shot and killed the artist after receiving a mission from the Oromo Liberation Front (OLF) -Shene group (attorney generals said).<sup>181</sup> By its nature, a public official's speech like the press statement by attorney general in our case has a unique potential, to prejudice the fair administration of justice.<sup>182</sup>

Even though a confession to the police is legally inadmissible, its publication before a trial is considered highly prejudicial. It can affect the court's impartiality and may constitute serious contempt. For instance, in New South Wales, a case involving the murder of two women saw the

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<sup>178</sup> Attorney General 'Press Conference Announcing the Arrest of Two of Three Prime Suspects for Murdering Hachalu Hundessa' (YouTube, 10 July 2020) <https://www.youtube.com/watch?v=CcLRqMwEcl0> accessed 10 March 2023

<sup>179</sup> Ibid

<sup>180</sup> Ibid

<sup>181</sup> Ibid

<sup>182</sup> American Bar Association (n24)

suspect surrender and be interviewed by the police.<sup>183</sup> A subsequent press conference announced that the suspect had confessed, and this information was broadcasted on television news.

The NSW Court of Appeal decided the tendency of this publication was to create a risk of prejudice to the accused at the trials (which did not take place ultimately since the accused committed suicide while in custody) and was not lessened because of the very strong evidence against the accused.<sup>184</sup> In 1983, Michael Fagan was arrested for wine theft. Following his arrest, Times Newspapers Ltd and several other newspapers published comments on the merits of the charges against him.

Darling J, in this case, observed that nothing could be more calculated to prejudice the defense. Furthermore, a publication that reported Fagan's confession to the wine theft was deemed to pose a 'very' substantial risk of serious prejudice.<sup>185</sup>

In New South Wales, a case known as *AG vs. Dean*<sup>186</sup> saw a police officer found guilty of contempt. This occurred when, during a media conference following the arrest of a murder suspect, the officer suggested that the suspect had confessed to the police in response to a journalist's question. This decision underscores that the dissemination of a confession statement is viewed as a 'trial by media'. It also establishes that public officers who disseminate such statements can be held accountable for contempt of court.

The actions of the then attorney general closely mirror those case discussed in the preceding paragraph, particularly the New South Wales police officer case and the decision of the court on that case. The similarities are as follows: Firstly, like the police officers, the attorney general's statement suggested a confession from the accused in Hachalu Hundessa's murder case. This statement was made after the arrest of suspects including Abdi Alemayehu and Tilahun Yami, as mentioned by the attorney general, and was delivered during a media conference or press statement released by the then attorney generals.

As such, the attorney general could be held accountable for contempt of court, given that the dissemination of an accused confession statement is prejudicial and poses a threat to subsequent trials. Indeed, when law enforcement officials publicly announce that a suspect has been apprehended and has confessed, as was done by the attorney generals, it can create a presumption of guilt in the public's mind. This is especially problematic in societies like Ethiopia, where the

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<sup>183</sup> *AG (NSW) v. TCN Channel Nine Pty Ltd* : [1990] 20 NSWLR 368

<sup>184</sup> *Ibid*

<sup>185</sup> Indian Law Commission (n 1)104

<sup>186</sup> *AG vs. Dean* (1990) 20 NSWLR 650

majority of the population may not be aware of legal nuances such as the inadmissibility of out-of-court confessions in a criminal trial.

Once a confession is published by the media, it can significantly impact the suspect's future. For those who saw or heard the confession statements on TV or radio from the press statement, the suspect arrested for Hachalu's assassination may already be deemed guilty in their minds. The press statement may also disseminate such confession statement, without briefing the method of which the confession statement was obtained. As reported by Human Rights Watch in a related case, the use of force to obtain confessions is a widespread practice in the Ethiopian criminal justice system.<sup>187</sup> The Human Rights Watch report states that police investigators at Maekelawi, literally the center, employ coercive methods amounting to torture or other ill-treatment to extract confessions, statements, and other information from detainees.<sup>188</sup> In situations where there is a lack of evidence for the crime under investigation or if the investigation is complex, police officers may be eager to obtain a confession, regardless of the means.

If a confession statement is obtained from the suspect at the police station through force, it becomes challenging for the accused to prove in court that they confessed under coercion.<sup>189</sup> In the cases under study, no statement was made in the attorney general's press release whether the accused persons confessed voluntarily. The attorney general released a press statement without discussing the methods used during the interrogation to obtain the confession statement. This lack of transparency can raise questions about the fairness and legality of the interrogation process.

Drawing from the Human Rights Watch report on related cases, there is a high probability that a police officer may resort to force to obtain a confession statement from the suspect, especially when there is no eyewitness testimony for that crime during the investigation. The complexity of investigations, such as in Hachalu's assassination case, further increases this likelihood. This scenario aligns with what was reported by Human Rights Watch in related cases.

The media, in collaboration with the attorney generals, reported their confession statement, while the defendant's case was still being heard in court, and their trial concluded after the broadcast. This could make it challenging for the accused to present their defense witness, lodge complaints, and

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<sup>187</sup> Human Rights Watch, 'They Want a Confession: Torture and Ill-Treatment in Ethiopia's Maekelawi Police Station' (17 October 2013) at 32, <https://www.hrw.org/report/2013/10/18/they-want-confession/torture-and-ill-treatment-ethiopias-maekelawi-police-station> accessed 5 May 2023

<sup>188</sup> Ibid, 1

<sup>189</sup> Ibid; Human Rights Commission, 'Concluding Observation on Ethiopia' (Human Rights Commission, 2011) <https://www.ohchr.org/en/documents/concluding-observations/ccprcethco1-concluding-observations-ethiopia-human-rights> accessed 7 July 2023

convince the court about the involuntariness of their confession at the trial stage. Their right to presumption of innocence may be immediately overlooked.

If the accused complain or retract their confession statement before the courts at the trial stage, they may be perceived by the public as liars. Moreover, such publications of confessions can linger in a judge's mind for an extended period, potentially impairing their ability to adjudicate impartially. This can distort and confuse the entire due process procedure. Ultimately, a person may lose their life or liberty due to a sanction imposed by a criminal court based solely on a confession statement.

Indeed, the release of a confession statement can create a risk of prejudice. When former attorney generals disclose statements about ongoing investigations to the media, particularly those involving confessions from individuals implicated in the Hachalu Hundessa murder case, it can significantly affect the accused right to a fair trial and the overall administration of justice.

This is due to the potential use of illegal interrogation methods to obtain the statement, which is in violation of the principle of the right not to self-incriminate. Moreover, if the statement is procured involuntarily, it puts the accused in a challenging position to persuade the court during the trial stage.

#### **4.2.3. Minabawi (Illusion): A Documentary on Metal & Engineering Corporation Officials' Pre-Trial Evidence, Display of Photography and Interview of Witness vs. Accused Fair Trial Rights in the Kinfe Dagnev Case et al.**

Producing documentary films for a damning indictment before trial is not entirely new in the Ethiopian media landscape. One of the famous examples was “Jihadawi Harekat” (Holy War Movement),<sup>190</sup> screened on February 2013, characterized by many as nothing more than a piece of political propaganda, targeting Muslim protesters.

The film, using loose and misleading representations, associated local Muslim protesters, then on trial accused of involvement in terrorism, with militant groups in other parts of Africa such as Nigeria brutal Boko Haram movement, and Somalia's Al-shabab.

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<sup>190</sup> CSMonitor.com, ‘Ethiopia airs jihad film amid sensitive Muslim protest trial’ (CSMonitor.com, 2020) <https://www.csmonitor.com/World/Africa/2020/0220/Ethiopia-airs-jihad-film-amid-sensitive-Muslim-protest-trial> accessed 20 October 2023

Opposition politicians were similarly outraged when Ethiopian Television, screened a comparably skewed Documentary, *Akeldama* [Field of Blood], which was broadcasted by the Ethiopian National Television on November 2012 in cooperation with National Information and Security Services and Federal Police Counter Terrorism Unit, just as charismatic critics of the government Eskinder Nega and Andualem Arage were being prosecuted one year preceding the documentary.

Returning to the case under analysis, the arrest of former officials from the Metal & Engineering Corporation (MetEC) in November 2018 on corruption charges became a major topic of discussion nationwide or their arrest was the talk of the country for many days. This was largely due to extensive media coverage, which at times was prejudiced, leading to a media trial that potentially undermined the defendants' right to a fair trial. A prime example of such media coverage is the documentary film entitled "Minabawi" or "Illusion"<sup>191</sup> produced and aired by Fana Broadcasting Corporation (FBC) a private satellite news broadcaster in Ethiopia.

At that time, the investigation unveiled by the Attorney General alleges grand corruption by MetEC officials who were implicated in irregular procurement and investment over six years worth 37 billion Ethiopian birr. A documentary made further damning accusations. The documentary alleged widespread embezzlement within MetEC, a military-run conglomerate formerly headed by General Kifle Dagnew as chief executive (CEO).<sup>192</sup>

This media portrayal significantly influenced public opinion, highlighting the powerful role of media in shaping narratives. While the documentary has sparked shock and discussion about corruption within MetEC, it has also raised questions about, journalistic ethics and fair trial rights.

The anti-corruption campaign involving MetEC has had far-reaching implications, ensnaring several individuals who were once prominent figures in the government and the ruling party, when its leaders, once deemed untouchable, are now under intense scrutiny.

For some, the documentary appears to play the role of a prosecutor rather than an unbiased reporter, targeting specific groups for political manipulation instead of pursuing genuine justice. Debretsion Gebremichael (PhD), the then chair of the Tigrayan People's Liberation Front (TPLF), was among those who voiced objections to the treatment of the former chief executive of MetEC, Kifle Dagnew.

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<sup>191</sup>State-run television, 'Documentary alleging widespread embezzlement by the military-run conglomerate MetEC' (YouTube, 2020) <https://www.youtube.com/watch?v=ugC08Z9U4Uc> accessed 20 May 2023

<sup>192</sup>Ibid

Debretsion (PhD) argued that Dagneu was the victim of a defamatory segment aired by state TV. As quoted by an Ethiopian observer, he stated, “A suspect should be brought to the court, not to the media”.<sup>193</sup> Echoing Debretsion’s suggestion, Lord Hope in the UK, in the case of ‘Montgomery v. H.M Advocate’, recently articulated this issue as follows: The cornerstone of law is the unassailable right of every accused individual to a fair trial by an independent and impartial tribunal.

This right extends beyond the courtroom and should not be subjected to media scrutiny. It is an absolute right that remains inviolable under all circumstances. It stipulates that this right should never be relegated or subordinated to the societal interest in crime detection and suppression. Simply put, the pursuit of justice and law enforcement should never infringe upon an individual’s right to a fair trial. This principle safeguards the rights of the accused, even amidst public pressure or societal interest in crime resolution.<sup>194</sup>

In line with this, when it comes to charges against former officials, their right to a fair trial is paramount. The media’s role in trying individuals in the court of public opinion, especially prior to the conclusion of an investigation and the arrest of a suspect, can potentially infringe upon these rights. The release of documentaries and prejudicial statements about arrested or accused individuals can disrupt their right to a fair hearing by independent and impartial courts.

Therefore, the dissemination of documentary films like “Minabawi” (Illusion), purportedly for public information, is prohibited as it can compromise the fair trial rights of those featured in the documentary.

The documentary film features several key figures. Kinfu Dagneu, a brigadier general in Ethiopia’s army and former CEO of MetEC, is a prominent figure in the documentary. He is shown explaining the corporation’s active ties in a series of conversations.<sup>195</sup> A former Ethiopian television presenter and advertising entrepreneur, Fitsum Yeshitila, is also featured in the documentary. She was incarcerated on accusations of receiving 954,770 Ethiopian Birr from MetEC as part of an unlawful sponsorship deal.<sup>196</sup>

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<sup>193</sup> Ethiopia Observer, ‘When a Documentary Plays the Role of a Prosecutor’ (Ethiopia Observer, 23 November 2018) <https://www.ethiopiaobserver.com/2018/11/23/when-a-documentary-plays-the-role-of-a-prosecutor/> accessed 20 October 2023

<sup>194</sup> *Montgomery v. HM Advocate* [2001] WLR 779 (PC)

<sup>195</sup> Documentary film on MEtEC (n 191)

<sup>196</sup> Ibid

The documentary employs expository strategies, including the use of compiled images and authoritative voice-over narrations. These techniques are potent in influencing public opinion, potentially crafting a narrative that may diverge from the objective truth. Specific images of the accused, such as Kife Dagneu, are also utilized in the documentary. The use of these images can shape a specific narrative or perspective about these individuals, further demonstrating the power of media in shaping public perception.<sup>197</sup>

The display of photographs of the accused is seen as a significant threat to their right to a fair trial. This is especially true when there are questions regarding the identity of the accused, as it greatly increases the risk of bias. This is because, following the display of the picture of the accused over the media, ‘witnesses who have not seen him, may quite unconsciously be led into the belief that the accused as photographed is the person they saw,<sup>198</sup> and identify him as the suspect.

Accordingly, using expository strategies like the compilation of images of those accused under Kife Dagneu et al in the documentary is threat to fair trial right of those accused, when the trial may held subsequent. Because, the witness recognizes not the person who had been seen by him/her, committing the crime but the person he/she saw in the photograph aired on documentary film.

Further, the display of photographs of the accused by the media may also influence the audience to develop feeling of hostility towards the accused and the presumption of guilt which could create an atmosphere not suited for conducting fair trial of the defendant.<sup>199</sup> In the assessment of the researcher, the reaction of the public who saw that documentary film was also very hostile towards defendants. Some individuals where even calling for those individuals to be executed on the mere sight of the TV news. This situation underscores the powerful impact media can have on an individual’s reputation and public perception.

In the Fana Broadcasting Corporation’s documentary, authoritative figures like Ambassador Suleyman Dedafo, Brigadier General Ahmed Hamza, Lieutenant Colonel Getu Taye, and Lieutenant Edosa Tufa were featured to enhance the narrative’s credibility. They acknowledged MetEC’s contributions to industrialization but criticized it as an institution draining national resources for an oligarchy’s benefit. They made severe allegations about corruption, power abuse, organized theft, and looting committed by MetEC officials.<sup>200</sup>

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<sup>197</sup> Ibid

<sup>198</sup> India Law Commission (n 1) 203-204

<sup>199</sup> Ibid

<sup>200</sup> Documentary film on MetEC (n 191)

The authorities also expressed their concerns and demands. They claimed that “civilians had been killed and summarily executed due to the actions of these criminals. They also alleged that MetEC officials imported cargo from Djibouti to Merkato without paying any customs duties. Furthermore, they accused the officials of giving credit in millions shields under the corporation’s name, despite not being a credit institution. MetEC officials were also accused of engaging in contraband activities and shipping military equipment using ships from the state-run Ethiopian Shipping, which flew the Ethiopian flag”.<sup>201</sup>

When deliberating on the impacts of an article titled “Doomed by Dowry” published in a magazine called ‘Saga’, which included an interview with the family of the deceased (appellant) in a given case, the Indian Supreme Court made a noteworthy observation. The court noted that there had been attempts to fabricate documents either to establish a criminal case against the appellants or to defend themselves from such charges. The media was criticized for publishing biased articles that emphasized the merits of cases still under consideration in court. The court pointed out that such reporting could potentially compromise the fairness of the ensuing trial.<sup>202</sup>

The court also emphasized that the facts presented in the article could be used in the upcoming trial. It expressed no doubt that such media articles could indeed interfere with the administration of justice. The court condemned this practice and warned the publisher, editor, and journalist responsible for the article against engaging in such media trials when the issue is sub judice. The court concluded the matter, expressing hope that others in journalism would take heed of this warning and refrain from obstructing justice.<sup>203</sup>

In a case bearing resemblance to the one adjudicated by the Indian Supreme Court, the presentation of evidence and oral statements obtained through interviews with public authorities against accused officials from MetEC, as shown in the documentary film, could potentially raise concerns. The public display of such evidence and statements outside a court of law could potentially violate the rights of the accused. It’s crucial to ensure that justice is served within the appropriate legal framework and not prejudiced by external influences.

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<sup>201</sup> Ibid

<sup>202</sup> *M.P.Lohia vs. State of West Bengal & ANR* [2005] INSC 83

<sup>203</sup> Ibid

In the documentary, the authorities issued a stern warning against the “cancer” of corruption, stating that all criminals would be exposed from their hiding places.<sup>204</sup> They listed the crimes allegedly committed by these individuals. Through their statements, they appeared to presume the accused as guilty in the documentary film. This could potentially infringe upon the principle of ‘innocence until proven guilty’, as it seems to pass judgment outside of a formal court proceeding.

The media’s broadcast of the documentary film on the MetEC officials, which includes interviews with authorities testifying against the accused, essentially amounts to a media trial rather than a court trial. This practice is problematic for several reasons. Firstly, it presents a one-sided narrative, as the media’s dissemination of such statements or interviews only portrays one side of the story, which can be highly prejudicial to the accused. It is also recognized as premature publication of evidence. There is no guarantee that the facts published by the newspaper are true, there being no opportunity to cross-examine the witness or to have the evidence corroborated. There is no guarantee that the published facts will be admitted at the trial, if it amounted to hearsay.<sup>205</sup>

Indeed, this documentary features key witnesses such as Ambassador Suleiman Dedefo, who are crucial to the prosecutor’s case. Ideally, a witness should provide their testimony in a courtroom, not in a TV documentary prior to their court appearance, as was done in Minabawi documentary. The authority’s statements were given during a media trial, rather than a trial before a court of law; when, the accused are not in a position to cross-examine the government authorities who have made prejudicial statements to the media.

Definitely, for individuals accused alongside Kinfu Dagne, their right to a fair trial, particularly their right to defend against the accusations or cross-examine witnesses, is potentially compromised. Secondly, public authorities, who serve as witnesses in our case, might have provided their testimonies to the media under duress or against their will. The audience lacks a mechanism to confirm whether these statements were given voluntarily.

This opacity raises questions about the validity and fairness of the testimonies shared in the media. It’s crucial that all testimonies are given voluntarily and with full consent to ensure a fair and just trial.<sup>206</sup> Allegations may arise that the investigative body agreed to pay a fee to a key witness for their revelations, with the payment reportedly contingent on a guilty verdict. Such an arrangement

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<sup>204</sup>Documentary film on MetEC(n 191)

<sup>205</sup>Law Commission of India ( n 1) 110 and 215

<sup>206</sup>Ibid, 215

could potentially incentivize the witness to ‘tailor’ their evidence to secure a more financially rewarding outcome.<sup>207</sup>

Thirdly, the opportunity for a witness to correct a testimony given to the media later in a court of law is quite limited. The witness could, in a television interview, commit himself to a view due to tension by an inaccurate recollection of facts. When later they have to give evidence, they may feel bound to stick to what they have said in the media interview. Any discrepancy between their media statement and court testimony could potentially undermine their credibility.<sup>208</sup>

The “Minabawi” documentary, featuring notable figure Kinfu Dagne, was released following his arrest on November 14, 2018, and prior to the start of his trial. It was broadcasted on state-run television on November 23, 2018. The timing of the documentary’s release, between the arrest and the trial commencement, could be interpreted as, an attempt to establish a criminal case against the accused or to leave them defenseless against such charges.

This aligns with the theory that most prejudicial information against the accused is disclosed in the period between the arrest and the start of the trial, which heightens the risk of prejudice.<sup>209</sup> And also, these documentaries can infringe upon the rights that are guaranteed to all individuals, including those accused, as recognized by the FDRE constitution and human rights treaties ratified by Ethiopia. The profound influence that media can exert on an individual’s reputation and public perception is undeniable.

In the case under scrutiny, the documentary film released about MetEC officials has had significant consequences for those named in it. A notable example is the esteemed actor, Znah-Bzu Tsegaye, who is currently living in exile. As reported by the Ethiopian Observer, Znah-Bzu Tsegaye has been subjected to inflammatory messages and insults from various sources following the screening of the recent film on MetEC, despite not being charged with any crime.<sup>210</sup>

He recounts instances where individuals called his workplace to insult him, with some accusing him of taking a larger sum than what was stated in the documentary. He expressed, “The abuses have been incessant and it’s been very frightening.” Given the current reactions from social and mainstream media, it appears unlikely that the actor’s honor will be restored in the near future.<sup>211</sup>

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<sup>207</sup> Ibid

<sup>208</sup> Ibid

<sup>209</sup> American Bar Association (n 24) 30

<sup>210</sup> Ethiopian Observer (n 193)

<sup>211</sup> Ibid

Indeed, researchers contend that a witness should provide testimony in a courtroom, not in a TV documentary prior to their court appearance.

The police, who have collected these statements from the authorities, should have prevented their inclusion in the documentary. The defense lawyers could potentially request the court to dismiss the testimonies of these witnesses or propose a motion to limit their appearance.

### **4.3.The perspectives or views of Legal professionals vs Influence of media trials**

#### **4.3.1. Legal Professionals view on media trial vs. right to reputation**

In the researcher's interview with the respondent about the impact of media trials on reputation rights, which are closely tied to fair trial rights, the judge expressed that media trials compromise the reputation rights of arrested or accused individuals. The media often unjustifiably concentrates on the personal lives of certain accused individuals. This is particularly evident when they disclose private information unrelated to the charges against these individuals.<sup>212</sup>

In a media trial all the rights of the accused go out of the window. It tarnishes the accused past, present and future by ousting each and every detail of the accused to the public, even minute details are shown to the public and construed upon. This can be particularly problematic in high-profile cases where there is extensive prejudicial media publicity.<sup>213</sup>

The respondent stated that the media openly debates all past records of the accused. Once the media deems an individual guilty, they sensationalize the guilt to such an extent that the public perceives them as guilty. Even if the courts find the individual not guilty, the public continues to view them as guilty, often perceiving the court's decision as biased.<sup>214</sup>

The respondents noted that media trials cause substantial damage to the reputations of those involved. They emphasized that it takes years of hard work to build a reputation and with just one stroke; it is brought from top to bottom reputations, built over years of hard work, can be destroyed in an instant.<sup>215</sup> In media trials, an individual's right to a decent reputation is irreparably smeared. Even without a formal punishment, the accused bear a stigma. This stigma persists even if they are

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<sup>212</sup> Interview with Mebretu Mesfin, former Judge at SNNPRS Hawassa City High Court (Hawassa, 27 June 2023)

<sup>213</sup> Ibid

<sup>214</sup> Ibid; Interview with Wondewesen Ayimirew, Federal and Regional Attorney and Consultant at Law (Hawassa, 30 July 2023)

<sup>215</sup> Ibid

found not guilty and cleared of all charges, demonstrating the long-lasting impact of media trials on individuals' reputations.<sup>216</sup>

Another respondent pointed out that it's challenging for the accused, whose case has been negatively publicized, to reclaim their life and rebuild their moral standing.<sup>217</sup> They highlighted that even if the accused is found not guilty by a court verdict, they may hesitate to participate in social life due to self-doubt. They essentially become prisoners of their own trauma, further illustrating the profound psychological impact of media trials.<sup>218</sup>

Indeed, in summary, while the Ethiopian Constitution guarantees both the right to reputation or human dignity and freedom of expression and press, it also provides grounds for limiting these freedoms to protect individuals' honor, reputation, and human dignity.<sup>219</sup> The public expression of opinion intended to injure human dignity shall be prohibited by law.

If a prejudicial report undermines the fair trial rights of the accused or their right to reputation, it could potentially be seen as a violation of these rights. In such cases, it may be appropriate to limit such reports or publication to ensure the protection of these rights.

#### **4.3.2. Legal professionals view on impact of media trial on the Judges**

The judge interviewed by the researcher expressed that the judiciary's ability to function effectively could be compromised if the press continues to interfere with their duties. Judges are trained to base their decisions solely on the evidence presented in court and the relevant law, thereby ensuring that external influences do not sway their judgment. This highlights the potential conflict between media trials and the judicial process.

Indeed, the respondent further added that the relentless media scrutiny and pressure could potentially foster a stressful and distracting environment. This could inadvertently affect the judicial process, underscoring the need for a balanced approach to media coverage of legal proceedings.<sup>220</sup> The interviewee also emphasized the importance of the press respecting the boundaries of the court and the judge's role. While it's crucial for the press to report on trials and inform the public,

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<sup>216</sup> Ibid

<sup>217</sup> Interview with Demise Desaleng, a Federal and Regional attorney, and consultant at law, (Hawassa, 5, July 2023)

<sup>218</sup> Ibid

<sup>219</sup> FDRE Constitution (n 3) art 29(6)

<sup>220</sup> Mebretu Mesfin (n 214)

maintaining a balance is vital to uphold the integrity of the judicial process. This perspective underscores the need for responsible journalism in legal matters.<sup>221</sup>

The judge expressed a belief in the necessity for regulations that balance the freedom of the press with a defendant's right to a fair trial. They argued that while the media plays a role in reporting on trials, it's crucial to ensure this role doesn't compromise the trial process. This perspective highlights the importance of regulatory measures in preserving the fairness and integrity of judicial proceedings.<sup>222</sup>

In terms of the impact of adverse media publicity on judges' decision-making, both an attorney and a legal consultant concurred. They agreed that biased or unfairly prejudicial media publicity indeed influences court judges. They explained that judges, like the general public, consume and interpret media content, and thus can be swayed by media trials. Additionally, the media often generates hype about how judges handle cases and sensationalizes certain claims or facts related to specific cases.

This can be done either to ensure justice is served or to interfere with the course of justice. These practices pose challenges for judges in the face of media trials, as they may be subconsciously influenced by such publicity.<sup>223</sup> The media can incite public outrage against the accused, potentially pressuring judges to make rulings aimed at appeasing the public.

This could compel judges to align their judgments with media narratives in an attempt to gain public approval.<sup>224</sup> In high profile cases, sometimes even the experienced Judges may become morally bound to be biased and to give their decision in compliance with the reports of the media, of course, to avoid being the subject matter of public criticism.<sup>225</sup> Even though the judge's decision is based on the law only, respondent judges agree that; since the judges are a person living in the society, exposure to adverse pretrial publicities does affect the subjective impartiality of the judge

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<sup>221</sup> Ibid

<sup>222</sup> Ibid

<sup>223</sup> Interview with Confidential Respondent, Federal and Regional Attorney and Consultant at Law (Hawassa, 7 June 2023)

<sup>224</sup> Interview with Confidential Respondent, Federal and Regional Attorney and Consultant at Law (Hawassa, 9 June 2023)

<sup>225</sup> Anamika Ray, 'Media Glare or Media Trial: Ethical Dilemma between two Estates of India Democracy' [2015] 5 Online Journal of Communication and Media Technologies 1, 99 <https://www.ojcm.net/article/media-glare-or-media-trial-ethical-dilemma-between-two-estates-of-india-democracy> accessed 1 June 2023

and it may pressurize judges subconsciously.<sup>226</sup> As a result of the publicities, the public may perceive the decision as biased which erodes its impartiality.<sup>227</sup>

High prosecutor who's the researcher interviewed was advised that, media trials in pending cases should be avoided to save judges of the enormous strain created by it. The respondent also adds that; 'Please stop trying (cases) in the media till a case is over. Never try a case in the media, it creates a lot of pressure on judges, they are also human beings'.<sup>228</sup>

As a solution the respondent judges states that; when media trials are occurred the judge should try to decide the case based only on evidence presented in court, and in some cases, change of trial venue may be ordered and stay of proceedings or continuance may be used as an option.<sup>229</sup> Attorneys or prosecutors and other judicial officers should be barred from making particular statements when outside the purview of the court rooms through the formulation of appropriate guidelines and laws.<sup>230</sup>

Another respondent opined that: Our courts can end media trial swiftly if our legislators put in place laws that characterize media trial as being an affront on the entire criminal justice system.<sup>231</sup> There should be laws making media trial criminal in particular cases. There should be laws that will make everyone very afraid of commenting on matters before the courts with the aim of swaying the perceptions of the judges processing the matters.<sup>232</sup>

There should be laws declaring that if media trial is proved regarding particular cases, the handling of the cases by the courts will be declared a mistrial and the cases will be retried again. They also added, public should be educated on and informed about the rights of accused persons to fair trial.<sup>233</sup>

#### **4.3.3. Legal professionals view on media trial vs. its impacts on defense lawyers**

Furthermore, extensive pretrial publicity can put pressure on the accused, and their legal team, potentially affecting their mental well-being, and ability to prepare for the trial. Media trial has even

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<sup>226</sup> Interview with Abebayehu Ayele, Judge at former SNNPRs Hawassa City High Court (Hawassa, 10 July 2023)

<sup>227</sup> Ibid

<sup>228</sup> Interview with Confidential High Prosecutor (Hawassa, 12 July 2023)

<sup>229</sup> Abebayehu Ayele (n 226)

<sup>230</sup> Ibid

<sup>231</sup> Interview with Ashile Daniel, former High Prosecutor at SNNPRS Justice Bureau, 14 July 2023; Interview with Yalew Takeste, former High Prosecutor at SNNPRS Justice Bureau, 14 July 2023

<sup>232</sup> Interview with Adisu Awate, Federal and Regional Attorney and Consultant at Law, (Hawassa, 17 July 2023)

<sup>233</sup> Ibid

started creating pressure on the lawyers who take up the case of the accused, thus forcing the accused to go to the trial without proper defense, which is against the principles of, natural justice.<sup>234</sup>

It has been seen as a regular practice wherein a media trial create pressure on the lawyers to not take up cases altogether, wherein the accused is guilty of a moral wrong so much so that they fear their lives. The attorney and consultants at law responds and states that; there is a time when, different media publications or reports called the case of the clients are indefensible, before even they could find a proper legal representation.<sup>235</sup>

As a result, defense lawyers occasionally request that cases not be reported or that such reports be retracted. The rationale behind this is to prevent any undue influence on the management and outcome of the cases. However, the court merely advises the media to maintain impartiality, balance in their reporting, and avoid bias, without imposing any sanctions on the media.<sup>236</sup>

These instances highlight a crucial issue of escalating pressure on lawyers when they choose to represent the accused, particularly in high-profile cases. Simultaneously, their reputation is at risk. The ‘media verdict’ of guilt directly infringes upon the principle of a fair trial. There’s a chance that lawyers may feel intimidated, leading to a reluctance to take on such cases.<sup>237</sup> A confidential respondent informed the researcher that they knew of a private attorney who demanded exceptionally high fees, amounting to more than three or four million, when a group of young individuals from the Sidama Ejeto were arrested and accused of high-profile crimes. The cases of these clients received adverse prejudicial publicity and various media designs and reports rendered the case of this young group as indefensible.<sup>238</sup>

The respondent further adds that, from the beginning, it poses a significant risk to be a defense lawyer for clients who have been subjected to media trials, particularly for those accused of high-profile crimes. This is true even if the accused are willing to pay a high attorney fee. The reason being, the adverse media publicity and biased reporting can portray the client’s cases as indefensible.

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<sup>234</sup>Demise Desalegn (n 217)

<sup>235</sup> Ibid

<sup>236</sup> Interview with Muluken Tolosa Federal and Regional attorney and consultant at law, Hawassa, July 19, 2023

<sup>237</sup> Ibid

<sup>238</sup> Interview with confidential attorney and consultant at law Hawassa, 22 July, 2023,

This could potentially lead to lawyers fearing future intimidation. This highlights the complex interplay between media, public perception, and the legal process, and the challenges it can pose for those involved in defending the accused.<sup>239</sup> To mitigate the impact of media trials, defense lawyers and prosecutors propose that media trials should be legally considered as contempt of court if they have the potential to scandalize, prejudice, or obstruct trials.

The most effective method of regulating the media, according to them, is to exercise the courts' contempt jurisdiction. This would involve efforts to penalize media houses, individuals, and journalists who violate the basic codes of conduct set by the court for media practice.<sup>240</sup> The respondents also suggest that the Supreme Court should issue guidelines on how the court system should exercise its contempt authority to halt media trials.

These guidelines should be crafted in a manner that effectively puts an end to media trials. In addition, lawyers demand that strategies to alleviate the effects of a media trial should include a focus on presenting robust evidence in court, maintaining a professional demeanor irrespective of media coverage, and utilizing legal channels to safeguard the rights of the client.<sup>241</sup> This approach aims to ensure that media trials come to an end and that the integrity of legal proceedings is preserved.

#### **4.3.4. Legal professionals view on impacts of media trial on public opinions**

A member of the legal profession has expressed that there have been instances where prejudiced media reports or publications have created a bias for or against the defendant, often leading to feelings of confusion or frustration. The confidential respondent cited an instance when a young group known as Sidama Ejeto was accused. There was an abundance of news reports disseminating various serious crimes allegedly committed by this group.<sup>242</sup>

Various social media platforms have prematurely declared them guilty of attempting to unconstitutionally overthrow the ruling party and committing crimes against the state's constitution. The community is awaiting a judgment on them. However, when most of them are declared innocent by a court verdict and released from custody, it creates an impression that the court is

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<sup>239</sup> Ibid

<sup>240</sup> Interview with Biruk Ayele, former High Prosecutor at SNNPRS justice bureau on 28 June 2023; Adisu Awate (n232); Wondewesen Ayimirew (n214); Demise Desaleng (n 217)

<sup>241</sup> Ibid

<sup>242</sup> Interview with a confidential attorney or consultant of law, (Hawassa 20 June 2023)

biased in favor of the defendant. This underscores the potential for media narratives to influence public perception.<sup>243</sup>

The confidential respondent further adds that; the release of public figures like Jawar Mohammed, Iskendir Nega, and other former members of the Tigray People Liberation Front (TPLF) from detention before two years was unexpected. The respondent attributes this to media news or reports, in collaboration with police officers and prosecutors, disseminating various crimes as committed and instigated by those accused persons who have been under custody.<sup>244</sup>

The confidential respondent emphasized that; the release of these individuals from government custody often leads to feelings of confusion or frustration. They suggest that it appears as though criminal law is not applied to those who are from the masses and are protected or supported by the masses. This sentiment is particularly pronounced in relation to the release of Jawar Mohamed and Iskendir Nega.<sup>245</sup>

Indeed, the respondent stated biased media reports can sway public opinion and potentially incite distrust in court decisions. This can lead to a strong and seemingly legitimate public expectation regarding the defendant's guilt or innocence. When the court's decision does not align with the narrative presented by the media, it can result in a perceived disconnect between the judicial system and public expectations.<sup>246</sup>

In response to the interview question about whether all types of crimes are equally subject to prejudicial publicity, the respondent pointed out that not all cases are equally impacted by prejudiced media reports or publications. It's crucial to note that the effect of a media trial varies significantly, depending on the case and the individual involved. Certain types of cases are more often subjected to media trials than others. Cases related to politics and those involving radical breaches of accepted moral codes are most frequently subjected to media trials.<sup>247</sup>

In politically-related cases, the respondent provided specific examples of cases that have recently faced trial by media in the country. These include cases involving public figures such as Iskendir Nega and Jawar Mohamed. These individuals were arrested in June 2020 and subsequently charged with terrorism in the context of "inciting violence" during a government crackdown amidst a riot

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<sup>243</sup> Ibid

<sup>244</sup> Ibid

<sup>245</sup> Ibid

<sup>246</sup> Interview with Adisu Abeto a Federal and Regional attorney and consultant at law, Hawassa, July 25, 2023

<sup>247</sup> Ibid

sparked by the assassination of the prominent Ethiopian singer, songwriter, and civil rights activist Hachalu Hundessa.<sup>248</sup>

The respondent also brought up the case of the Sidama Ejeto young group, which faced adverse media publicity in Hawassa City during their struggle to establish the Sidama National regional state. The respondent also mentioned the case of former officials of the Metal and Engineering Corporation under Kife Dagneu et al. Their case was aired to the public through a narrated documentary film. This highlights the significant role media can play in shaping public perception of high-profile cases, potentially influencing the public trust on the criminal justice system and undermines the outcome of legal proceedings.<sup>249</sup>

#### **4.4. Conclusion**

Media trials can compromise the judicial system, introducing bias and infringing on the accused right to a fair trial. When media acts as a judge, delivering premature verdicts, it undermines due process. Prejudicial media reports can affect the rights to self-incrimination and presumption of innocence. They can also intimidate lawyers, making them reluctant to take on certain cases. Overall, media trials are seen by legal professionals as detrimental to the principles of criminal justice and fair trials.

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<sup>248</sup> Ibid

<sup>249</sup> Interview with Confidential high public prosecutor, (Hawassa June 5 2023)

## **CHAPTER FIVE**

### **5. Summary, conclusion and recommendations**

#### **5.1.Introduction**

It is crucial to summarize the main conclusions, problems, and insights we have discovered while examining how Ethiopian laws and practices address media trials as we wrap up this study. As a result, this chapter ends with recommendations that provide a crucial link for implementing these findings. As a result, it provides detailed recommendations derived from an extensive analysis of the FDRE Criminal Code of 2004, the FDRE Constitution, Media Proclamation 1238/2021, and other significant legal frameworks. It also provides some recommendations that respondents requested in order to lessen the effect of media trials.

#### **5.2.Summary on the major findings of the study**

First of all, the right to a fair trial often conflicts with freedom of expression and press, particularly in media trials or biased information dissemination. The FDRE Constitution's Article 29(6) permits legislative restrictions on press freedom to safeguard public morals, youth welfare, and prevent war propagation and reputation-damaging statements. However, it doesn't explicitly cite justice administration defense or fair trial assurance as reasons for speech freedom restriction. Under the ICCPR's Article 19, expression freedom limitation is justified to protect others' rights, including the right to a fair trial.

The FDRE Constitution, similar to international instruments, doesn't categorize fair trial rights as non-derogable during emergencies. However, the United Nations Human Rights Committee's 'General Comment No. 29: Article 4' emphasizes that any deviations from the fundamental principles of fair trial rights are always prohibited, even in emergencies. Interestingly, this general comment does not include the right to freedom of expression and press as non-derogable rights. Therefore, according to UNHRC's General Comment No. 29, the right to a fair trial holds more significance in the scale of justice.

As addressed in this thesis's second chapter, the Indian Supreme Court judgment in *A.K. Gopalan v. Noordeen* states that "if a prejudicial publication is made about an arrested person, then the right to freedom of speech and expression under Article 19(1) (a) Indian Constitution must yield to the

person's right to a prejudice-free fair trial". This highlights the importance of upholding fair trial rights under all circumstances, against freedom of expression and press.

Secondly, The American bar Association and the Indian Law Commission provide guidelines on what recognized as prejudicial reporting. In the United States and India, laws outline the types of reports or publications that constitute adverse publications and amount to trial by media. These include publications about the accused character or previous convictions, disclosures of confessions, comments on the merit of the case, publishing photographs when the identity of the accused is in question, and interviews with witnesses.

In Ethiopia, the editorial policies of the Ethiopian Broadcasting Corporation and Ethiopian Broadcasting Authority; now renamed Ethiopian Media Authority reflect an understanding of the risks to media in criminal reportage. They emphasize respect for court independence and establish court reporting rules as a distinct field of reporting. As a general precaution, these principles oppose disseminating inaccurate or misleading material and support careful consideration of how crime-related news may affect viewers.

However, these guidelines don't clearly define what constitutes biased reporting and what qualifies as a media trial. There is no law with legal power under the Ethiopian criminal justice system that covers a list of activities or conducts that amount to media trial or adverse publications, as these policies are not laws and are not supported by sanctions. Nevertheless, these policies are significant because they could serve as models for future legislation addressing this issue.

Thirdly, with regard to the effectiveness of the Ethiopian legal framework to mitigate impact of trial by media, the FDRE Criminal Code in Ethiopia, akin to UK law, includes the offense of court contempt. In the UK, public publications that risk obstructing or prejudicing justice are deemed contempt of court. The UK act permits courts to delay the publication of any proceedings for a period necessary to avoid prejudice.

Article 449 of our criminal code addresses court contempt but doesn't explicitly empower the court to postpone any proceedings report publication, even to prevent a "substantial risk of trial by media" due to extrajudicial statements or prejudicial publication. The ambiguity of sub clause (b), referring to any action that "disturbs the activities of the Court," leaves it unclear whether the legislation intends to protect criminal justice administration from unfavorable press coverage.

Unlike the UK's Contempt of Courts Act, which considers the arrest date as the commencement of a pending or active criminal proceeding, our contempt of court law suggests that a pending criminal

proceeding only begins after the charge-sheet is submitted to court. This implies that “biased or distorted pre-trial publications” are largely exempt from contempt of court liability, thereby allowing such prejudicial publicity to persist.

In terms of penalties, violations of the UK’s Contempt of Court Act can lead to severe sanctions, including prison sentences up to two years and unlimited fines (not exceeding £2,500 per occasion). In contrast, Article 449 of our FDRE Criminal Code stipulates a lesser punishment for contempt - simple imprisonment not exceeding one year or a petty fine not exceeding three thousand Birr. This discrepancy trivializes the offense compared to potential profits media outlets can earn from publishing prejudicial news.

And also, the Mass Media Proclamation No 1238 of 2021 is another Ethiopian law that potentially regulates the impact of adverse media trials and prejudicial publicity on criminal justice administration. This proclamation aims to ensure responsible media operation by respecting public peace, security, and competing rights and interests, which may include the right to freedom of expression and the accused fair trial rights. However, there is no specific provision that directly regulates the impacts of trial by media on criminal justice administration and the accused rights to a fair trial.

This legal framework has been found inadequate in regulating prejudicial and biased media news or reports that amount to trial by media. Under Article 21(2) of the now-repealed Mass Media and Access to Information Proclamation No 590 of 2008, special protection was provided to law enforcement and legal investigation organs. A public relations officer could refuse a request for information about an alleged offender if disclosure could prejudice or impair the fairness or impartiality of the trial. Interestingly, this repealed proclamation was more comprehensive in combating trial by media due to adverse prejudicial reports or the dissemination of adverse extrajudicial statements.

Fourthly, with regard to the practice of trial by media, the finding shows that; trial by media is a prevalent practice in Ethiopia. The case study on the press statement released by the then attorney generals and the analysis on Minabawi documentary film reveals that, dissemination of publications recognized to trial by media like narratives that presume guilt prior to a court verdict, broadcasting confessions of the accused, pre-trial releasing of evidence and interviewing witnesses are commonly practicing in Ethiopian criminal justice system. In addition, interviews conducted with

respondents indicate that trial by media impacts; the fair trial rights of the accused, defense lawyers, the judges of the court and diminishes public trust in the criminal justice system.

### **5.3. Conclusion**

Balancing competing interests, particularly in the Ethiopian legal system, is challenging. The Constitution does not recognize the administration of justice or protection of fair trial rights as grounds to limit freedom of expression and press. While the Ethiopian Broadcasting Authority and Ethiopian Broadcasting Corporations editorial policies attempt to recognize and address the threats posed by media in criminal reporting, these policies are not legally binding or supported by sanctions. They do not compel all media outlets to mitigate the impact of unbalanced and biased prejudicial reporting on criminal cases. Unlike the provisions under Indian Law Commission and American Bar Association, there is no law or specific provision in Ethiopian criminal justice system that provides a detailed list of what is recognized as prejudicial media reporting of trial by media.

The existing law is inadequate in regulating the impact of adverse publicity on the administration of criminal justice and the constitutionally protected right to a fair trial. The court contempt provision of the FDRE Criminal Code is insufficient in punishing media houses, individuals, and journalists who publish prejudicial news or disseminate unverified facts through extrajudicial statements. The current media proclamation, which aims to ensure responsible media operation by respecting competing rights and interests, is problematic in mitigating the risk of trial by media. It fails to provide special protection to law enforcement and legal investigation organs against requests for information that could prejudice trial fairness or impartiality, as provided under the repealed media proclamation.

From interviews with respondents, analyses of documentary film and press statements given by former attorney generals, it's concluded that prejudicial media reporting on criminal cases poses challenges to the administration of criminal justice and the fair trial rights of the accused. In general, improvements are needed in the legal frameworks regulating the impact of media trials on the administration of criminal justice and fair trial rights of the accused within the Ethiopian criminal justice system.

#### **5.4.Recommendations**

For the research findings pinpointed in this research and extracted in the summary and conclusion part, the researcher recommends the following for consideration to; the legislative organ, Ministry of Justice, the Judiciary and Ministry of Education.

##### **To law making organ or legislature**

**Firstly, Enact Specific Legislation:** The finding of the study shows that, currently there are no specific laws addressing, the concept of prejudicial reporting of trial by media under Ethiopian criminal justice system. Accordingly, the first step would be to enact specific legislation that directly addresses the issue of media trials and prejudicial publicity. This legislation should clearly define what constitutes a media trial and outline the legal consequences for engaging in such practices. The author also recommends the enactment of a statute, independent of the contempt power which deters all those liable for broadcasting prejudicial materials or violating the right to a fair trial. This is seen as the most effective and realistic way to prevent media trials throughout the course of judicial proceedings.

The proposed Act may include a list of certain categories of publications. The best practices should be adapted from the ABA and ILC reports which the researcher addressed under chapter three of this thesis. Under this statute, it should be emphasized that every individual involved in investigation or criminal proceedings - such as the police, prosecutors, parties, attorneys, witnesses, and judges - must be prohibited from disseminating or releasing any material related to a pending or active trial.

**Secondly, amend existing laws to make them effective and adequate:** The FDRE Constitution currently does not address the balance between freedoms of expression; include press, and the right to a fair trial of an accused person. The researcher suggests amending Article 29(6) to protect “other person’s rights”, in addition to youth well-being, public morals, preventing war propagation, and preserving human dignity or reputation. This includes providing a list of protections under “other person’s rights”. This proposed amendment aligns with Article 19 of the ICCPR, which justifies restraining freedom of expression to protect another person’s rights, including the right to a fair trial. Specifics can be outlined in subsequent laws.

The researcher would like to recommend that; the FDRE Constitution should include a provision allowing courts to exclude media from reporting on proceedings if it’s believed to obstruct justice administration. This aligns with Article 14(1) of the ICCPR, which permits media exclusion or

restrictions on press freedom if publicity hinders justice administration. Specifics can be established in subsequent laws.

The researcher also recommends that; when the rights to freedom of expression and press conflict with the right to a fair trial, the latter should take precedence. This is based on the interpretation of the ICCPR treaty body and Article 13 of the FDRE Constitution. The justification for this is found in UNCHR's 'General Comment No. 29: Article 4', which states deviations from the fundamental principles of fair trial rights even in state of emergency, is prohibited. As the protection of fair trial guarantees must meet international standards, renouncing this right even during states of emergency is not allowed. Therefore, the right to a fair trial should be given more weight on the scales of justice.

**Thirdly**, the researcher would like to recommend that; amend existing laws, such as the FDRE Criminal Code and the Mass Media Proclamation, to include provisions that specifically address media trials and prejudicial publicity. The researcher's findings suggest that Article 449 of the FDRE Criminal Code, which addresses contempt of court, could potentially regulate the influence of trial by media on criminal justice administration and the rights of the accused.

However, the effectiveness of this provision is questionable due to various limitations. For instance, the phrase "in any other manner disturbs the activities of the Court" under sub-clause (b) of Article 449 is considered vague and open to interpretation. This lack of clarity could potentially limit its effectiveness in regulating trial by media.

The researcher recommends that the law-making organ should provide an illustrative list of actions that could constitute a "disturbance of court or judicial proceedings in any other manner". If this is not done, it's suggested that Article 449 subsection (b) should be amended. Specifically, the phrase "in any other manners" could be replaced with "by prejudicial publication in print and electronic media, radio broadcast, cable television, and the world-wide web".

Drawing from the experiences of the American Bar Association and Indian Law Commission on what constitutes prejudicial reports or publications, the researcher would like to recommend that; recognizing publications about the accused character or previous convictions, dissemination of confessions, comments on the case's merit, photographs when identity is in question, and interviews with witnesses as trial by media.

The researcher also suggests amending Article 449 of the FDRE Criminal Code to consider a trial as pending or active "from the time of arrest", similar to the UK Contempt of Court Act 1981,

rather than “after the filing of the charge-sheet”. This would ensure that pre-trial publications do not infringe on the rights of the accused. This change aims to protect the rights of the accused from prejudicial pre-trial publications. The amendment is based on the principle that an arrested person comes under the court’s protection immediately. It seeks to regulate out-of-court contempt and restrict prejudicial media publicity, ensuring fair trial rights from the moment of arrest.

The penalties for contempt of court under Article 449 of the FDRE Criminal Code currently include a minor fine not exceeding three thousand Birr or imprisonment sentence up to six months. These penalties are insufficient to discourage the practice of trial by media. Therefore, it’s recommended that these penalties be revised to include extended prison sentences and an increased fine limit. The UK’s Contempt of Court Act could serve as a valuable reference for best practices.

The current Media Proclamation No. 1238 of 2021 lacks specific protections for law enforcement and legal investigation organs to control the impact of prejudicial media reporting. It’s recommended that lawmakers urgently introduce provisions to the existing Media Proclamation No 1238 of 2021 to safeguard these entities. This could be accomplished through an amendment or addition, referencing Article 21(2) of the repealed Mass Media Proclamation No 590 of 2008.

Moreover, Article 21/2 of the repealed Mass Media Proclamation No. 590 of 2008 does not provide a comprehensive list of information that constitutes prejudicial reports or publications, which could potentially infringe on a defendant’s right to a fair trial. Therefore, it’s suggested that such a comprehensive list be incorporated under the current media proclamation. Best practices from the ABA and ILC could be considered in this regard. This would assist public relations officers in understanding which types of information are prejudicial and in rejecting requests for such information.

Indeed, Article 21(2) of the repealed Proclamation No. 590 of 2008 uses the term “public relation officer” without providing a clear definition. When adding provisions to the current media proclamation, it’s recommended that this term be replaced with more specific terms such as “trial participants, law enforcement bodies, or prosecutions organs”. The best practices from the US and the European Union directive, as discussed in chapter two of this thesis, could serve as valuable references in this context. These recommendations aim to provide a clearer framework for understanding and regulating the influence of media trial on judicial proceedings.

**To Ministry of justice;** Conduct public awareness campaigns or implement programs to promote media literacy among the public. This would help individuals critically evaluate the information presented in the media and understand the potential impact of media trials on the justice system.

**To Judiciary:** The judiciary can play a role by issuing guidelines on what information cannot be reported during ongoing trials to ensure the rights of the accused are protected. Provide training for judges on how to handle cases that receive significant media attention. This training should include strategies for ensuring a fair trial despite intense media scrutiny. From the experiences of US and European Union directive the researcher would like to recommend the judiciary, to implement protective measures for accused persons to mitigate impact of prejudicial media publicity. This could include things like gag orders, continuance or stay of proceedings, change of venue when publication is localized and restriction on extrajudicial statements of public officials like police and prosecutors.

**To Ministry of Education:** In collaboration with journalism schools and universities, the Ministry of Education can incorporate modules on ethical journalism, media trials and their impact on the justice system into the curriculum for journalism students. This will equip future journalists with the knowledge and skills to report responsibly on ongoing trials. Organize training programs for journalism students that focus on the ethical considerations of reporting on legal proceedings. These programs could include case studies, role-plays, and discussions on the potential consequences of prejudicial reporting. Encourage research on the impact of media trials as part of postgraduate studies in journalism. This will contribute to a better understanding of the issue and inform future policy decisions.

### **5.5.Future research**

Academicians, as stakeholders, should delve deeper into the concept of ‘trial by media’. Their research could provide a better understanding and guide legal and policy decisions on the matter. The author suggests that existing laws, which are scattered across various substantive and procedural laws, should be amended.

These amendments should address current issues related to ‘trial by media’ and align Ethiopian law with global standards. If left unchecked, the media, under the guise of press freedom, could become an uncontrollable force. This is a potential time bomb that needs to be defused promptly.

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## APPENDIXES

### Appendix I: Interview Questions

1. How do media trials impact the fairness and impartiality of the legal proceedings?
2. Do you think that, the judiciary could function properly if the press continues to disturb the judge in his duty and capacity to act solely based on what is before the Court?
3. Can a prejudicial publication or news by media trial influence judges and whether judges as human beings are not susceptible to such indirect influences, at least sub consciously or unconsciously? Why/why not?
4. Can you share any experiences where media trials have influenced the administration of criminal justice?
5. In your opinion, how does pretrial media publicity impact the accused right to a fair trial?
6. How do you think media trials impact the perception of the public towards the accused? Can this perception influence all the process after that?
7. In your opinion, what role do the media play in ensuring justice is served, and where should they draw the line to avoid infringing on an individual's right to a fair trial?
8. What are the potential impacts of media trials from a defense lawyer's perspective?
9. In Ethiopia what types of cases are highly subject of trial by media?
10. Do you think that media trials have an impact on the reputation of the accused person? Why/why not?
11. Once the media has considered an individual to be guilty and if that individual is found not guilty by the courts, can the public still sees him/her as guilty and accepts the decision of the courts as biased? Why/why not?
12. Do you think that, once the media has considered an individual to be guilty, there may be long year's stigma or trauma on the accused, even if the trial is completed, found not guilty, and are cleared of the charges?
13. What would be a confidence of the accused to participate in social life after he/she is designated as criminals by media trial and later found innocent by a court of law, and released from custody?
14. What do you think should be done to protect offenders in the future from being sentenced based on public demand and not as per the legal requirements?
15. In your opinion, should there be regulations to control the extent of media trial in ongoing trials? Why or why not?

## **Appendix II: Interview Guides Prepared for respondents**

Personal Detail of Respondent

Name of the Respondent (if he or she consented) \_\_\_\_\_

Position \_\_\_\_\_

Type of the Study: A Master Thesis in Law (LLM Thesis)

**Title: TRIAL BY MEDIA THROUGH PREJUDICIAL REPORTING AND ITS IMPACT ON THE ADMINISTRATION OF CRIMINAL JUSTICE AND FAIR TRIAL RIGHTS OF THE ACCUSED**

Objective of this Interview:

To gather information so as to assess the different issues related to the influence of trial by media on the administration of criminal justice and fair trial rights of accused person. Accordingly, the main objective of this interview is focus in examining and analyzing the legal professional's perspective or views on the influence of prejudicial media reporting and how it may affect the criminal justice administration and fair trial right of the accused.

So, you are kindly requested to respond to the interviews as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

**Thank you, in advance, for your co-operation**