



ADDIS ABABA UNIVERSITY
SCHOOL OF LAW
COLLAGE OF LAW AND GOVERNANCE STUDIES

**COURTROOM JOURNALISM AND FAIR TRIAL RIGHTS:
ETHIOPIAN LAW AND PRACTICE**

BY: KALKIDAN DEREJE DEHINAE
THESIS ADVISOR: YONAS BIRMETA (PHD)

Addis Ababa University
School of Graduate Studies
College of Law and Governance

September 2020

**COURTROOM JOURNALISM AND FAIR TRIAL RIGHTS:
ETHIOPIAN LAW AND PRACTICE**

Thesis Submitted in Partial Fulfillment of the Requirement for the
Degree of Master in Human Rights Law (L.L.M)

By:

Kalkidan Dereje

Advisor:

Yonas Birmeta (PhD)

Addis Ababa University
School of Graduate Studies
College of Law and Governance

September 2020



Thesis approval page

The Thesis Titled “Courtroom Journalism and Fair Trial Rights: Ethiopian Law and Practice”

By Ms. Kalkidan Dereje is Approved for the Degree of Master of Laws (LLM)

Approved by:

Advisor’s name

signature

Examiner’s name

signature

Examiner’s name

signature

DECLARATION

I, the undersigned, declare that the thesis comprises my work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University. I also declare that it has never been presented in this or any other university and that all resources and materials used in the thesis have been duly acknowledged.

Signature:

Name of student: Kalkidan dereje

University Id Number.GSE/0815/10

Date: September 2020

ACKNOWLEDGMENT

First of all, I would like to thank the Almighty God for the strength and capacity I gained to begin and accomplish this work. My parent's Ato Dereje Dehinae and W/Ro Hiwot Seifu and my brothers' support are priceless I will always be indebted. Special thanks go to my advisor Dr. Yonas Birmeta for his very constructive comments and suggestions.

ABSTRACT

Courtroom journalism is an important task for the news media for several reasons. Trial publicity of criminal cases fulfills part of the watchdog function of the media. The role of the media is regarded as a handmaiden of effective justice administration. Despite the importance, journalism in court reporting is often accused of interfering in the fair trial rights and administration of the criminal justice system.

The aim of this paper is to assess and analyze the impact of courtroom journalism on the fair trial rights of the accused. The protection the law affords to protect the fair trial rights of the accused from adverse trial publicities. The effective protection of all human rights very much depends on the independent and impartial Judiciary capable of ensuring fair trial proceedings thus the paper also tries to assess courtroom journalism in the federal high court Lideta branch criminal bench.

TABLE OF CONTENTS

DECLARATION	iii
ACKNOWLEDGMENT	iv
<i>ABSTRACT</i>	v
ACRONYMS	viii
CHAPTER ONE	1
INTRODUCTION	1
1.1 Background of Study	1
1.2 Statement of the Problem.....	2
1.3 Review of Literature	3
1.4 Objective of Study	5
1.4.1 General Objective	5
1.4.2 Specific Objective	6
1.5 Research Questions	6
1.6 Significance of the Study	6
1.7 Research Methodology	6
1.7.3 Sources of Data	7
1.8 Ethical Considerations	7
1.9 Scope of Study	8
1.10 Limitations of Study	8
1.11 The Organization of the Thesis.....	8
CHAPTER TWO	9
COURTROOM JOURNALISM AND FAIR TRIAL RIGHTS	9
2.1 Conceptual and Legal Frameworks of Fair Trial Rights.....	9
2.2 Courtroom Journalism	13
2.3 Impact of Courtroom Journalism on Fair Trial Rights.....	14
2.4 Standards and Mechanisms Regulating Courtroom Journalism	18
2.4.1 Restrictions on the Media	20
2.4.2 Restriction on Extra-Judicial Statements	23
CHAPTER THREE	26
COURTROOM JOURNALISM AND FAIR TRIAL RIGHT UNDER ETHIOPIAN LAW	26
3.1 National Standards and Protection.....	26

3.1.1 FDRE Constitution.....	26
3.1.2 Freedom of the Mass Media and Access to Information Proclamation	28
3.1.3 Broadcasting Service Proclamation	30
3.1.4 Ethiopian Broadcasting Corporation Establishment Proclamation	31
3.2 Remedial Measures	33
3.2.1 The Criminal Code of the Federal Democratic Republic of Ethiopia.....	33
3.2.2 Freedom of Mass Media and Access to Information Proclamation	35
3.2.3 Broadcasting Service Proclamation	35
CHAPTER FOUR.....	37
COURTROOM JOURNALISM IN PRACTICE: The CASE OF LIDETA FEDERAL HIGH COURT CRIMINAL BENCHES.....	37
4.1 General Overview of Ethiopian Media Landscape	37
4.3 Media Attendance	38
4.4 Manner of Reporting and Content of Media Reports.....	39
4.5 Impact on the Judges and Court Proceedings	41
4.6 Impact on the accused.....	41
4.7 The Measures of Court.....	45
CHAPTER FIVE	47
CONCLUSIONS AND RECOMMENDATIONS	47
5.1 Conclusions.....	47
5.2 Recommendations.....	48
6. BIBLIOGRAPHY	50

ACRONYMS

UDHR: Universal Declaration of Human Rights.

ICCPR: International Covenant on Civil and Political Rights.

ECHR: European Convention on Human Rights.

ACHPR: African Charter on Human and Peoples' Rights.

FDRE: Federal Democratic Republic Of Ethiopia.

OHCHR: Office of the High Commissioner for Human Rights.

ETV: Ethiopian Television.

EBC: Ethiopian Broadcasting Corporation.

EBA: Ethiopian Broadcasting Authority.

ASRAT: Amhara Satellite Radio and Television.

CHAPTER ONE

INTRODUCTION

1.1 Background of Study

Every person is entitled to the right to a fair trial in any suit at law.¹ The right is guaranteed in numerous international, regional, national laws and protected under the FDRE Constitution.²

The right to a fair trial is one of the basic principles in a democratic society.³ It is a key element of human rights protection.⁴ It serves as a procedural means to safeguard the rule of law and the proper administration of justice.⁵

The right to fair trial consists of several concrete rights as a minimum guarantee including the right to be presumed innocent, the right to be tried without undue delay, the right to prepare a defense and defend oneself in person or through counsel, the right to call and examine witnesses and the right to protection from retroactive criminal laws are among the protected rights.⁶ These

¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered in to force 23 March 1976) 999 UNTS 171 (ICCPR)Art14; Convention on the Protection of Human Rights and Fundamental Freedoms(European Convention on Human Rights, as amended 1950)(ECHR)Art6;African Charter on Human and Peoples' Rights (adopted 27 June 1981,entered into force 21 October 1986)(198221 ILM58)(ACHPR) Art 7; Constitution of the Federal Democratic Republic of Ethiopia (hereinafter FDRE constitution), 1987, Proc.No1, Neg.Gaz.Year1,no1.

² Ibid; Universal Declaration of Human Rights (adopted 10 December 1948 UN GA Res 217A (III) (UDHR), 217A(UDHR)Art 10; American Declaration of the Rights and Duties of Man (adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948)Art XVIII; American Convention on Human Rights (adopted at the Inter-American specialized conference on Human Rights, San José, Costa Rica, 22 November 1969)Art8;Arab Charter on Human Rights (adopted in Cairo on 15 September 1994, translated from Arabic)Art7.

³ The European Parliament and the Council of 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.

⁴ OHCHR 'General Comment 32' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (2007) UN Doc CCPR/C/GC/32 para2. OHCHR,www.ohchr.org> 'accessed September 24 2020'.

⁵ Ibid.

⁶ ICCPR (n1)Art14(2);ECHR(n1)Art6(2); ACHPR (n1)Art 7.

principal rights must be effectively ensured to the accused persons in the process of determination of any criminal charges against them.⁷

The right to a 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.⁸ The guarantee of the right to a public hearing includes the media and the public.⁹

The openness of the justice system has to be guaranteed for the democratic values of transparency and accountability and the realization of fair trial rights.¹⁰ The media has a right to gather and deliver information and comment on criminal trials at any stage.¹¹ Such an act of the media has to respect the rights of individuals and the independence of the judiciary.¹² Fairness of proceedings necessitates the need for protection from any direct or indirect influence, pressure, or interference.¹³

This study aims to assess and analyze the impact of courtroom journalism on the fair trial rights of the accused and the standards and mechanisms developed to regulate courtroom journalism. The effective protection of all human rights depends on the independent and impartial judiciary capable of ensuring fair trial proceedings hence the paper also tries to assess the practice in the federal high court Lideta criminal bench.

1.2 Statement of the Problem

It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during, and after trial.¹⁴ It is

⁷ Ibid.

⁸ Amnesty International, *Fair Trial Manual* (2ndedn, Amnesty International Publications 2014)121. <https://www.amnesty.org> ‘accessed on September 24 2020’.

⁹ Ibid, ICCPR (n 1)14(2).

¹⁰ FDRE constitution,(n1)Art 12; Art 20(1).

¹¹ 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.

¹² Ibid.

¹³ OHCHR ‘General Comment no 32’ (n4) Para 25.

¹⁴ The Madrid Principles (n11)preamble.

also the right of the public to receive and impart information about the administration of the criminal justice system.¹⁵

As fundamental human rights, freedom of expression and fair trial rights get equal protection.¹⁶

The exercise of the rights often comes in conflict and the problem arises when one is protected at the expense of the other.¹⁷ Prejudicial publication adversely affects the fairness of a trial.¹⁸

Unregulated freedom of the media in publishing information about a criminal case that prejudices the mind of the public and those who adjudicate on the guilt of the accused and presents an accused as if he has already been adjudged guilty well before the trial in court, it is a serious prejudice to the right to fair trial accused and undue interference with the administration of justice.¹⁹

Courtroom journalism in Ethiopia has shown instances that have the potential to diminish the fair trial rights of the accused.²⁰ Thus the bounds of media freedom in the courtroom, its impact on the fair trial rights of the accused, and the protection of the law and remedies available under the Ethiopian legal system need to be scrutinized.

1.3 Review of Literature

Under the Ethiopian legal system, there is limited research conducted on various aspects of fair trial rights conceptual and legal framework and enforcement. However, there is no domestic literature that analyzed fair trial rights from the view of trial publicity.

The only domestic literature available dealing with media coverage of criminal cases *vis-a-vis* fair trial rights is an article written by Tsega Andualem Gelaye titled “State Media Coverage of Highly Publicized Criminal Cases in Ethiopia and the Fair Trial Rights of the Accused”.²¹ In this

¹⁵ OHCHR ‘General Comment no 32’(n4) Para 28.

¹⁶ Vienna Declaration and Programme of Action: World Conference on Human Rights (Text of the Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993)

¹⁷ Tsega Andualem Gelaye, ‘State Media Coverage of Highly Publicized Criminal Cases in Ethiopia and the Fair Trial Rights of the Accused’ (2015)2 ‘Ethiopian journal of human rights’ 92,97.

¹⁸ Law Commission of India, 200th Report on Trial by Media Free Speech and Fair Trial under the Criminal Procedure Code 1973’(Law Commission of India 2006) 11-18.

¹⁹ Ibid.

²⁰ Gelaye, (n17)92.

²¹ Ibid.

article, the writer has argued that the media is capable of playing both constructive and destructive roles in the administration of criminal justice.²² The writer has emphasized that responsible media is the only type of media that aids in the course of criminal justice whereas irresponsible media publicity of criminal cases will have an effect undermining the fair trial rights of the accused.²³ In the article, the writer has examined the foreign approaches used to distinguish categories of media that are prejudicial to the fair trial rights of the accused and the possible legal grounds for restricting the freedom of expression for the sake of fair trial rights.²⁴

The author has assessed four selected broadcasts of ETV against the three most affected fair trial rights of the accused namely presumption of innocence, the privilege against self-incrimination, and the right to be tried by an impartial court.²⁵ The author has stated that in practice, Ethiopian state media reporting of highly publicized are found to be reporting of publication of confession, a publication concerning the character of the accused or prior criminal records pretrial report of the evidence, and interview of a witness which are the categories of media coverage commonly regarded as inherently prejudicial information which goes against the fair trial safeguards and concluded Ethiopian state media coverage of criminal cases is endangering the fair trial rights of the accused.²⁶

Concerning the Ethiopian legal regime for regulating irresponsible media coverage of criminal cases, the author has concluded that there is no significant problem with the adequacy of protective and remedial measures.²⁷ The problem is the practical implementation of those preventive and remedial measures provided by the law and a culture of impunity.²⁸ The author has recommended media in Ethiopia must be accurate and fair in their reporting of criminal cases

²² Ibid, 93.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid,99.

²⁷ Ibid.

²⁸ Ibid,110-111.

upholding their professional, moral, and legal obligations of non-disclosure of substantially prejudicial information against the accused.²⁹

This article is an inspiration and the only available domestic literature related to the general objective of this paper. However this paper focus on fair trial rights in the trial stage, the bounds of courtroom journalism, and their actual influence on the fair trial rights of the accused and the key actors in the judicial proceeding to scrutinize the effect.

Courtroom journalism is journalism in court reporting.³⁰ It is concerned about the media coverage of proceedings and reporting of criminal cases in the hands of the court.³¹ Covering the courts is an important and sensitive task since the criminal court proceeding is special in its procedure and legal terminology which requires proper understanding of the law. Further, the content and manner of reporting call for respecting the fair trial rights of the accused and the power of the courts.³² Regulating, courtroom journalism requires balancing the exercise of freedom of expression of the media and the public and the fair trial rights and independence of the judiciary all equally seeking protection. Thus identifying the line in which the two comes into conflict and regulate and protect them in their sphere is a very essential and difficult task. Observing the Ethiopian media approach it is important to dig deeper into the issue and figure a way out. Thus the paper is peculiar in dealing deeper with the issue as well to specifically address the trial media coverage under the Ethiopian media landscape in light of fair trial rights.

1.4 Objective of Study

1.4.1 General Objective

The general objective of the research is to assess and analyzes the impact of courtroom journalism on the fair trial right of the accused and the bounds of media in covering criminal cases in court. As well as assess the protection and remedies available under Ethiopian law.

²⁹ Ibid,109.

³⁰ Journalists Report, Legal Reporting: Covering The Judicial System And Understanding Its Importance' (Journalists Resource June 15, 2011)<www.journaliststoolbox.Org> Accessed On September 20 2020;The News Manual: A Professional Resource For Journalists And The Media, 'Chapter 64:The Rules Of Court Reporting (The News Manual) <www.thenewsmanual.Net> 'Accessed On September 24'.

³¹ Ibid.

³² The Madrid principles,(n11)preamble.

1.4.2 Specific Objective

The specific objectives of this research are:-

- To assess the affirmative and adverse impact of courtroom journalism on the right to a fair trial.
- To appraise the bounds, standards and mechanisms developed to regulate courtroom journalism and balance freedom of expression and fair trial rights.
- To evaluate the protection and adequacy of the protection afforded by the law to regulate trial publicity.
- To analyze courtroom journalism in practice.

1.5 Research Questions

1. What are the positive and adverse effects of courtroom journalism on the fair trial rights of the accused?
2. What categories of trial publications have the potential to adversely affect the fair trial rights of the accused?
3. What are the international and regional standards and mechanisms developed to regulate courtroom journalism?
4. What are the national standards and mechanisms regulating courtroom journalism?
5. What is the practice of courtroom journalism in federal high court Lideta criminal bench?

1.6 Significance of the Study

The study helps the justice sector to realize the effect of courtroom journalism on the right to a fair trial to regulate courtroom journalism and shield the fair trial rights of the individual in their sphere of responsibility. Further, it will contribute to the lawmaker to balance the exercise of the right to fair trial and freedom of expression within the legal limits.

Most significantly, the study will have far-reaching importance in the relation of the media and the court helping both organs to fulfill their duty and role for the proper administration of justice.

1.7 Research Methodology

As the purpose of this research is to assess and analyze the impact of courtroom journalism on fair trial rights and the protection the law affords. It follows empirical legal research employing qualitative methods of legal rule analysis, case study, and analysis of the practice.

The research follows a qualitative research approach since data collected through this method provides an in-depth overview of examining the real impact of trial publicities and the challenges our courts are facing from courtroom journalism. Legal document analysis and case analysis of high profile criminal cases with high media coverage and study of cases broadcasted on Ethiopian media are analyzed to assess the practice. The paper employs in-depth interviews conducted with selected key informants in the federal high court Lideta terrorism and constitutional crimes bench. The production of knowledge was necessary for this research because it is on an existing problem in the court on which there are no adequate materials on the topic under study.

1.7.3 Sources of Data

To come up with the desired outcome stated under the objective of the study both primary and secondary data sources are used.

1.7.3.1 Primary Sources

All the international regional and national laws, as well as different principles, guidelines, and standards developed based on the laws, are scrutinized to assess the legal standards and mechanisms regulating courtroom journalism.

Selected cases that have acquainted media publication are analyzed accompanied by An in-depth interview is conducted with judges, public prosecutors, and defense lawyers which had entertained media publicized cases in Federal High Court Lideta Criminal Bench regarding the current practice and the existing problem of courtroom journalism.

1.7.3.2 Secondary Sources

Relevant works of literature gathered from books, journal articles, published and unpublished writings will serve as secondary sources of data collection. Such secondary sources will be gathered from libraries, journals, and internet sources. The collected data will be analyzed to evaluate the practice with the law.

1.8 Ethical Considerations

The researcher collected data guided by the principles of informed consent by explaining the purpose of the research to the participants. Informed participation helped the researcher to gather valid and reliable data.

1.9 Scope of Study

Fair trial guarantees must be observed from the moment the criminal investigation commences until the criminal proceedings, including any appeal, have been completed. In the Pretrial and trial phase, numerous rights are guaranteed to safeguard at most fairness. On the other hand media reporting of criminal cases is done before during and after trial. This study has chosen the fair trial rights at trial stages and journalism during a trial. The study mainly focuses on critically analyzing Ethiopian law and practice. Hence all the legal instruments are scrutinized and practically the study mainly bases on the Federal High Court Lideta branch Criminal Bench Addis Ababa.

1.10 Limitations of Study

Due to financial and time constraints the study is limited to assessing the practice from the Federal High Court Lideta branch Criminal Bench thus information could not be solicited from all parties that may have been pertinent to the issue. Due to these two major limitations, the paper might miss some important points.

1.11 The Organization of the Thesis

The paper is organized into five chapters. The first chapter provides an introduction of the study, which includes an outline of the study area; the problem encountered its scope and aims as well as the methodology of the study. The second chapter discusses international standards and mechanisms of regulating courtroom journalism after providing the conceptual and legal framework. Chapter three is devoted to analyzing standards and mechanisms developed to regulate courtroom journalism and the protection and remedies available under Ethiopian law. Chapter four deals with Ethiopian courtroom journalism analyzing the Federal High Court Lideta Criminal Bench based. The final chapter is dedicated to the conclusion of the research and recommendations for the implementation of the findings. Reference is provided at the end.

CHAPTER TWO

COURTROOM JOURNALISM AND FAIR TRIAL RIGHTS

2.1 Conceptual and Legal Frameworks of Fair Trial Rights

The right to a fair trial is a norm of international human rights law, protected and guaranteed in international and regional human rights instruments and declarations and principles of international and regional bodies.³³ It is also recognized in international humanitarian laws.³⁴ Besides, most of all it is part of customary international law binding all states to respect and protect the right.³⁵

The right to a fair trial under ICCPR is interpreted in recognition of the fundamental importance of the right to the protection of other basic human rights and the proper administration of justice hence, the guarantees of the fair trial may never be made subject to measures of derogation that

³³ Universal Declaration of Human Rights (adopted 10 December 1948 UN GA Res 217A (III) (UDHR), Art10;Art 11; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered in to force 23 March 1976) 999 UNTS 171 (ICCPR)Art14; Convention on the Protection of Human Rights and Fundamental Freedoms(European Convention on Human Rights, as amended 1950)(ECHR)Art6;African Charter on Human and Peoples' Rights (adopted 27 June 1981,entered into force 21 October 1986)(198221 ILM58)(African Charter)Art 7;Convention on the Right of the Child(adopted 20 November 1989, entered into force 2 September 1990),UNGA Res 44/25 (CRC) Art 40; American Declaration of the Rights and Duties of Man (adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948)Art XVIII; American Convention on Human Rights (adopted at the Inter-American specialized conference on Human Rights, San José, Costa Rica, 22 November 1969)Art8;Arab Charter on Human Rights (adopted in Cairo on 15 September 1994, translated from Arabic)Art7; Statue of International Crime Tribunal for Rwanda, Article 20(3); Statute of International Crime Tribunal for former Yugoslavia, Art 21; Final Act of the UN Diplomatic Conference of Plenipotentiaries on the Establishment of The International Criminal Court(ICC) (17 July 1998) UN Doc A/CONF183/10 Art 67.

³⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)(Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts entry into force 7 December 1979) Art 75 (4).

³⁵ International Commission of Jurists, *The Independence, and Accountability of Judges, Lawyers and Prosecutors Practitioners Guide no1* (2nd edn, International Commission of Jurists 2007)7.

would circumvent the protection of non-derogable rights³⁶ and deviating from fundamental principles of a fair trial is prohibited at all times.³⁷ Besides, to strengthen the protection and realization of the right a third optional protocol to the ICCPR is drafted to include the right among the non-derogable rights under the convention.³⁸

The right to a fair trial applies to the determination of any criminal charge against the accused, which regulates both the rights and duties in a suit at law and serves as a procedural means to safeguard the rule of law.³⁹

Fair trial rights are guaranteed as a minimum requirement to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and to limit abuse of power by the government.⁴⁰ A fair trial means a trial before an impartial judge, a fair prosecutor, and a judicial atmosphere in which bias for or against the accused, the witnesses, or the cause which is being tried is eliminated.⁴¹

³⁶ OHCHR 'General Comment 32' In 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Right Treaty Bodies (2007) UN Doc CCPR/C/GC/32 para6 <www.ohchr.org> 'accessed on September 24 2020'.

³⁷ OHCHR 'General Comment No. 29: Article 4: Derogations During The State of Emergency 'In Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies'(2001) UN Doc HRI/GEN/1/Rev8 Para11< www.ohchr.org> 'accessed on September 24 2020'.

³⁸ Draft Third Optional Protocol to the ICCPR, Aiming at Guaranteeing Under All Circumstances the Right to a Fair Trial and a Remedy, Annex I, in: 'The Administration of Justice and the Human Rights of Detainees, The Right to a Fair Trial: Current Recognition and Measures Necessary for Its Strengthening' Final Report, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 46th Session, (3 June 1994) E/CN.4/Sub.2/1994/24, 59-62.

³⁹ UDHR (n 33) Art 10; ICCPR (n 33) Art14 (3); ECHR (n 33) Art6.

⁴⁰ Lawyers Committee for Human Rights, '*What is a Fair Trial? A Basic Guide to Legal Standard and Practice*' (Lawyers Committee for Human Rights2000)1.

⁴¹ Devika Singh, Shashank Singh 'Media Trial: Freedom of Speech VS. Fair Trail' (2015) 20 5 Ver. IV IOSR-JHSS 88,89.

In criminal trials, where the prosecution has all the machinery of the state behind it, the principle of equality of arms is an essential guarantee to ensure the equal position is maintained between the defense and the prosecution both procedurally and in making their case.⁴²

The other fundamental principle of fair trial right is the right of every person charged with a criminal offense to be presumed innocent until and unless proved guilty according to the law in the course of proceedings that meet at least the minimum prescribed requirements of fairness.⁴³ As per the principle, the burden of proof is on the prosecution and the suspected or accused person is guaranteed the benefit of the doubt.⁴⁴ The right necessitates to be treated by the principle and imposes a duty on all public authorities to refrain from prejudging the outcome of a trial and abstain from a public reference of guilt.⁴⁵ The principle safeguards the person's innocence cautioning the media coverage of the pretrial and trial criminal processes not to undermine the principle.⁴⁶

The basic institutional framework enabling the enjoyment of fair trial rights is that proceedings in any criminal case are to be conducted by a competent, independent, and impartial tribunal established by law.⁴⁷ Independence primarily rests on mechanisms ensuring a court's position externally Whereas Impartiality comprises both objective and subjective impartiality of the court

⁴² OHCHR 'General Comment 32' (n36) Para 13; Office of the High Commissioner for Human rights in Cooperation with the International Bar Association '*Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*'(OHCHR and IBA) (Professional Training Series No. 9/Add.1 Office of the High Commissioner for Human rights in Cooperation with the International Bar Association2008)217.

⁴³ UDHR (n 33) Art 11; ICCPR (n 33) Art14 (2); ECHR (n 33) Art6 (2); ICC (n33) Art 66.

⁴⁴ UNCHR 'General Comment 32' (n36) Para 30; ICC (n33) Art 66.

⁴⁵ *Gridin v. Russian Federation*,(2000) UNDOC CCPR/C/69/D/770/1997 Para 3.5 and 8.3; *Alenet de Ribemont v France* App no 15175/89 (ECHR, 10 February 1995); 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); African Commission on Human and Peoples Right 'Principles and Guidelines on The Right to Fair Trial and Legal Assistance In Africa'(2001) people 6(E)(1); OHCHR 'General Comment 32'(n36)Para30.

⁴⁶ Ibid.

⁴⁷ UDHR (n33) Art 10; ICCPR (n33) Art 14(1).

and the judge which is ascertained in the conduct of and bearing on, the entire adjudication of a specific case.⁴⁸

One of the essential elements of the concept of fair trial rights is the right to a public hearing.⁴⁹ It is a crucial safeguard of the fairness and independence of the judicial process, and a means of protecting public confidence in the justice system.⁵⁰ The right to a public hearing includes both the public nature of the hearings and the publicity of the judgment.⁵¹ Save for exceptional grounds all court proceedings must be held in public where the general public and the media are present.⁵²

The right to a fair hearing in criminal trials is also specified by several concrete rights, such as the right to be tried without undue delay, the right to prepare a defense, the right to defend oneself in person or through counsel, the right to call and examine witnesses and the right to protection from retroactive criminal laws.⁵³

To acquire at most fairness of a trial, the observance of each of these guarantees is not enough the right to a fair trial is broader than the sum of the individual guarantees and depends on the entire conduct of the trial.⁵⁴ The effective protection of all human rights depends on the practical availability at all times of access to competent, independent, and impartial courts that can and will, administer justice fairly.⁵⁵ One of the most important functions of an independent judiciary is to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.⁵⁶

⁴⁸ Lawyers Committee for Human Rights, (n40)14.

⁴⁹ Amnesty International, *Fair Trial Manual* (2nd edn, Amnesty International Publications 2014)121.

⁵⁰ *Ibid.*

⁵¹ ICCPR (n33) Art 14(1); ECHR (n33) Art 6.

⁵² OHCHR 'General Comment 32'(n36) para 2; 29.

⁵³ ICCPR(n33)Art14(3);ACHPR(n33)Art7;ECHR(n33) Art6(2).

⁵⁴ OHCHR 'General Comment 32'(n36) para 2.

⁵⁵ OHCHR and IBA (n42) 215.

⁵⁶ Basic Principles on the Independence of the Judiciary(Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) Art 6.

2.2 Courtroom Journalism

The court and its proceedings call for the media to attend, access information, and report what happens in court as part of the right to a public hearing and freedom of expression.⁵⁷ Courtroom journalism begins from attending any part of court hearings; it entails the right to access information in the course of proceedings and all information that enables the media to report those proceedings fully and contemporaneously.⁵⁸ Journalists choose what information they want to report and do not have to check whether the evidence given in court is true.⁵⁹ However, journalists have to respect the truth and the right of the public to the truth in the process of gathering, transmitting, disseminating, and commenting on news and information.⁶⁰ The reports have to be based on fair methods and honest collection, fair comments, and criticism.⁶¹ Courtroom journalism helps to ensure that trials are properly conducted and fair trial rights are maintained.⁶² It provides public scrutiny of the trial process and maintains the public's confidence in the administration of justice and the competence and impartiality of judges.⁶³ Trial publicity can contribute to public education and raise awareness of court proceedings.⁶⁴ Further, the publicity given to criminal trials is vital to the deterrent purpose behind criminal justice.⁶⁵ It

⁵⁷ ICCPR(n33)art 14(1);19(2); OHCHR 'General Comment 34' In 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Right Treaty Bodies (2011) UN Doc CCPR/C/GC/34para18; OHCHR 'General Comment 32'(n36)Para 28;29.

⁵⁸ 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)7.

⁵⁹ Independent Press Standards Organization, 'Court reporting: What to expect Information for the public' (Independent Press Standards Organization) available at < www.ipso.co.uk > accessed on 26 February 2020.

⁶⁰ International Federation of journalists 'Declaration of Principles on the Conduct of Journalists' (Adopted by 1954 World Congress of the International Federation of Journalists Amended by the 1986 World Congress) pple 1-4.

⁶¹ Ibid.

⁶² OHCHR 'General Comment 32'(n36) Para 28;The Judicial College(n58)7.

⁶³ Amnesty International, (n49)121.

⁶⁴ Susanna Barber, 'Televised Trials: Weighing Advantages against Disadvantages' (1985)10 JUST SYST J 279, 280-281.

⁶⁵ Ibid.

is also important for the media to fulfill its role as a public watchdog in guarding against a miscarriage of justice.⁶⁶

Furthermore, court reporting is the manifestation of the exercise of the right to freedom of expression of the individual and the media. The media in court acts as the eyes and ears of the public, the media enables the public to follow court proceedings realizing the public right to know and be informed.⁶⁷ The media's role in the administration of the criminal justice system is not only important but also necessary nonetheless only a responsible press can play this vital role.⁶⁸ The media gathering, transmitting, disseminating, commenting and overall conduct in courtroom journalism can seriously threaten the right of the accused to a fair trial.⁶⁹

2.3 Impact of Courtroom Journalism on Fair Trial Rights

An accused's right to a fair trial and the media's right to freedom of expression are equally protected human rights and necessary for the proper administration of justice however the exercise of the rights often comes in conflict.⁷⁰ Numerous categories of trial publicity adversely affect the fair trial right of the accused.⁷¹ Publications that present the accused as guilty, prejudge the outcome of a trial and unduly influence the trial proceeding are common prejudicial publications adversely affecting various aspects of the right to a fair trial.⁷²

⁶⁶ Philip Judy, 'The First Amendment Watchdog Has a Flea Problem' (1997) 26 CAP U L REV 541, 549.

⁶⁷ The Judicial College,(n58)11.

⁶⁸ Law Commission of India,200th Report on Trial by Media Free Speech and Fair Trials under The Criminal Procedure Code1973'(Law Commission of India,2006)195-220; Tsega Andualem Gelaye, 'State Media Coverage of Highly Publicized Criminal Cases in Ethiopia and The Fair Trial Rights of The Accused' (2015)2 'Ethiopian Journal Of Human Rights' 92, 94; Ariana Tanoos, 'Shielding The Presumption of Innocence from Pretrial Media Coverage' (2017) Vol50:997 'Indiana Law Review'999,1011-1012..

⁶⁹ Ibid: Joanne Brandwood, ' You Say "Fair Trial" and I Say "Free Press": British And American Approach To Protecting Defendants' Rights In High Profile Trials'(2000) N.Y.U. L Rev 1412,1414; Devika Singh, Shashank Singh 'Media Trial: Freedom Of Speech VS. Fair Trail' (2015) 20 5 Ver. IV IOSR-JHSS 88,88; Fair Trials, Innocent Until Proven Guilty? The Presentation of Suspects In Criminal Proceedings (Fair Trials 2019)19 <<https://www.fairtrials.org>> 'accessed 22 April 2020'

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid; ABA Standards for Criminal Justice Fair Trial And Free Press third edition (approved by ABA house of delegates 11 February 1991)

Conflicts arise when media transgresses its domain and tries to seize the power of the judiciary by disseminating judgmental comments or reflect on the merits of the case pending trials.⁷³ Comments and critiques of the media about the case in the course of a trial that can prejudice or influence the Judge, the witnesses, or a party to the cause threaten the fairness of the trial.⁷⁴

Publicizing confessions or reports of confessions and prior convictions of the accused is considered inherently prejudicial.⁷⁵ Such reports present the accused as guilty, interfere in the trial process, and violate the right to presumption of innocence.⁷⁶ Such publication has a detrimental effect on public perception.⁷⁷ Though the confession may not have any evidential value to the court there is no more evidence than the accused admitting to the allegations to presume him as guilty.

Publications that comment on the character, credibility, or reputation of the accused during a trial are highly prejudicial.⁷⁸ Such revelations are used by the media to connect the character to the alleged fact and deduce the guilt of the accused.⁷⁹ Presenting the person as guilty is a violation of the presumption of innocence and interfering in the ultimate power of courts to determine the guilt of the person.

Further, reporting the trial proceedings and information relating to it by referring to the accused as “criminal” “killer” “rapist” “thief” and any other labeling of guilt is convicting the person before the court and depriving the fairness of the trial.⁸⁰

Media on account of unbalanced coverage of cases publishes interviews of witnesses or relatives of a victim and prejudices the issue of conviction of the accused, bias the court, prosecutor, and

⁷³ Law commission of India (n68)201; Devika Singh, Shashank Singh (n69)90.

⁷⁴ Ibid.

⁷⁵ Law commission of India, (n68)199-201; Brandwood, (n69)1420.

⁷⁶ Ibid.

⁷⁷ Barber,(n64)280-281.

⁷⁸ Law commission of India, (n68)195-199; Fair Trials (n69)30

⁷⁹ Ibid.

⁸⁰ Fair Trials, (n69)26.

the accused thereby intruding on the right to defense while the matter is pending adjudication in a court of law.⁸¹

Bias becomes an appalling factor when it is created by the actors involved in the process. An already established bias against the defendant makes it easy to convict him, to interpret the evidence against him, and finally, result in prejudicial judgment violating fairness and impartiality.⁸² The possibility of the media influence and prejudice a court's decision has been a point of contention, that it may vary depending on whether that decision is made by a jury (or lay judges) or professional judges.⁸³ In this regard, the media's pretrial and trial publicity has been proved the most serious cause of jury partiality.⁸⁴ It has been argued the trial publicity created such an impact on the jury and influenced the outcome of the trial because the jury is a layman and can easily be influenced, whereas Judges only apply rules and principles thus cannot be influenced by the public or media interferences.⁸⁵

However such an approach cannot withstand scrutiny such character of the judiciary is what is supposed to be rather than a statement of fact, after all, judges are all human, thus appropriate experience and training may lessen their susceptibility but cannot completely free them from outside influence.⁸⁶ Though the American system is skeptical on the issue, the Anglo-Saxon legal system concluded that prejudicial publications can subconsciously influence judges.⁸⁷

Moreover, the impartiality of the judge is both objective and subjective exposure to biased information has the potential to create an impression among the public and the accused that the judges are already biased.⁸⁸ Justice must not only be done but must be seen done, prejudicial publicity erodes the subjective impartiality of the judge and the confidence of the public and the accused in the fairness of the trial.

⁸¹ Law Commission of India (n68)215; Devika Singh, Shashank Singh (n69)90.

⁸² Judy (n54) 582; Devika Singh, Shashank Singh (n69)90.

⁸³ Law Commission India (n68)46-60.

⁸⁴ Ibid; Tanoos (n68)1011; Brandwood (n 69)1417.

⁸⁵ *Sekanina v Austria* (1993) European Court (13126/78) 30; *Asan Rushiti v Austria*(2000) (28389/95)32, *Tendam v Spain* (2010) (25720/05) 35-41.

⁸⁶ Law commission of India (n68)33-55.

⁸⁷ Ibid.

⁸⁸ OHCHR 'General comment No 32'(n36)para21; International Commission of Jurists(n35)27.

The public's opinion of an accused innocence or guilt is influenced by media statements.⁸⁹ Researchers suggest that people are easily persuaded to believe that the way a case is described and explained by the media is certainly correct.⁹⁰ The trial publication influences the attitude of the public in certainly establishing the guilt of the person, an acquittal does not change the attitude of the public it rather questions the trial process that the person should have been found guilty.⁹¹ For the reason of adverse trial publicity, the accused continues to be treated as guilty by the public.⁹²

The impact of adverse trial publicities on the accused becomes hard to assess when it is a vulnerable one, particularly on their ability to prepare their defense.⁹³ Labeling of guilt produced by trial publicity creates in the mind of the accused he has no hope for acquittal, feels the trial is partial and the judgment is against him as if he is already convicted and affects the exercise of his rights in defending himself.

As much as unbalanced inaccurate and biased publicities violate the fair trial rights of the accused and interfere in the administration of justice; in case of trial publicity balanced accurate and impartial reports may still result in an adverse effect on the fair trial rights of the accused.⁹⁴ To emphasize, the publicity attached to the matter in a trial has to on no occasion tend to dilute the essentials of a fair trial. Though discussions about the case can be held in the media such discussions should not transfer to trying the case in the media since the media is neither a prosecutor nor a judge to evaluate the merit of the case and determine the guilt or innocence of the accused.⁹⁵ Such an act tantamount to intruding in other's domain and can lead to a miscarriage of justice.⁹⁶

⁸⁹ Shirin Bakhshay and Craig Haney,' The Medias Impact on The Right to A Fair Trial: A Content Analysis of Pretrial Publicity In Capital Cases' (University Of California, Santa Cruz American Psychological Association; (2018)2; Brandwood (n69)1417.

⁹⁰ Ibid.

⁹¹ Barber (n64)282.

⁹² Ibid.

⁹³ Gridin v. Russian Federation, (n45) Para. 8.2; Fair Trial, (n69)28.

⁹⁴ Brandwood (n69)1418.

⁹⁵ State of Maharashtra v. Rajendra Jawanmal Gandhi: 1997 8 SCC 386; Anukul Chandra Pradhan vs. Union of India, 1996(6) SCC 354; Devika Singh, Shashank Singh (n69)90.

⁹⁶ Ibid.

To conclude courtroom journalism is not only essential but necessary for the proper administration of justice and helps to ensure fair trials however, unrestrained publicity is a potential threat to justice and interferes with criminal trials.⁹⁷ Fair trial rights and fairness of proceedings require impartial decisions to be made as to guilt or innocence based on the law not based on public pressure for a conviction nor influenced by bias in the mind of the decision-maker created by courtroom journalism.⁹⁸ Due process requires that the accused receive a trial by an impartial court free from outside influences.⁹⁹ High publicity of trial reports, repeated and continuous coverage of the proceeding creates an undue influence on the accused as well as pressures all the other actors in the process.¹⁰⁰ The accused is entitled to a fair trial and is presumed to be innocent till proven guilty by a court of law, none can be allowed to prejudge or prejudice his case until the court judges.¹⁰¹

2.4 Standards and Mechanisms Regulating Courtroom Journalism

Effective protection of the accused rights from the dangers posed by prejudicial publicity demands to reconcile the conflict between the right to a fair trial and the right to freedom of expression.¹⁰²

The media's right to report trial is embedded in the right to freedom of expression however this freedom is not absolute legitimate restrictions on the exercise of the right are provided by the international and regional human right instruments.¹⁰³ Publications that interfere in court power and threaten its impartiality can be restricted to maintain orderly court proceedings.¹⁰⁴ Likewise, trial publicity can be legitimately limited when ensuring the right to a fair hearing necessitates.¹⁰⁵ Regarding restricting freedom of expression for the administration of justice, the Madrid Principles on the Relationship between the Media and Judicial Independence set basic principles

⁹⁷ Law Commission of India (n68)1; Brandwood (n69)2.

⁹⁸ OHCHR 'General Comment 32'(n36)para25; Devika Singh, Shashank Singh (n69)90.

⁹⁹ Ibid.

¹⁰⁰ Fair Trials,(n69)28.

¹⁰¹ Law commission of India (n68)2; Devika Singh, Shashank Singh (n69)90.

¹⁰² Brandwood(n69)1-3.

¹⁰³ ICCPR (n33) Art 19(3);ECHR (n33)Art 10.

¹⁰⁴ *Dissanayake v. Sri Lanka* Com No. 1373/2005; *Miguel Angel Estrella v. Uruguay*, Communication No. 74/1980, UN Doc Supp No. 40 (A/38/40) (1980), para 10; *Weber v. Switzerland*, App No. 11034/84 (1990) ECHR, Para 20.

¹⁰⁵ Ibid.

that can smooth the relation of the media with the judiciary recognizing the conflict in between.¹⁰⁶ In these principles, it is affirmed that the protection of the innocent is a superordinate social value that justifies restriction on the media's right to report on the criminal proceeding before during, and after trial.¹⁰⁷ As per these principles, the media in its exercise of freedom of expression has to maintain the right to presumption of innocence.¹⁰⁸ Nevertheless, the limitation restricting the media report of criminal proceedings has to be to the extent necessary for the prevention of serious prejudice to the defendant, for the preservation of serious harm or improper pressure upon the witness or the victim.¹⁰⁹

Trial publicity can be restricted by excluding the media from attending court hearings and accessing information under the legitimate restriction of morals, public order, national security, or when the interest of the private lives of the parties so requires under the right to a public hearing.¹¹⁰ In special circumstances where publicity would prejudice the interests of justice, it is legitimate for the court under the right to a public hearing to exclude the media.¹¹¹ In such limitations, the judgment is still made public except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.¹¹²

Based on the legitimate grounds of restriction under the freedom of expression and the right to public hearing, countries have regulated the relation of the judiciary and the media either by directly restricting media reports of trial publicity or draining the source of information of the media through restricting extrajudicial statements. Besides remedial measures that lessen the adverse effect of prejudicial trial publicities are available.

¹⁰⁶ Center for the independence of judges 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).

¹⁰⁷ Ibid.

¹⁰⁸ Ibid, pple1.

¹⁰⁹ Ibid, pple 10;11.

¹¹⁰ ICCPR (n33) Art 14(1);ECHR (n33)Art6;UNCHR 'General Comment 32' (n36) para29.

¹¹¹ Ibid.

¹¹² Ibid.

2.4.1 Restrictions on the Media

Prior restraints are imposed on courtroom journalism based on the grounds of protecting the fair outcome of the trial and the integrity of the justice system.¹¹³ The media may be restricted from attending criminal trials, accessing certain types of information, and may also be restricted from reporting trial information.¹¹⁴ Such restriction may be automatic under the law or at the discretion of the court.¹¹⁵

2.4.1.1 Contempt of Court Rules

Countries regulate courtroom journalism by imposing limitations on the ability of the press to report on criminal cases and allowing the court to control prejudicial publicities in their chambers and outside of the court through contempt of court laws.

The Contempt of Court Act 1981 of the United Kingdom provides the framework for all reporting of criminal proceedings in England and Wales.¹¹⁶ It is a contempt of court to publish anything to the public which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced, even if there is no intent to cause such prejudice.¹¹⁷ Such publications include confession of defendants, photographs of the accused, comments on the merit of the case, and interviews of witnesses.¹¹⁸ It is important to note that not every publication of the media that could affect fair trial in an insignificant way is subjected to contempt.¹¹⁹

The Act applies to all types of publications that are about proceedings after the court's awareness of the case.¹²⁰ The Act is a significant safeguard as it places the media in jeopardy of being in contempt of court when reporting criminal proceedings unless that reporting is fair and accurate

¹¹³ Brandwood (n69)1414ff; Devika Singh, Shashank Singh (n69)91.

¹¹⁴ ICCPR (n33) Art 14(1);ECHR (n33)Art6; The Judicial College (n58).

¹¹⁵ The Judicial College (n58).

¹¹⁶ Ibid,11.

¹¹⁷ Ibid.

¹¹⁸ Brandwood (n69)46.

¹¹⁹ Ibid.

¹²⁰ The Judicial College (n58)11.

and published in good faith.¹²¹ As per the act, there are automatic restrictions specifically stated in the law and restrictions left to the discretion of the court.¹²²

Under the Contempt of Court Act 1981, The court has the discretion to deliberately withhold a name or other matter from being given in evidence in open court, and also may prohibit publication of that name or matter already given in open court.¹²³ The court exercises its power to withhold material from the public in court, if the name or matter was to be heard in open court, it would frustrate or render impractical the administration of justice and that the order is necessary taking into account the public interest in open justice.¹²⁴

Furthermore, considering the risk posed by the publicity of a fair, accurate, and contemporaneous report during the trial the court may postpone publication of its proceedings where that is necessary to avoid a substantial risk of prejudice to the administration of justice in those or other proceedings.¹²⁵

Violations of the Act can trigger heavy sanctions, courts may impose unlimited fines and prison sentences of up to two years.¹²⁶ Besides, interim measures such as jury selection or change of venue are applied to maintain the fairness of the trial.¹²⁷

India also regulates courtroom journalism by imposing prior restraints on the media report of criminal cases. Contempt of Courts Act of India 1971 makes any type of publications of any matter which prejudices or interferes or tends to interfere with the due course of any judicial proceedings or interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any manner amount to criminal contempt.¹²⁸ Publications that refer to the character, previous convictions, and confessions judging the guilt or innocence of the accused or discrediting witness amount to criminal contempt.¹²⁹

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid,26.

¹²⁴ Ibid,27.

¹²⁵ Ibid,29.

¹²⁶ Ibid,11.

¹²⁷ Ibid.

¹²⁸ Law Commission India (n68)40.

¹²⁹ Ibid,189-220.

For the media to be liable for contempt the proceeding has to be pending, thus full immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case, unless a charge sheet is filed or summons or warrant is issued.¹³⁰

The Act has recognized the substantial risk of prejudice raised by fair and accurate reporting of the trial in the later or connected trial thus allowed postponement orders that are capable of avoiding the risk of prejudice to the later or connected trials.¹³¹

The Indian court can prohibit publication for a temporary period during trial whenever the court is satisfied that interest of justice so requires.¹³² Further, based on the content of the publication and its effect or an infringement of rights to a fair trial the accused has the right to approach the higher court.¹³³ The court may grant preventive relief of postponement of the offending publication or postponement of reporting of certain phases of the trial.¹³⁴ Besides, the supreme court of India laid down appropriate guidelines concerning media reporting of matters which are sub judice in court including public disclosure of documents forming part of court proceedings and also the manner and extent of publicity to be given by media of proceeding in court.¹³⁵

In general, a court has the inherent power to regulate its proceedings and a duty to ensure a fair trial and protect a defendant from prejudicial publicity.¹³⁶ Thus the court can control the presence of the press at the judicial proceedings, control prejudicial publicity and regulate the trial participants' conduct coming under the jurisdiction of the court.¹³⁷

¹³⁰ Ibid,40.

¹³¹ Ibid,39-42; Devika Singh, Shashank Singh (n69)91; *Indian Express Newspapers V Union of India* (1985) SCR (2) 287.

¹³² Ibid,90.

¹³³ Ibid,91.

¹³⁴ Ibid,93.

¹³⁵ Ibid,88.

¹³⁶ OHCHR 'General comment 32'(n36)para 29.

¹³⁷ *Sheppard v. Maxwell*, 231 F. Supp. 37, 39 (S.D. Ohio 1964), rev'd, 346 F.2d 707 (6th Cir.1965), rev'd, 384 U.S. 333 (1966).

2.4.2 Restriction on Extra-Judicial Statements

The media source of information to publicize trials can emanate from those involved in the criminal proceedings.¹³⁸ 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 is one approach countries use to regulate courtroom journalism.

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 fair trial rights.¹³⁹ As per the directive, public statements made by public authorities, or judicial decisions reflecting an opinion of guilt before proved guilty violates the presumption of innocence.¹⁴⁰ The directive stress 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.¹⁴¹

Furthermore, principles and guidelines on fair trial rights and legal assistance in Africa also highlight that presumption of innocence has to be maintained by public officials when providing information to the media.¹⁴²

Restricting extrajudicial statements is the major tool the American legal system uses to protect the fair trial rights of the accused.¹⁴³ Protection of freedom of expression with no legitimate ground of restriction allows the media to broadcast or publish any information in their possession relating to a criminal case. To regulate prejudicial publicities a stringent requirement of a clear

¹³⁸ 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'(HM Courts and Tribunals Service the News Media Association and the Society of Editors 24 October 2018)1<<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>>'Accessed on August 19 2020'

¹³⁹ 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 preamble.

¹⁴⁰ Ibid, para 19.

¹⁴¹ Ibid.

¹⁴² African commission on human and peoples right 'principles and guidelines on the right to a fair trial and legal assistance in Africa'(2001)ppl 6(e)(2)

¹⁴³ Brandwood (n69)1.

and present danger posed on the fairness of a trial may permit restrictions on the publications.¹⁴⁴ However, the preferred way is imposing restrictions on extrajudicial statements made by those most likely to prejudice criminal trials: attorneys and law enforcement officials.¹⁴⁵

American bar association standards for criminal justice fair trial and free press are essential standards developed to locate the proper balance between the two competing interests of fair trial and free press.¹⁴⁶ The Standards acknowledge that public officials' speech by its very nature has a unique potential to prejudice the fair administration of justice hence, it is necessary to regulate out-of-court statements by attorneys and law enforcement officials to regulate prejudicial publicity affecting the right to a fair trial.¹⁴⁷ The standard prohibits all extrajudicial comments when it poses a substantial likelihood of prejudice to fair trial rights.¹⁴⁸ Further, court personnel should not disclose to any unauthorized persons, information relating to a pending criminal case that is not part of the public records of the court and that may be prejudicial to the right to a fair trial.¹⁴⁹ Likewise, oblige Judges to refrain from making statements that may be prejudicial to the right of the prosecution or the defense to a fair trial.¹⁵⁰

Furthermore, the US courts have powerful tools such as *Voir dire*, instruction to the jurors, gag or injunction order, and change of venue to shield fair trial rights from prejudicial publicities.¹⁵¹ *Voir dire* involves identifying jurors biased by the media release of prejudicial information and the removal of biased jurors.¹⁵² Instructing jurors to ignore what they have heard or seen in the media and decide the case based on the evidence presented to them is also used to minimize the effect of prejudicial media publicity.¹⁵³ Further, US courts also give gag or injunction orders

¹⁴⁴ Elliot Atkinson, 'Free Press v Fair Trial: Insulation against Injustice' (1973). 43 Louisiana Law Review 3, 556.

¹⁴⁵ ABA Standards for Criminal Justice Fair Trial And Free Press third edition (approved by ABA house of delegates 11 February 1991)

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Susan Duncan, 'Pretrial Publicity in High Profile Trials: An Integrated Approach to Protecting the Right to a Fair Trial and the Right to Privacy' (2010) 43 Ohio Northern University Law Review 766-767.

¹⁵² Ibid.

¹⁵³ Ibid.

against trial participants to prevent them from disseminating information detrimental to the fair trial rights of the accused.¹⁵⁴ Additionally, changing the trial to a place less exposed to the prejudicial publicities affecting the trial process is also used in the US to curb the effects of prejudicial media coverage.¹⁵⁵

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

CHAPTER THREE

COURTROOM JOURNALISM AND FAIR TRIAL RIGHT UNDER ETHIOPIAN LAW

3.1 National Standards and Protection

3.1.1 FDRE Constitution

Ethiopia is a State Party to international and regional human rights instruments that protect the right to fair trial and freedom of expression.¹⁵⁶ The right to a fair trial is a constitutionally guaranteed right that must be respected and protected by all organs of state at all levels.¹⁵⁷

Article 20 of the FDRE Constitution has stipulated various guarantees to a fair trial under the caption of the right of persons accused. The provision has secured the right to be informed with sufficient particulars of the charge, the right to be presumed innocent until proved guilty according to law, the right not to be compelled to testify against oneself, and also guaranteed the right to access to any evidence presented against them, to adduce evidence produced in their defense, the right of appeal and the right to request for the assistance of an interpreter.¹⁵⁸

The right to a public hearing is safeguarded by the constitution.¹⁵⁹ Protecting the right to privacy of the parties concerned, public morals, and national security are set as legitimate grounds the court may hear cases in closed session.¹⁶⁰

Furthermore, the fair trial rights guaranties are strengthened by the judiciary organ established by the Constitution.¹⁶¹ Article 79 of the FDRE Constitution affirms judges shall exercise their functions in full independence and be free from any interference or influence of any governmental body, government official, or any other source.

¹⁵⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered in to force 23 March 1976) 999 UNTS 171 (ICCPR)Art14;Art19;African Charter on Human and Peoples' Rights (adopted 27 June 1981,entered into force 21 October 1986)(198221 ILM58)(African Charter)Art7;Art 9.

¹⁵⁷ Constitution of the Federal Democratic Republic of Ethiopia (hereinafter the FDRE), 1987, Art 20and Art. 13(1), Proc.No1, Neg.Gaz.Year1,no1.

¹⁵⁸ Id, Art 20.

¹⁵⁹ Id, Art 20(1); Federal Courts Proclamation,1988,Art 26,Proc.No 25,Neg.Gaz.Year2,no13.

¹⁶⁰ Ibid.

¹⁶¹ FDRE Constitution, as cited above in note157, Art 78.

Further, save for the right to a public trial, the formulation of the right to a fair trial of the accused under the FDRE Constitutional provision has no express or general limitation clause.¹⁶² Accordingly, looking at how limitations to fundamental rights are made under the FDRE Constitution, it can be concluded that the Constitution does not allow for a legitimate ground of limitation or restriction in the exercise of the right.¹⁶³

About temporary deviation in a state of emergency like the international instruments, fair trial rights are not listed in the non-derogable rights of the Constitution. However, guided by the interpretation of the treaty body to the ICCPR, deviating from the fundamental principles of fair trial rights including the presumption of innocence at all times is prohibited.¹⁶⁴ Since the realization and protection of fair trial guarantees have to conform to the international standards, renouncing from the protection of the right in the state of emergency is banned.¹⁶⁵

The right to freedom of expression is guaranteed under Article 29 of the FDRE Constitution. The provision also protects freedom of the press and other mass media prohibiting any form of censorship and guarantee access to information of public interest.¹⁶⁶ The Constitution recognizes the importance of access to information for democracy and the essence of the press in fertilizing the realization of the right and guarantees legal protection to ensure its operational independence and its capacity to entertain diverse opinions.¹⁶⁷

Further in the protection of the right bans limitation based on content or effect of point of view expressed, but allow restrictions of the right to protect the well-being of the youth and the honor and reputation of individuals.¹⁶⁸ Thus the Constitution does not make the ground of

¹⁶² Id, Art 20.

¹⁶³ Ibid; Simenh Kiros Assefa, 'The principle of presumption of innocence and its challenges in the Ethiopian criminal process' (2012) 6 No 2 'Mizan law review' 273, 274

¹⁶⁴ 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.

¹⁶⁵ FDRE Constitution, as cited above in note 157, Art 13(2).

¹⁶⁶ Id, Art 29(2)

¹⁶⁷ Id, Art 29(3)

¹⁶⁸ Id, Art 29(5)

administration of justice or protecting the judiciary or protection of fair trial rights as a legitimate ground to limit freedom of expression.

The ground of limiting freedom of expressions for the honor and reputation of the individual accompanied with Article 24 of the FDRE Constitution which has secured the right of everyone for respect to human dignity honor and reputation can address some aspect of adverse trial publicity effect on the right to a fair trial of the accused since publication that presents the accused as guilty and label guilt attacks the honor and reputation of the individual.

3.1.2 Freedom of the Mass Media and Access to Information Proclamation

The constitutional guarantee of freedom of expression is further strengthened by the freedom of the mass media and access to information proclamation No 590/2008. The proclamation has reaffirmed the restrictions imposed by the FDRE Constitution and has specifically included national security, public order, and other overriding rights as the legitimate ground of limitation.¹⁶⁹

The rights of the mass media to seek, receive and impart news or information, expresses opinion or criticism on various issues including critical nature, or participate in the process of forming public opinion through other means in fulfilling its public function, is recognized and protected by the law.¹⁷⁰ The law acknowledges the role of the mass media in ensuring respect for fundamental rights and ensuring justice.¹⁷¹

The importance of access to information to the functioning of the mass media is protected thus the law secures the right to access information held by public bodies and imposes a legal obligation on public officials to facilitate access.¹⁷² The right to access information includes being informed whether or not the public body holds a record containing the requested information and to obtain information from any public body.¹⁷³

¹⁶⁹ Freedom of the Mass Media and Access to Information Proclamation (Hereinafter Mass Media Proclamation), 2000, preamble, Proc No. 590, Neg.Gaz.Year14,no 64.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Id, Art 12(1).

¹⁷³ Id,Art12(2).

The information that is to be accessed by the media and provided by the public bodies governs the justice administration sector implying as a government body the police, the prosecution, and the judiciary are required by the law and duty-bound to provide and allow access to information about their function and institution to the media.¹⁷⁴ However, the right to information and accessing information held by public bodies is subject to justifiable limits based on overriding public and private interests.¹⁷⁵

Protection of proceedings of law enforcement and a legal investigation is a ground to deny the media to access information under the law.¹⁷⁶

The other ground of exempted information is the prosecution of an alleged offender.¹⁷⁷ The exemption applies to information relating to prosecution under preparation or completed or pending where disclosure or assuring the existence or nonexistence of the requested information would likely impede the prosecution or result in a miscarriage of justice or prejudice the fairness or impartiality of a trial.¹⁷⁸ Such exemption considers publicity of information about the prosecution process's effect on the trial it can potentially protect the right of the suspect in securing information that affects fair trial and ease the adverse effect of trial publicity in this process.

The exemptions under Article 21 of the proclamation are to protect proceedings of law enforcement and legal investigation, no exemption is provided with the trial proceedings or the judicial process. There is no exemption means the public relations officer ought to please a request in this regard. Thus publicities can be done in trial proceedings with no law to protect the adverse effect.

Most importantly what disregards the essence of the provisions exempting information is an overriding public interest. The public body may not refuse a request for information unless the harm to the protected interest which would be caused by disclosure outweighs the public interest

¹⁷⁴ Id, Art 2(5); Art 12.

¹⁷⁵ Id, Art15.

¹⁷⁶ Ibid, Art21

¹⁷⁷ Id, Art 21(2)

¹⁷⁸ Ibid.

in disclosure.¹⁷⁹ What tantamount to a public interest is not stated by the law-making it open to interpretation and susceptible to abuse.

Fundamentally, the law does not prohibit the media to get the information in any other means, besides the media, are protected from revealing their sources.¹⁸⁰ The media can get the information in any other means and use it to hamper the right of the accused. The law does not contain any provision that imposes a duty on the media coverage of criminal cases addressing and even considering the right of the accused fair trial right.

Nevertheless, the preamble of the proclamation which contains the objective of the law explicitly states that a mass media with high ethical standards and professional competence is the one that plays an indispensable role to build democratic order in Ethiopia.¹⁸¹ Adverse trial publicity is the character of irresponsible and unethical media thus the preamble shows the stand of the law is against adverse publicities in general but such stipulation of the law is not supported by specific provisions that can be implemented which cannot tantamount to protection.

3.1.3 Broadcasting Service Proclamation

The broadcasting service proclamation establishes a regulatory system that controls the type of broadcasting services, who and how to establish broadcasting services and the transmission of the programs.¹⁸² The Ethiopian Broadcasting Authority (EBA) is established as a key regulatory body tasked with the expansion of a high standard, prompt, and reliable broadcasting service that can contribute to political, social, and economic development.¹⁸³ To provide broadcasting service mandatory license requirement is set.¹⁸⁴ The Authority is given the power to grant, renew,

¹⁷⁹ Id, Art 28

¹⁸⁰ The Criminal Code of the Federal Democratic Republic of Ethiopia (hereinafter the criminal code), 1996, Art45, Proc No 414.

¹⁸¹ Mass Media Proclamation, as cited above in note 169,Preamble.

¹⁸² Broadcasting Service Proclamation, 1999, Art, Proc. No533, Neg. Gaz. Year 13, no39.

¹⁸³ Id, Art4; Art 6

¹⁸⁴ Id, Art 18

suspend, and revoke broadcasting service licenses.¹⁸⁵ The authority in his power of regulation can inspect the service providers in their compliance with the law.¹⁸⁶

In support of the general stand of the kind of media and broadcasting the law supports, the proclamation strictly stipulated that the accuracy of the content and source of any program to be transmitted has to be ascertained and the news must be impartial, accurate, and balanced.¹⁸⁷ However, the meaning and evaluation of the standards are not stated in the law. The proclamation despite providing the general standard where all programs and news are to be evaluated does not provide specific provisions regulating criminal proceeding broadcasts. There is no regulation or directive issued for proper implementation of the proclamation as per Article 47 of the Proclamation. Nevertheless, evaluating the content and source of courtroom journalism in the standards of impartiality, accuracy, and balance is crucial to the protection of a fair trial. Since biased and unbalanced trial publicity with uncertain contents threatens fair trial rights of the accused, the proclamation obligating broadcasts of the media to be impartial, accurate, and balanced, and sealing the deal with liability in case of failure has the potential to regulate courtroom journalism.

3.1.4 Ethiopian Broadcasting Corporation Establishment Proclamation

Ethiopian Broadcasting Corporation (EBC) is a public broadcasting service established to broadcast main and current issues in the country and abroad and also entertainment and educational events to enhance awareness of the public on overall activities and become active participants in the development of the country.¹⁸⁸ This corporation includes radio, television, and website broadcasting service that has a countrywide coverage.¹⁸⁹

The corporation to meet up to the quality and standard service has an editorial policy that serves as a comprehensive and operational guideline and helps the journalists to effectively fulfill their duty.¹⁹⁰ Programs transmitted by the corporation have to adhere to the core values of justice,

¹⁸⁵ Id, Art7(2)

¹⁸⁶ Id, Art 44

¹⁸⁷ Id, Art10

¹⁸⁸ Ethiopian Broadcasting Corporation establishment Proclamation, 2006.Art3;Art5,Proc,No 858,Neg.Gaz.Year20,no.79.

¹⁸⁹ Id, Art 5

¹⁹⁰ Ethiopian Broadcasting Corporation, Ethiopian Broadcasting Corporation Editorial Policy(2008)p.133.

diversity, serve the public, transparency, and accountability, accuracy, fairness, credibility, competitiveness, secularism, teamwork, and editorial independence.¹⁹¹

The policy puts accuracy as the yardstick in which the trustworthiness of EBC will be measured.¹⁹² For a program to be accurate sufficient research, relevant and convincing source has to be implemented and has to be investigated as thoroughly as possible from different perspectives.¹⁹³ The principle of accuracy is not confined to getting the information accurately the substantive nature of the information and the idea of truthfulness has to also be considered.¹⁹⁴ Most importantly based on the principle of accuracy the strong stand of the corporation is avoiding the use of doubtful information that lacks credibility, not deliberately use or broadcast false information or information that misleads and distorts facts.¹⁹⁵

The information gathering and reporting of the corporation have to be fair, impartial, and balanced and have to take all necessary caution with the appropriateness of the source and use of language, image, and sound.¹⁹⁶

The editorial policy in addition to setting the principles all programs has to follow; has set court reporting principles as a specialized area of reporting.¹⁹⁷

With the reporting of court cases' respecting the independence of the court is the key principle to be followed by the journalists.¹⁹⁸ Covering trials is done carefully not to interfere in the independence and influence cases that are in process and also not to transmit reports that may bias the court.¹⁹⁹ The policy has regarded the time the court has issued a warrant, the defendant is apprehended or ordered to appear in court as the time the case is in the hand of the court and the rule applies.²⁰⁰ The policy has allowed commenting on the outcome of the case and debating on

¹⁹¹ Id,138-146

¹⁹² Id,140

¹⁹³ Id,141

¹⁹⁴ Ibid

¹⁹⁵ Ibid

¹⁹⁶ Id,142

¹⁹⁷ Id,162

¹⁹⁸ Ibid

¹⁹⁹ Ibid

²⁰⁰ Ibid

the issue after the court has reached a verdict.²⁰¹ The policy advocates reporting crime-related issues the impact they have on the audience viewer listener and the anxiety they create should be considered.²⁰²

The editorial policy is believed to be the cornerstone of any media however there is no national editorial policy that regulates all the media actors in the country. In this regard, broadcasting service providers apply their editorial policy in line with the existing laws.

EBA has made a model editorial policy for community radio broadcast service to serves as a guideline to help them establish their policy.²⁰³ 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.²⁰⁴ The languages used in reporting such cases have to be cautiously chosen and have to avoid dramatic narrations. The interview of witnesses has to be considerate of impact on the fairness of the trial.²⁰⁵ 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 on²⁰⁶. As a unique feature of this model policy, it strictly prohibits reporting of the case held in court.²⁰⁷

3.2 Remedial Measures

3.2.1 The Criminal Code of the Federal Democratic Republic of Ethiopia

The criminal code address crimes committed by the media relating to the court proceeding. As per Article 450 breach of secrecy of proceedings is a crime. The media cannot disclose a fact gained by attending court proceedings where such fact is a secret by itself or specifically

²⁰¹ Ibid

²⁰² Id, P.163

²⁰³ Ethiopian Broadcasting Authority, Community Radio Model Constitution and Structure, Editorial Policy, Human Resource Management Directive, and Finance and Property Management Directive,(2006).

²⁰⁴ Id, p30

²⁰⁵ Id, p 31

²⁰⁶ ibid

²⁰⁷ ibid

declared secret by the court hearing the case.²⁰⁸ This provision does not only ban the use of the fact gained by the media attending the court but also bans whomever present at the trial from disclosing such fact thus has the potential to cut the chain of the media from using the fact in hand or to access it from third part however the ban is only to secret facts.²⁰⁹

Article 451 of the Criminal Code has a more direct provision relating to a media publication, a publication of inaccurate or forbidden reports of proceedings is a crime. This provision is essential to safeguard the rights of the accused at the trial stage. The provision protects cases in the hand of the judiciary from inaccurate or distorted publications. More importantly, the provision addresses the two major effects of adverse trial publicity which are creating negative public opinion and harming the accused.

The criminal law strengthens the punishable act to include tendentious publications intended to pervert the course of justice. as per article 457, the prohibition of publications that distort facts or are inaccurate or biased constitutes a crime where the publication is made to influence the judicial decision in a case being or to be tried. The influence on the judicial decision can emanate from informing the accused person or by acting upon the feeling of the judge, jurors, witnesses, experts, or officers of the court. The act has included a case not yet presented to the court and biased and inaccurate publications but the key elements of the crime is the intention, the publications have to made to influence the judicial decision especially the provision in the Amharic version is more clear than the publication intends to gain error decision by adversely influencing the judicial decision. Although publicities that distort facts, that are biased and inaccurate describe the character of adverse publicities that has the potential to influence the judicial decision it is difficult to assess and establish that media published the information for the purpose to influence the judicial decision. The media may publish the information for the mere fact of exercising its right and provide information to the public not necessarily to influence the judiciary thus difficult to criminalize the publication under the provision.

Defamation and calumny are criminal acts as per article 613 of the criminal code. The provision criminalizes the act despite the fact being true or false thus, publicities presenting the person as

²⁰⁸ Id, Art 450

²⁰⁹ Ibid

guilty before the court constitute an offense falling under the provision. As the person is innocent until proved guilty the media publicizing guilt will fall under sub-article two of the provision and punishable whether done intentionally or negligently.

The other provision that falls in the ambit of protecting the honor and reputation of the individual and aid in the protection of the fair trial right of the accused is the criminal act of insulting behaviors and outrage punishable as per article 615 of the criminal code. Media publications referring to the suspect or accused as “criminal” “thief” “rapist” or another name-calling tantamount to insult punishable as per the provision.

3.2.2 Freedom of Mass Media and Access to Information Proclamation

Media publications are weighed on the effect on the honor or reputation of any person. If any factual information or matter is injurious to the honor or reputation of a person, the injured person has the right to have his reply inserted, free of charge in the publication in which the report appeared.²¹⁰ In addition to replying inserted the law allows compensation up to one hundred thousand (100,000), birr’s having regard to the seriousness of the damage.²¹¹

3.2.3 Broadcasting Service Proclamation

Article 45 (2) of the proclamation has penalized transmitting unbalanced inaccurate and biased broadcasts with a fine, not less than Birr ten thousand(10, 000) and not exceeding Birr fifty thousand (50, 000).

In general, the Ethiopian legal regime for regulating courtroom journalism, the stand of the law is against adverse publicities and advocates impartial accurate, and balanced broadcasts. However, in case of trial publicities, infringing fairness of the trial and fair trial rights not all types of the adverse trial publicities fall in the ambit of partial inaccurate and unbalanced publicities and the content and tone of publicities also matter in reporting on criminal cases. the mere fact that the trial is highly publicized and extensive coverage is given imposes pressure on the actors and particularly on the accused right to defend the facts that may be gained from the trial but commenting on the merits and rendering conclusions amounts to interference in the court's power. Thus protection from adverse trial publicities has to be in consideration of the

²¹⁰ Mass Media Proclamation, Art40

²¹¹ Id, Art 41

special nature of criminal trials and fair trial rights supported by specific provisions that can be implemented to tantamount to protection.

CHAPTER FOUR

COURTROOM JOURNALISM IN PRACTICE: The CASE OF LIDETA FEDERAL HIGH COURT CRIMINAL BENCHES

4.1 General Overview of Ethiopian Media Landscape

The legal and regulatory framework of the Ethiopian media is briefly discussed in the previous chapter. It is established that the law regulating broadcasting services in general advocates high ethical journalism and transmission of impartial, accurate and, balanced broadcasts that serve the public at large. Media coverage of criminal cases falls in this ambit.

Despite this, the practice of Ethiopian media in broadcasting criminal cases has shown deviation, irresponsible media coverage of criminal cases and the release of highly prejudicial information have been witnessed before and during trials.²¹² When such practice is done by public broadcasting services, who has double duty as a government organ to respect the right of individuals and protect them from violation by others, the adverse effect is aggravated.²¹³ Programs made on high profile criminal cases and broadcasted in countrywide and state-owned broadcasting services can be traced back, to have a grasp on the Ethiopian media experiences in reporting criminal cases.²¹⁴

Ethiopian state-owned media the former ETV and the now EBC is experienced in broadcasting an hour and more long programs of criminal cases filled with confession of suspects, interview of witnesses, comments on the merits of the case, photographs of suspects, and other prejudicial

²¹² Tsega Andualem Gelaye, “State Media Coverage of Highly Publicized Criminal Cases in Ethiopia and the Fair Trial Rights of the Accused” (2014)2 Ethiopian Journal of Human Rights 92,107-110.

²¹³ FDRE constitution Art 9(2)and Art13(1), as cited above in note 157.

²¹⁴ Akeldama,(http://diretube.com/ethiopian-documentary/akeldama-part-1-video_25cf45af1.htm,
http://www.diretube.com/ethiopian-documentary/akeldamapart-2-video_30d42597c.html,) ‘last visited’ November 1 2019; Jihadawi Harakat, (<http://www.youtube.com/watch?v=g4SxGOS5y88>), ‘last visited’ August 9, 2019; Documentary on corruption in metal and engineering corporation (www.youtube.com/watch?v=NRreiadxcu) last visited on 14 November 2018

publications pretrial and during the trial.²¹⁵ The trend followed in high profile criminal cases is that the initiation and the making begin from the body that claims to have investigated the case and the media pave the way to reach the public through documentaries and programs says Ato Fikadu Tsega deputy Attorney General.²¹⁶ The content of the documentaries is disseminated to uphold the work of the investigation office without due regard to the right of the suspects and due process of law.²¹⁷ Besides the documentary statement of high government officials on a case at investigation do not hesitate to label guilt of suspects before the case goes to trial.²¹⁸

Documentaries titled “Akeldama” (Land of Blood), “Jihadawi Harakat” (Jihad Movement) and ‘*Sheikeh Nuru Lemen Motu?*’ or why Sheikh Nuru Yimam dies?, “Minabawi”(Illusion) and “yefitih sekoka” (Agony of Justice) are the major instances manifesting the practice of Ethiopian media in broadcasting criminal cases. Though the programs were broadcasted on the state-owned media they are shared by commercial broadcasting services of FANA broadcasting corporation and WALTA media and communication and information and widely shared across Ethiopian other media outlets and social media reaching every corner of the state.²¹⁹ The documentaries share similar features and manifest the practice of the media in deviating from its responsibility and advocating adverse publicity. This study further digs the practice of the media in courtroom journalism on the impact it has created on fair trial rights.

4.3 Media Attendance

Federal high court LIDETA criminal bench experiences the visit of journalists almost every day. Especially in the terrorism and constitutional crimes criminal bench and the corruption bench journalists are the main participants attending in courts. Journalists attend court proceedings as any civilian there is no procedure created by the court to know the attendance of the media.²²⁰

²¹⁵ Ibid.

²¹⁶ Interview with Ato Fikadu Tsega, Deputy Attorney General, on 11 May 2020.

²¹⁷ Ibid.

²¹⁸ ABIY Love Tube Ethiopia: Metec corruption case exposed (<https://www.youtube.com>) last visited September 29 2020; Netsebraq Media Attorney General Adanch Abebe On Hachalu Hundessa (<https://www.youtube.com/channel/USgw>) last visited on September 20 2020

²¹⁹ Documentary on corruption in metal and engineering corporation cited above at note 214; Yefitih Sekoka Documentary (www.youtube.com/watch?v=NRreiadxcu) last visited on November 14/2019

²²⁰ Interview With Judge Samuel Tadesse , Judge at Federal High Court Lideta Branch Terrorism and Constitutional Crimes Bench, On 27 April 2020.

The courts know there was a media attendance when cases are reported like other citizens. Further, as the media bodies attend the court as a citizen following the court day, they grasp the procedure done in the court as they understand, and most often no further approach is taken for further information or clarity on what is done in courts. In this regard, the attorneys standing in the case are more approachable to hand information and clarity on the area. The federal high court LIDETA bench has no communication office that can give information on cases there is no applicable means the media can approach the court for information other than attending the trial and taking their understanding.²²¹ In this regard, the attorney general office in LIDETA is more accessible to give information it has its own communication office and also delivers its case-related news by its website and Facebook pages.²²²

4.4 Manner of Reporting and Content of Media Reports

Media reports of the court day based on the information gained by attending the court or by any other means the manner of reporting is a key part. A court proceeding has its procedure and legal terminologies the journalist needs to understand what is done in the court with the proper legal meaning and effect to report precise and accurate information. This being the case the media bodies attend court proceedings and report it as they want or understand which results in disseminating distorted reports.²²³ Reporting of unsaid or undone facts, confusing the rulings and orders of the court, generalizing facts, and reporting one side of the information to characterize the courtroom journalism in federal high court LIDETA branch criminal benches.²²⁴ In this regard w/ro Etifwork Bredan, a judge in terrorism and constitutional criminal bench, and Ato Ephrem Hailu a public prosecutor in the same criminal bench consider distorted reports arise from a lack of legal knowledge and taking court proceedings as mere news and not understanding the special nature of criminal proceedings and the effect of reporting on the fairness of the trial and the rights of the accused. Besides Judge Etifwork Bredan stresses the

²²¹ Interview with W/Ro Alem Neguse, Deputy Registrar at Federal High Court Lideta Criminal Bench, On 15 September 2020.

²²² FDRE Attorney General (<https://www.eag.gov.et/>) “Last Visited” September 21 2020”

²²³ Interview with W/Ro Etifwork Bredan, Judge at Federal High Court lideta branch Terrorism and Constitutional Crimes Bench, On 04 May 2020.

²²⁴ Id; Interview With Ato Ephrem Hailu, Public Prosecutor at Federal High Court Lideta branch Terrorism And Constitutional Crimes Bench, On 14 September 2020

problem also emanates from the Media deviating their responsibility and being affiliated by the interest of the group the media believe they represent thus only grasp the information they want.

Ato Delelegn Gucho Attorney at law and consultant says the media reports without the support of lawyers and others with legal knowledge are susceptible to be distorted.²²⁵ In the case, he represented as a defense lawyer, Christian Tadele, and 13 others vs. federal attorney, a case that got media attention, ASRAT television has a continued report on the proceeding beginning from the remand court.²²⁶ Under the case at hand, every news the ASRAT media broadcasted has the scrutiny of the lawyers standing in the cases and the information and reports they disseminated were accurate and no complaint was raised.²²⁷ To strengthen the argument, in the same case reports of other media were challenged by the court that the report was distorted and impacting the court proceeding and warned the media.²²⁸

Reporting unnecessary details and the merits of the case is the other character of media reports.²²⁹ The media reports pending trial have to be limited to reporting mere information of what is done in court, information which does not involve the opinion of the media is appropriate to be disseminated.²³⁰ Whereas, weighing of evidence and characterizing the accused or other discussions on the detail and merits of the case is direct interference in the power of the court and beyond the right of the media.²³¹

Sometimes the media attend and report to serve the interest of one side of the parties, bias to the prosecutor side and presenting the accused as guilty or bias to the defendant and aggravating the defendant's complaints and arguments only; conveying biased and distorted information to the public.²³²

Crime stories and criminal cases attract the interest of the public there is no strong culture of the Ethiopian community to follow court proceedings attending courts; the public knows the court through the media thus the media reports are capable of shaping the mind of the public. The

²²⁵ Interview With Ato Delelegn Gucho, Attorney at Law and Consultant at Federal Court, On 11 May 2020

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Federal attorney vs. Christian Tadele and 13 others, (criminal file no 200917, federal high court, pending) (unpublished).

²²⁹ Interview, cited above at note 220;223;224.

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

media report's content has an impact on the court proceedings and the fair trial rights of the accused.²³³

4.5 Impact on the Judges and Court Proceedings

The impact of irresponsible media coverage of criminal cases can be viewed from pretrial and trial reports. Broadcasting filled with highly prejudicial information attaching guilt to the suspects and released pretrial and pending trial adverse effect continues on trial stage which results in an already informed judge and a guilty labeled defendant. Thus it is easy to expect the process of the trial among such parties.

Even though the judge's decision is based on the law only, Judges residing at the terrorism and constitutional crimes bench agree a judge is a person living in the society, and exposure to adverse pretrial publicities does affect the subjective impartiality of the judge.²³⁴ As a result of the publicities, the judge may have a biased perception of the other parties, and the public may perceive the decision as biased which erodes its impartiality.²³⁵

The media adverse publicity influence on the judge is apparent in high profile case, from the manner of the court proceedings says Ato Ephrem Hailu and Ato Delelgn Gucho, the manner the judges are guiding the court, the rulings, the reasoning they render to reject objections and complains of defendants, using nonlegal reasoning to guilty the defendant and the way the accused are treated in court reviles pre-informed and biased judge as a result of the media.²³⁶ Therefore violates the presumption of innocence of the accused the right to be judged by an impartial court and the overall fairness of the trial.²³⁷

4.6 Impact on the accused

The presumption of innocence is a basic component and fundamental in the realization of fair trial rights and procedural means to safeguard the rule of law.²³⁸ Presumption of innocence

²³³ Interview with Ato Samuel Tadesse, cited above at note 220.

²³⁴ Ibid; interview with w/ro Etifwork Berdan, cited above at note 223.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Lautenbach G, *The concept of the rule of law and the European court of human rights* (oxford university press 2013)125,126; European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights right to fair trial criminal limb*, (ECHR, 2018), 38.

imposes a duty on others to respect the right and treat the person innocently. Further, the judicial decision has to in no way reflect the opinion of the guilt of the accused before proved guilty.²³⁹

In this regard, a pretrial-made program and distorted and biased trial publication have not passed a grievance from the defendants when it reaches the trial stage. The defendants request the court to ban the dissemination of the program and warn the media bodies.²⁴⁰ In several cases that got media attention, the defendants raised the content of the programs to violate their right to presumption of innocence and the right to defend.²⁴¹

In the case of Abubeker Ahmed and 18 others vs federal attorney, the defendants have complained many times raising the documentary named “JAHADAWI HARKAT” and related news of the trial that the content of the publication violets their right to presumed innocent.²⁴² “Jihadwi Harakat” is a documentary made with the assistance of the National Information and Security Services (NISS) and the Federal Police Counter Terrorism Unit (FPCTU).²⁴³ The documentary is about alleging to show terrorist groups who have adopted the view of ‘Saleh Nebha’ that calls for the establishment of the decentralized terrorist network in East Africa and intends to conduct a jihad war in Ethiopia to take over the governments control on the people and ultimately establish an Islamic state.²⁴⁴ The documentary constituted confession of suspects, the pre-trial release of evidence, display of photographs, comments on the merits of the case as well as an interview of the witness which are regarded as inherently prejudicial to the defendant's right to a fair trial by the standards developed discussed in the previous chapters.²⁴⁵ Based on the contents of the documentaries the accused’s claim it infringes their right to presumption of innocence interfere in the independence of the court and their right to defend.²⁴⁶ The court has

²³⁹ Ibid; Amnesty International, *Fair Trial Manual* (2nd edn, Amnesty International Publications 2014)140.

²⁴⁰ Interview with Ato Ephrem Hailu cited above at note224 and Interview with Ato Delelgne Gucho, cited above at note 225.

²⁴¹ Ibid.

²⁴² Federal Attorney Vs. Abubker Ahmed and 18 Others(Crime File No124754,Federal High Court, Sene 24 2007)(Unpublished)

²⁴³ Jihadawi Harakat, cited above at note214

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Abubeker Ahmed and 18 others vs. federal attorney (n242)

accepted the complaint and banned the broadcast of the documentary.²⁴⁷ Nonetheless, the documentary continued being broadcasted disregarding the ban and the defendants did not stop complaining each time it was broadcasted but no further measure was taken by the court.²⁴⁸ on the complaint the defendants stated that they were being called terrorists by the prison authorities and others because of the label of guilt attached in the media, they were treated cruelly and outcasted by the prisoners, and their right to be visited and treated properly in prison was violated and imprisoned with persons already found guilty and all in all treated as a guilty person and fair justice was denied to them.²⁴⁹ Based on this complaint the court ordered that prison authorities replay the complaint and for the respect of the right but the complaint continued until the final judgment.²⁵⁰

The Metal & Engineering Corporation (METEC) is the story of the documentary entitled “Illusion” or “Minabawi”, aimed at uncovering a web of corruption about the corporation and its high-ranking officials.²⁵¹ The documentary was aired in equal time through the state-owned Ethiopian broadcasting corporation (EBC), FANA broadcasting corporation, and WALTA media and communication on November 09, 2018, after a week-old advertisement and Press briefing by Ato Berhanu Tsegaye, the attorney general.²⁵²

A month later a human rights violation documentary titled “the Agony of Justice” or “yefitih sekoka” was released on December 12, 2018.²⁵³ The program is a story of torture and abuse of citizens in the hands of an intelligent officer in what was once a nurture torture chamber now allegedly closed “maekalawi” and other secret chambers in Addis Ababa.²⁵⁴ It was aired on state-owned EBC and affiliated media outlets, WALTA media, and information and FANA broadcasting corporation and widely shared across Ethiopian cyber media outlets and social

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Documentary on corruption in metal and engineering corporation, cited above at note 214

²⁵² Ibid.

²⁵³ Yefitih sekoka, cited above at note 219

²⁵⁴ Ibid.

media.²⁵⁵ The above stated two documentaries were broadcasted before pretrial and even before the arrest of some of the suspects. When the case reached the court the accused raised the content of the documentaries were politically affiliated and infringe their right to be presumed innocent and further it is distorting their image in society and their families are being discriminated against and hated.²⁵⁶

Judgments influenced by personal bias or prejudice, or harbor preconceptions about the particular case as a result of prejudicial publications erode their impartiality and the right to be judged by a fair and impartial court. Since fairness of proceedings entails the absence of any direct or indirect influence, pressure, or intrusion from whatever side and for whatever motive. A hearing becomes unfair when the defendant is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defend.²⁵⁷

The preconceived notion of the case created by the media affects the defense's right by weighing the evidence partially.²⁵⁸ This can be evident from the ruling on the guilt of the accused using nonlegal arguments basing the decision on the prosecutor's charge and evidence and generalizing the defendant's defense as not true and presented to innocent himself only.²⁵⁹

Concerning the impact of adverse trial publicities, one of the biggest fear of the defendants is their destroyed image left in the public.²⁶⁰ The public's opinion of an accused innocence or guilt is without doubt influenced by media statements, Presumption of innocence obliges the public to respect the right nevertheless media publication influence the attitude of the public in certainly

²⁵⁵ Ibid.

²⁵⁶ Federal attorney Vs. Getachew Assefa 26 others (criminal file no 238040,federal high court, pending) (unpublished); officer Asefa G/Mariam and others vs federal attorney(criminal file no238026,federal high court, pending)

²⁵⁷ *Gridin v. Russian Federation* Communication No. 770/1997, para. 8.2.

²⁵⁸ Abubeker Ahmed and 18 other, cited above at note 242

²⁵⁹ Interview with Ato Delelegn Gucho, cited above at note 225.

²⁶⁰ Abubeker Ahmed and 18 others, cited above at note 242; Getachew Assefa 26 others, cited above at note 256; officer Asefa G/Mariam and others, cited above at note 256.

establishing the guilt of the person, an acquittal does not change the attitude of the public it rather questions the trial process that the person should have been found guilty.²⁶¹

4.7 The Measures of Court

Federal high court Lideta branch has no established mechanism to regulate the relationship between the court and the media.²⁶² Recently there was an attempt to prepare a guideline to know which media is attending the court and attach responsibility and guide on the information they have to report.²⁶³

In the time the court knows by itself or a complaint from the defendants the court calls the media and gives warning on the issue they broadcasted.²⁶⁴ Banning of programs not to be disseminated in the media is also taken by the courts.²⁶⁵

The judges believe that the highly prejudicial content of media reports emanates in pretrial publicities and no programs have to be done before final judgments are rendered in the case. The purpose of making documentaries before the suspect's guilt is rendered by the court has no purpose to serve except eroding fair trial rights and independence of the courts.²⁶⁶

Courtroom journalism in Ethiopia is not properly regulated and the trend followed by the courts is after the damage is done. For the pretrial publicities unless a formal complaint is opened in the court there will not be much the courts can do except refraining themselves from being biased and rendering decisions affirming to the law. The judges agree what is previously disseminated and aggravated by the media and what is presented in courts is most often different thus to save themselves from the adverse effect of the media publicity on their decision there personal experience has been more effective. Refraining from exposure to biased information and

²⁶¹ Interview, cited above at note 220;223;224.

²⁶² Interview with Alem Nigusae, cited above at note 221

²⁶³ Ibid.

²⁶⁴ Interview with judge Samuel Tadesse, cited above at 220 and judge Etifwork Berden, cited above at 223.

²⁶⁵ Ibid.

²⁶⁶ Interview with Ato Fikadu Tsega, cited above at 216.

abstaining from listening to media with such broadcasts and not following social media has been used to render an impartial decision.²⁶⁷

²⁶⁷ Interview with judge Samuel Tadesse, cited above at 220 and judge Etifwork Berden, cited above at 223.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Media has a wide reach, a more effective, and direct approach to the people. The media has a crucial role in following up and analyzing the administration of the criminal justice system and the inherent right to report on criminal proceedings before during and after trial.

Fair trial rights are affected by media coverage of criminal proceedings and violated by the publication of confessions, interview of witnesses, comments, and reflection on the merits of the case and all publications that unveil the suspect as guilty, prejudging the outcome of the case and unduly influence the impartiality of the court. The analysis of the practice of courtroom journalism has shown that Ethiopian media has a practice of exhibiting highly prejudicial broadcasts that infringe the presumption of innocence and fair trial rights.

Undoubtedly, measures should be taken to regulate courtroom journalism but such measures have to recognize a broad and comprehensive right of the public and the press freedom of expression and access to information concerning criminal proceedings. Allocating proper balance between the two competing interests is difficult and there is no internationally agreeable measure set to regulate courtroom journalism. Countries choose to either restrict the media report or control its source of information.

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. Nevertheless, the objective of the laws safeguarding freedom of expression manifests the stand of the law is against adverse publicities in general and advocates impartial, accurate, and balanced broadcasts in the realm of general responsibility and obligations of media publications. Hence, it is safe to say that the protections afforded by the law in the ambit of general media publications have the potential to protect. However, no law has directly addressed the unique feature of courtroom journalism in criminal cases and the impacts they have on the constitutionally protected right to a fair trial. Journalism of criminal proceedings and information relating to suspects and accused are not regulated by the law accordingly the law is not adequate to shield the right from adverse

publicities. Besides, the courts are reluctant in taking measures and in following the implementation of the bans and warnings given to the media. In addition, there is no formal relationship between the court and the media.

5.2 Recommendations

In light of the study conducted so far, the following points are to be considered in measures to be taken as a way forward:

The court

- It is recommended that the court has to protect itself from any undue interference from the media by giving due consideration to the adverse effect of trial publicists and regulate its relationship with the media through enacting guidance or directive.
- The court has to control the presence of the media in judicial proceedings
- The court has to be open to the media and establish a communication office where appropriate information is available to the media bodies.
- It has to follow the effectiveness and implementation of the warning and ban it rendered by ordering the appropriate body.

The legislator

- Enacting a law that clearly defines, regulates, and guides what the media can and cannot do in a court report. The law can be a regulation in the auspices of the freedom of mass media and access to information proclamation or regulation and a directive in the ambit of the broadcasting service proclamation. The regulation of the media act should be supported by a common code of conduct of journalists that should contain a specific section covering pretrial and trial criminal proceedings.

The EBA

- EBA in its power of inspection of broadcasting services has to strongly scrutinize their adherence to the law and take appropriate measures.
- EBA has to pledge the broadcasting services editorial policy to give due consideration to the publication of criminal proceedings and significantly respect for the fair trial and independence of the judiciary.

- Training and awareness-creating activities should be offered to journalists in the manner of reporting criminal cases. This additionally should be supported by covering criminal proceedings by the trained journalists.

6. BIBLIOGRAPHY

6.1 cases

- Gridin v. Russian Federation,(2000) UNDOC CCPR/C/69/D/770/1997.
- Allenet de Ribemont v France App no 15175/89 (ECtHR, 10 February 1995)
- Dissanayake v. Sri Lanka Com No. 1373/2005.
- Miguel Angel Estrella v. Uruguay, Communication No. 74/1980, UN Doc Supp No. 40 (A/38/40) (1980).
- Weber v. Switzerland, App No. 11034/84 (1990) ECtHR.
- Federal Attorney Vs. Abubeker Ahmed And 18 Others (Criminal File No 124754, Federal High Court, Sene 24 2007)(Unpublished)

6.2 Laws

6.1.1 International and Regional Laws

- Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A.
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
- Convention on the Protection of Human Rights and Fundamental Freedoms(European Convention on Human Rights, as amended 1950).
- African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986)(198221 ILM58).
- Final Act of the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court (17 July 1998) UN Doc A/CONF183/10.
- The European Parliament and the Council of 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.

- UNCHR 'General Comment 32' In 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (2007) UN Doc CCPR/C/GC/32.
- OHCHR 'General Comment No. 29' Article 4 Derogations During A State of Emergency 'In Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (2001) UN Doc HRI/GEN/1/Rev8 Para11.
- Draft Third Optional Protocol to the ICCPR, Aiming at Guaranteeing Under All Circumstances the Right to a Fair Trial and a Remedy, Annex I, in: 'The Administration of Justice and the Human Rights of Detainees, The Right to a Fair Trial: Current Recognition and Measures Necessary for Its Strengthening' Final Report, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 46th Session, (3 June 1994) E/CN.4/Sub.2/1994/24, 59-62.
- OHCHR 'General Comment 34' In 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (2011) UN Doc CCPR/C/GC/34.
- Basic Principles on the Independence of the Judiciary(Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).
- Independent Press Standards Organization, 'Court reporting: What to expect Information for the public'(Independent Press Standards Organization)< www.ipso.co.uk> accessed February 2020.
- International Federation of journalists 'Declaration of Principles on the Conduct of Journalists (Adopted by 1954 World Congress of the International Federation of Journalists Amended by the 1986 World Congress) <<http://www.ifj.org/about-ifj/ifj-code-of-principles/>> accessed 20 march 2020.

- 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).
- International Commission of Jurists, The Independence, and Accountability of Judges, Lawyers and Prosecutors Practitioners Guide no1 (2nd edn, International Commission of Jurists 2007).
- 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.
- African Commission on Human and Peoples Right ‘Principles and Guidelines on The Right to Fair Trial and Legal Assistance In Africa’(2001)

6.1.2 Domestic laws

- Constitution of the Federal Democratic Republic of Ethiopia (hereinafter the FDRE), 1987, Proc.No1, Neg.Gaz.Year1,no1.
- Ethiopian Broadcasting Corporation establishment Proclamation, 2006.Proc,No 858,Neg.Gaz.Year20 ,no.79.
- Ethiopian Broadcasting Corporation, Ethiopian Broadcasting Corporation Editorial Policy(2008).
- Ethiopian Broadcasting Authority, Community Radio Model Constitution and Structure, Editorial Policy, Human Resource Management Directive, and Finance and Property Management Directive,(2006).
- Broadcasting Service Proclamation, 1999, Proc. No533, Neg. Gaz. Year 13, no39.
- The Criminal Code of the Federal Democratic Republic of Ethiopia (hereinafter the criminal code), 1996, Proc No 414.
- Freedom of the Mass Media and Access to Information Proclamation (Hereinafter Mass Media Proclamation), 2000, Proc No. 590, Neg.Gaz.Year14, no 64.

6.2 Articles

- Tsega Andualem Gelaye, “State Media Coverage of Highly Publicized Criminal Cases in Ethiopia and the Fair Trial Rights of the Accused” (2014)2 Ethiopian journal of human rights.
- Simenh Kiros Assefa, ‘The Principle of Presumption of Innocence and Its Challenges in The Ethiopian Criminal Process’(2012)6No2 ‘Mizan Law Review’
- Susanna Barber, ‘Televised Trials: Weighing Advantages against Disadvantages’ (1985)10 JUST SYST J 279.
- Philip Judy, ‘The First Amendment Watchdog Has a Flea Problem’ (1997) 26 Cap U L Rev.
- Ariana Tanoos, ‘Shielding The Presumption of Innocence from Pretrial Media Coverage’ (2017) Vol50:997 ‘Indiana Law Review’999.
- Joanne Brandwood, ‘You Say "Fair Trial" and I Say "Free Press": British And American Approach to Protecting Defendants' Rights In High Profile Trials’(2000) N.Y.U. L Rev 1412.
- Devika Singh, Shashank Singh ‘Media Trial: Freedom of Speech VS. Fair Trail’ (2015) 20 5 Ver. IV IOSR-JHSS 88.
- Susan Duncan, ‘Pretrial Publicity in High Profile Trials: An Integrated Approach to Protecting the Right to a Fair Trial and the Right to Privacy’ (2010) 43 Ohio Northern University Law Review 766-767.
- Shirin Bakhshay And Craig Haney, ‘The Medias Impact on The Right to Fair Trial: A Content Analysis of Pretrial Publicity In Capital Cases’ (University Of California, Santa Cruz American Psychological Association; (2018).
- Elliot Atkinson, ‘Free Press v Fair Trial: Insulation against Injustice’ (1973). 43 Louisiana Law Review 3, 556.

6.3 Other sources

- Amnesty International, *Fair Trial Manual* (2ndedn, Amnesty International Publications 2014)

- Lawyers Committee for Human Rights, ‘What is a Fair Trial? A Basic Guide to Legal Standard and Practice’ (Lawyers Committee for Human Rights2000)1.
- Office of the High Commissioner for Human rights in Cooperation with the International Bar Association ‘Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers’ (Professional Training Series No. 9/Add.1 Office of the High Commissioner for Human rights in Cooperation with the International Bar Association2008).
- Law Commission of India,200th Report on Trial by Media Free Speech and Fair Trials under The Criminal Procedure Code1973’(Law Commission of India,2006)
- 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)
- Fair Trials Innocent Until Proven Guilty? The Presentation of Suspects In Criminal Proceedings.
- ABA Standards for Criminal Justice Fair Trial And Free Press third edition (approved by ABA house of delegates 11 February 1991)

6. 4 Materials Obtained From the World Wide Web

- Akeldama,(<http://www.diretube.com/ethiopiandocumentary>) last visited on November 1, 2019.
- Jihadawi Harakat, (<http://www.youtube.com/watch?v=g4SxGOS5y88>) last visited on August 9, 2019.
- Documentary on Corruption in Metal and Engineering Corporation (www.youtube.com/watch?v=NRreiadxcu) last visited on 14 November 2018.
- Yefitih sekoka Documentary (www.youtube.com/watch?v=NRreiadxcu) last visited on November 14/2018

6.5 Interviews

1. Interview with W/Ro Etifwork Bredan, Federal High Court Judge at Terrorism and Constitutional Crimes Bench.
2. Interview with Ato Ephrem Hailu, Public Prosecutor at Federal High Court Lideta Terrorism and Constitutional Crimes Bench.
3. Interview with Ato Delelgn Gucho, Attorney At Law And Consultant at Any Federal Court.
4. Interview with Ato Samuel Tadesse, federal high court judge at terrorism and constitutional crimes bench.
5. Interview with Ato Fikadu Tsega, Deputy Attorney General At federal Attorney General Office.