Courts Gagging the Media

Why in news?

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- A special CBI Court recently issued a gag order prohibiting the press from reporting on the court proceedings of a fake encounter case.
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- In another case, Allahabad High Court gagged the media from reporting on an ongoing case concerning hate speech by the CM of Uttar Pradesh.
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What is the justification?

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- The orders were enabled by the Supreme Court itself.
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- In 2012, the Supreme Court held that in certain circumstances, courts could pass “postponement orders” barring coverage of specific judicial proceedings.
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- The court framed the issue as requiring a balancing of two competing rights: the right to free speech, and the right to a fair trial.
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- Observing that sometimes excessive publicity could jeopardise a fair trial, the court held that to the extent it was reasonable and proportionate, “prior restraints” on court reporting could be imposed.
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- Allahabad High Court cited that the media reports court proceedings inaccurately to justify the gag order.
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Is the justification fair?

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- In a Jury system, guilt or innocence is decided by a jury of twelve who do not possess specialised legal training
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- The idea that “media trials” might distort the outcomes of cases makes sense only in such a system.
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- In India we abolished jury trials more than 40 years ago, and it is judges now who decide cases.
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- Judges, by definition, are not only supposed to apply the law but also have to have the relevant training and temperament to be regardless of the public.
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- The 2012 SC order also failed to adequately limit the kinds of cases in which these exceptional “postponement orders” could be passed.
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- It also failed to limit the duration for which they could be passed.
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- This has given ample space for abuse as happened in the recent orders.
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What should be done?

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- Media misreporting of court proceeding can be rectified by making the written transcripts and recordings of court proceedings available to the public.
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- In some situations, a temporary halt on reporting could be justifiable.
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- But the bar should be limited to a single hearing, and only in the most exceptional of situations.
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Source: The Hindu

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