

## TRIAL BY MEDIA : A WAR ON DEMOCRACY AND RIGHTS

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### INTRODUCTION

Media has always been considered the watchdog of the society. Every system of government must have a free and fair media. In a huge and diverse democracy like India, it is critical that the media operates free of bias and prejudice, as the media also serves as the Opposition. The media is essentially the backbone of Indian democracy. The origins of media can be traced back to the Indian Nationalist Movement. Since those times, the media has played an important role in ensuring citizens' rights and liberties. Aside from these crucial duties, the media has evolved into a much-needed agent of change in society. Over the years, the media has played an important role in shaping public opinion. However, in recent years, the media has stepped outside its purview and into the sphere of the judiciary, conducting parallel trials with the courts. The media has taken up the function of a public court that does not recognise the concepts of "innocent until proven guilty" and "guilty beyond a reasonable doubt." Media trials typically begin even before the courts can hear the case, in which the media investigates the topic on its own and broadcasts it in such a way that the public creates an opinion against or for the accused prior to the real trial. These acts have a negative impact on the actual trial, resulting in an infringement of the accused's right to a fair trial. Although the media has been praised for raising awareness over the last decade, they have also been chastised for their excessive coverage of certain issues, particularly those involving famous figures.

Article 19 of the constitution guarantees the freedom of speech and expression. However, the freedom is not absolute because it is limited by the same article's subclause (2). However, the right to freedom of expression and speech does not include the freedom to commit contempt of court.

Since its inception, investigative journalism has been an emotive subject. Despite the fact that this sort of journalism poses various problems about journalistic ethics and norms, it has significantly influenced public opinion. Although the primary focus of investigative journalism is on the topics of scandals, crime, politics, corruption, and so on; this journalistic style is not limited to the foregoing. Mentioned fields. Investigative journalism became popular in India in the 1980s. The Bofors incident, in which the then-Indian Prime Minister, Rajiv Gandhi, was implicated, was the first time investigative journalism was brought to light. This incident

eventually led to Gandhi's defeat in the following elections. This incident, as well as the sort of reporting done by the media, drew the attention of the country to a new type of journalism that had previously been used by magazines and journals.

Media has now reincarnated itself into a public court (JantaAdalat) and has started interfering into court proceedings<sup>6</sup>. It entirely ignores the crucial difference between an accused and a convicted person while upholding the golden concepts of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. Now, we have media trials, in which the media conducts its own investigation and develops public opinion against the accused even before the court takes notice of the matter. It influences the public and sometimes even judges in this way, and as a result, the accused,

<sup>6</sup> Tripathi, Devesh, —Trial by Media: Prejudicing the Sub Judge, RMLNLU Journal

who should be believed innocent, is presumed to be a criminal, leaving all his rights and liberty unrestricted. Excessive media coverage of a suspect or accused before trial prejudices a fair trial or characterises him as having committed the crime, it amounts to undue interference with the administration of justice, necessitating contempt of court proceedings against the media. Unfortunately, standards intended to control journalistic practise are insufficient to avoid violations of civil rights.

### **MEDIA v FREEDOM OF SPEECH AND EXPRESSION**

*The press is commercialized to a large extent. In this business, profits and social responsibility need to be balanced and if that does not happen, society will not accept the media for long. As an independent and statutory body, the PCI shall ensure that a balance is struck between profit-making and social responsibility, profit-making tendency of some media owners and contractual-basis hiring of journalists are hampering quality of journalism* -- Justice MarkandeyKatju, (former Judge, Supreme Court of India), Former Chairman, Press Council of India.

Article 19 of the Indian Constitution, which ensures freedom of speech and expression, trial by media or any of its principles are not included in the Constitution. Press freedom is a part of freedom of speech and expression<sup>7</sup>. The entire concept of freedom of speech centres on the expression or communication of ideas, regardless of the media employed. However, this Article contains some constraints, making the freedom not absolute. The legislature has the authority to place reasonable restrictions on how this right may be used.

The principle agents of these rights, the media and the judiciary are interdependent proponents of constitutional rights, often in conflict as to where the priority and emphases should be placed in the free press v. fair trial dichotomy; the tension between the two is an

inevitable and perhaps necessary one<sup>8</sup>. The Hon'ble Supreme Court of India has observed that the freedom of press is regarded as —the mother of all liberties in a democratic society<sup>9</sup>.

However, balancing the rights of the public to know and the accused's presumption of innocence until proven guilty by a competent court has become unavoidable, but neck-and-neck competition for publication and coverage among various media outlets with a tendency to interfere with the administration of justice has become a matter of concern for both the legislative and the judiciary. Under Article 19(1)(a) of the Constitution, the rights of the freedom of Press have been recognized as Fundamental Rights and under Article 21 of the Constitution the suspect and under trial and the Civil litigant have Fundamental Right to have a free and fair trial<sup>10</sup>. As a result, balancing the two fundamental rights has become unavoidable, and the time has come for Courts to issue appropriate guidance on reporting of events in electronic and print media that are under consideration.

### **MEDIA TRIAL v. FAIR TRIAL**

"Every accused has the right to a fair trial" and "Justice may not only be done it must also be seen to be done." The strong belief of Indian criminal procedure.

Free trial and free press- the two major principles which are under conflict. The justification for the investigation and journalism is as the freedom of public in a democracy to get them involved in the day-to-day head topics happening and affecting around public. While the "Right to Fair trial" is a basic right as the trial should not be get influenced by any external pressure which is regarded as the basic tenet of Indian justice.

<sup>7</sup> Manuptra; Manuptra Article, Retrived on (November 15 2023, 9 :41 pm) <https://articles.manupatra.com>

<sup>8</sup> Effect of trial by media before courts. Available at <http://www.lawteacher.net/commercial-law/essays/effect-of-trial-by-media-before-courts-lawe>

<sup>9</sup> Harijari Singh and Vijayakumar ,AIR 1997 SC 73

<sup>10</sup> Maneka Gandhi Vs Union Of India 1978 SCR (2) 621.

**Zahira Habibullah Sheikh v. State of Gujarat<sup>11</sup>**

A "fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor, and an atmosphere of judicial calm," the Supreme Court noted. A fair trial is one in which there is no bias or prejudice toward the accused, the witnesses, or the issue under trial.

The legal system struggles with the complicated question of how to balance the rights of the media and the accused person to a fair trial. Finding a balance between the two rights is necessary to guarantee the administration of justice.

**Y V Hanumantha Rao v. K. R Pattabhiram and Anr.**

It was observed by the Andhra Pradesh High Court that: When litigation is pending before a court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to trial of action, as for instance by influence on the judge, the witness or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of court if he prejudices the truth before it is ascertained in the proceedings.

**NOTABLE INVOLVEMENT OF MEDIA TRIAL**

**Nirbhaya rape case.** Because to the persistent media trials, unlike in previous cases, the legislature, executive, and judiciary were alert, and the case's judgement was delivered without delay.

**Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India<sup>12</sup>**

The findings in this case gives a glans upon the constitutional view on the freedom of press in India as the Hon'ble Supreme Court states that the freedom of press is essential for the proper functioning of the democracy. That is, every citizen must be entitled to get involved in the democratic process.

**R. Rajagopal v. State of Tamil Nadu<sup>13</sup>**

The Supreme Court has ruled that press freedom includes the ability to participate in a free and informed discussion regarding public individuals' involvement in public affairs. However, when it comes to their personal lives, a correct balance between press freedom, privacy rights, and protected defamation must be struck in accordance with the democratic ideals outlined in the Constitution.

**In Re. M.V Jayarajan v. High Court of Kerala & Anr<sup>14</sup>**

Media cannot penetrate into forbidden sphere and brings to public matters which are to remain private. Media cannot trespass upon areas constitutionally earmarked for courts and hols media trials on any matter which is sub judice – Contempt of Court. In this case, the court also held that the media has no right to get involved and penetrate into the spheres and bring the matter to the public which are to remain as private. The media has aggressively transgressed all reasonable limits and even violating the privacy of individuals. It's also observed that 'the only role of the electronic media and press is to give true and ungrabbed report of the court proceedings.

**Saibal Kumar vs. B.K. Sen<sup>15</sup>**

The Hon'ble Supreme Court held that: "No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of the investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution."

<sup>11</sup> (2005) 2 SCC (Jour) 75  
<sup>12</sup> (1985) 1 SCC 641

<sup>13</sup> (1994) 6 SCC 632  
<sup>14</sup> 2011 (4) KHC 437: 2011  
<sup>15</sup> (1961) 3 SCR 460

### ***D. C Saxena v Chief Justice of India***<sup>16</sup>

In this case the court observed the restrictions under Article 19(2) upon on the freedom and expression guaranteed by Article 19(1)(a) including the freedom of press in two spheres that is they specify that the freedom of speech and expression is not absolute but are subject to regulation and on the other hand, they put a limitation on the power of a legislature to restrict this freedom of press and media.

As of the **200th LAW COMMISSION REPORT**, 'There is a feeling that the whole pattern of publication of news has changed in light of the extensive use of television and cable services,' the commission stated. "Several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses, and even judges as well as on the administration of justice in general.'The commission claims that this is criminal contempt of court; reasonable limitations on free expression imposed by Act provisions would be recognized.

### In ***M.P. Lohia v. State of West Bengal***<sup>17</sup>

The Supreme Court cautioned the publisher, editor and journalist of a magazine that had reported the facts of a case that was sub-judice, thus "interfering with the administration of justice.

## **MEDIA v. JUDICIAL PROCEEDINGS**

### **Impact on Judges**

It is true that every bearer of legal office does his or her greatest to avoid being influenced by what is seen, heard, or read outside the courtroom, and he will not willfully allow himself to be influenced in any way by the media. Similarly, it is important to realise that judges, like everyone else, have flaws. A man may not be able to totally remove what he has seen, heard, or read from his memory, and he may be impacted by it.

In the Nanavati case, for example, there was a lot of uproar from the media, and there was a lot of reporting that was later said to have impacted the jurors' views. The tale was publicised by the weekly tabloid Blitz, which was owned and controlled by R. K. Karanjia, a Parsi, who publicly supported Nanavati and depicted him as a victimised husband whose naïve wife had been influenced by a rich playboy.

### **Impact on Accused ,Victim and Witness**

If the media portrays the suspect or accused as if he has already been adjudged guilty well before the trial in court, even if the person is ultimately acquitted after the due process in the courts, such an acquittal may not help the accused to rebuild his lost image in society. Also, if the identity of witnesses is published, there is a risk of the witnesses' security being jeopardised due to pressure from both sides.

### **SUGGESTIONS**

1. To ensure a fair trial amidst media scrutiny, consider implementing stricter reporting guidelines, educating the public on the presumption of innocence, and utilizing pre-trial publicity hearings to address potential biases.
2. Limiting the release of sensitive details, such as evidence or witness statements, can prevent premature judgments. Establishing clear ethical standards for journalists and holding them accountable for accurate reporting helps mitigate sensationalism.

Court Intervention: Give judges the authority to impose gag orders in order to restrict comments made outside of court. Keep a watchful eye on media coverage and take action if any discriminatory material appears.

Analysis and Accountability Following Trial: During the post-trial analysis phase, assess how the trial was affected by media attention. Hold media organisations responsible for any violations of the trial's reporting guidelines.

Working along with media outlets: Encourage cooperation between law enforcement and media organisations to advance

<sup>16</sup> (1996) 5 SCC 216

<sup>17</sup> AIR 2005 SC 790

ethical reporting. Create channels of communication to quickly resolve concerns regarding possible biases.

**Monitoring Technology:** Use technology to track and spot instances of sensationalism or false information. Disseminate factual facts and refute false narratives via social media channels.

## CONCLUSION

The Hon'ble Supreme Court described the media as "The Ark of the Covenant of Democracy." The media "the fourth pillar" of democracy of India, the term fourth pillar has been invented by Thomas Carlyle to describe the media. In the case *State of Maharashtra v. Rajendrajawanmmal Gandhi*<sup>18</sup> held that " a responsible press is the handmaiden of effective judicial administration". Since the Indian media is so widespread and accessible, it affects almost every demographic in the country, making media-driven initiatives more effective in influencing the entire public.

The International Journal of Research and Analytical Reviews Under the Contempt of Court Act, the administration of justice is equivalent to criminal contempt. If the Act's provisions impose reasonable restrictions on free expression to prevent such interference, then those restrictions would be legal. The freedom of the media to disseminate opinions orally, in writing, or through audiovisual media, including media, exposes the entire legal system and the judicial process to public scrutiny. The media is regarded as society's watchdog and a reform-catalyst. Under Article 19(1)(a), the media implicitly asserts the right to look into, reveal, expose, and critique in order to provide a useful check on the proper operation of democracy. As a result, the media has an obligation to provide fair and impartial reporting. The public's awareness of the rule of law and a deeper grasp of the justice system as a whole are

enhanced by free and vigorous reporting, criticism, and debate<sup>19</sup>.

The major effect of media trial was always pinpointing in the matters related to criminal cases where the police were under the public pressure and in majority of times, they were forced to fabricate a story which may ultimately destroy the future of the one who is suspected to be the wrongdoer even after he is found to be not guilty by the court, because he has been crucially trialled and held to be the accused by the media and public.

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<sup>18</sup> (1997)8SCC 386

<sup>19</sup> Tata Press Ltd v. Mahanagar Telecom Nigam Ltd, AIR 19955SCC 139