

## **MEDIA TRIAL: IS FREEDOM OF MEDIA BECOMING A BOON OR A BANE?**

**-DEBARATI MUKHERJEE<sup>1</sup>**

### **ABSTRACT**

Freedom of speech and expression has been recognised as a fundamental right in the Constitution of India which includes freedom of media also, though not expressly but in an implied manner and it is also regarded as one of the pillars of democracy. This freedom is publishing news without any fear and the freedom of people to be informed of public matters. Media should act as a facilitator along with being an expediter on many matters including those affecting the collective conscience of society. With the passage of time media trial has emerged. Although it may be for the general awakening for the people but fair reports should be printed following the coded media laws and should not interfere with sub judice cases that are pending and decide their fate without judicial help. The legal sanctity of media is doubtful especially when a high profile case is pending in courts and the media portrays one-sided stories about the parties influencing a lot of people, spoiling the image of the accused who might be even innocent and that has to be decided by courts. Even in cases of sexual assaults many a times through media investigation the privacy of the victim is breached. There should be distinction and balance between free trial and free speech. This paper will analyse in details the constitutionality of free press, role of media along with legal provisions like fair trial, contempt of court, media laws, impact of media etc. The paper discusses about media trial so far as its status as the one of the pillars of democracy, and the way it can create an impact among jurors in the trial process and lives of people related to such trial and also the public and whether media trials are a healthy process or not.

### **INTRODUCTION**

Freedom of speech is regarded as the hallmark of the society. Freedom of speech and expression of the individual and the media neither confers an absolute right to speak and disseminate anything whatever one wishes, nor does it provide unrestricted or unfettered immunity for every possible use of language and escape the punishment of those who abuse the freedom. The

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<sup>1</sup> 2nd year, BSc. LLB, School of Law, KIIT University

success or failure of a democratic country is solely dependant to that extent to which civil liberties are being enjoyed by the countr men where the aim of democracy is to make most of the developments to the citizens by way of conferring rights in the maximum possible way. In such a democratic system people are to be considered supreme and all the organs of the state, i.e. Legislature, Executive and Judiciary are to serve and protect their interests. Democracy can survive not only under the vigilance of legislature but also, under the guidance of the opinion of public and the press is par excellence, the vehicle through which opinion can become articulate. Therefore freedom of press is essential to political liberty also.

Media has gained wide ranging roles in our society. The people in our society perceive many things through their senses and media has got the ability to change it wholly. People should participate in all the affairs of the state. In the developing countries, the growth of media culture is an ethical dilemma. It has become a trend that in all matters the media comes forward to investigate the truth. This is what is famously known today as *media trial* which gained popularity during the late 20<sup>th</sup> centuries and the beginning of the 21<sup>st</sup> century. Instead of responsive journalism, media coverage on someone's privacy and creating a widespread perception in the minds of public about his flaws or whatsoever is practiced. At the same time unwanted, frivolous information is disseminated, so, the need is to make balance between freedom of press to publish facts and conserve the dignity of the judiciary. Media has become a living courtroom where before the judges media reaches to the final conclusion. The judiciary has grown way modern than before and various courts are established for deliverance of justice, though very often it is hardly seen as it has become a coin in the hands of influential personalities. The judicial system and the administration of justice is the work of litigants and judges, not anybody else's. indeed where institutions of justice fails, the media should step in but there also has to be a check on the prejudicial effect on a sub judice matter by media. The media should also be accountable to be criticised if they do not behave and act in the correct way by the superior authorities. So far as a trial process is concerned, media is seen to play rather a negative role by exceeding the freedom which are made for them. A free hand should never be given to the media and should be regulated properly from poking into the justice system. A case has to be established by adducing evidence which are admissible, not evidences from media investigations. It leads to prejudice the parties and also it creates a burden on the judges to decide owing to media pressure. Lord Macaulay, who used to be a Member of the British Parliament

termed the media “the fourth pillar of democracy”. Many a times media is regarded indispensable for a democratic country. Unfortunately media is not the same as it used to be back then in the earlier times. There are many factors responsible for the media to compromise with their principles which is harming the nation. A number of debates have taken place with respect to the reporting of cases by media and the manner in which they are tackling the ongoing court matters. Examples of positive sides of media trials are also innumerable where they have roused the public out of their usual life and together forced the administrative authorities to work. On the contrary, it is also criticized on several occasions for being a huge obstacle in the way of free and fair trial.

The increased role of media in the globalized and tech savvy world has appropriately put the world of Justice into the hands of press and magazines. Judicial system is also not left unaffected by the effect of 'mass media', it comes as no surprise that the legal world is highly scrutinized by the media. The more the people get into details of a case the more burden become for the judges to pronounce the verdict in the case. The critique might be good, but one cannot overlook the ill-effects it has. One hand the right to freedom of press enshrined in the Constitution of India prevails and on the other hand right to fair and speedy trial unbiased by pre-trial publicity. It is necessary to determine how the two rights can be reconciled.

### **CONSTITUTIONAL VALIDITY OF MEDIA TRIAL**

The Constitution of India confers to all the citizens of our country with a set of fundamental rights which are listed in Part III of the Constitution. The media plays a vital role in our lives in the modern era. The media got its freedom which flows from article 19(1) which confers the right of freedom of speech and expression along with reasonable restrictions contained in article 19(2). The media plays an important role as it can mould public opinion regarding numerous issues, through media, people across all over the country receives information and develop their own point of view in a different perspective. The freedom of media has been justified in many ways. In the landmark case of **Express Newspaper Pvt. Ltd. v. Union of India**<sup>2</sup>, upholding the freedom of speech and expression it was held by the Supreme Court that, the freedom is not absolute and freedom of media is a part of it, which if not controlled will lead to disasters and anarchy in the public order and security of the state. The article 19(1) of the **International**

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<sup>2</sup> Express Newspaper Pvt.Ltd.. v. Union of India, AIR 1986 SC 872 (India).

**Covenant of Civil and Political Rights**<sup>3</sup> mentions that “Everyone shall have the right to hold opinions without interference.” Again, it contains special duties and responsibilities and subjected to restrictions. The Supreme Court in **In Re: Harijai Singh & Anr vs In Re: Vijay Kumar**<sup>4</sup> held that freedom of press is a prerequisite for a democratic country. It also further stated- “It is thus needless to emphasis that a free and healthy press is indispensable to the functioning of true democracy.” In **Hamdard Dawakhana v Union of India**<sup>5</sup>, the apex court held that right to imparting and acquiring education of common interest is a part of article 19(1). The public at large has the right to know correct news and the media should not publish false stories in this regard. It is considered necessary for the full development of the personality of the individual. *It is said that without the freedom of press truth cannot be attained.*<sup>6</sup>

### **GOLDEN RULES OF FAIR TRIAL**

The **Universal Declaration of Human Rights**<sup>7</sup> under its article 10 states that- “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

In India prevails adversary system of litigation, which is inclined towards the accused. The concept of fair trial emerges from article 14,20,21,22. Article 21 which guarantees life and personal liberty, can be taken away by a just, fair and reasonable procedure established by law. Therefore, fair trial is a part of article 21. In a free and fair trial in our country, the accused is presumed to be innocent until proven guilty beyond all reasonable shadow of doubt. The burden to prove the accused guilty always lies on the prosecution in a trial. The basic principles of fair trial are:

- Adversary system of litigation
- Presumption of innocence
- Independent, Impartial and Competent judges
- Knowledge of specific accusations
- Right to open trial in presence of accused

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<sup>3</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>4</sup> In Re: Harijan Singh and Anr.; In Re: Vijay Kumar, (1996) 6 SCC 466, para 10 (India).

<sup>5</sup> Hamdard Dawakhana v. Union of India, 1960 (2) SCR 671 (India).

<sup>6</sup> supra

<sup>7</sup> <https://www.un.org/en/universal-declaration-human-rights/>

- Right to free legal aid
- Evidence to be taken in presence of accused
- Protection against illegal arrest
- Right to bail
- Prohibition of double jeopardy (autrefois convict and autrefois acquit)
- Right against self incrimination

### **MEDIA TRIAL V FAIR TRIAL**

Article 19(1) guarantees “freedom of speech and expression”, of which freedom of media is a part while article 21 talks about “right to life and personal liberty”, from which fair trial derives its origin. It is the cardinal principle of criminal jurisprudence that an accused person is presumed innocent until proven guilty and no one is allowed to prejudge or prejudice the accused until the conclusion of the trial. In the present century, role of press/media has gained importance. Media is termed as the 4<sup>th</sup> pillar of democracy, and it has reincarnated as a public court (*often called janata adalat*), very often it is seen that the media through “*aggressive journalism*” exceeds its boundaries and publish news, while the trial process is not completed which may prejudice the functionaries of the criminal justice system and also the public in common, resulting in undue interference in the due process justice. Article 19(2) though does not mention administration of justice in reasonable restrictions. The media conducts its own investigation, builds opinion amongst the public and draws its own inference even before conclusion of the trial. It fails to recognize the difference between an arrestee, accused and a convict. The apex court in **Sahara India Real Estate Corporation Ltd. and Ors. Vs. Securities and Exchange Board of India and Anr**<sup>8</sup>, stated that all the important values must be balanced against the other important values and none of the rights in Part III are absolute. The apex court upheld “*prior restraint*” in Indian approach with the help of judicial decisions. In **Zahira Habibullah Sheikh v. State of Gujarat**<sup>9</sup>, the court held that, “*fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.*”

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<sup>8</sup> Sahara India Real Estate Corporation Ltd. And Ors. V. Union of India, (2012) 10 SCC 603 (India).

<sup>9</sup> Zahira Habibullah Sheikh v. state of Gujarat, (2004) 4 SCC 158 (India).

**LEGAL PROVISIONS RELATED TO MEDIA TRIAL**

- **The Press Council Act, 1978** was drafted with the objective of preserving the Freedom of Press, to improve the quality of the daily newspapers and to ensure the independence of the Press. Section 14 of act<sup>10</sup> gives the power to the council to censure information based on complaint for misconduct in journalism profession and judicial proceedings will be held for such persons liable. Apart from this act there are other several pieces of pre constitutional legislations which were enacted to curb the excessive activity of the media.
- **The Contempt of Court Act, 1971** is a one of the grounds for reasonable restrictions under article 19(1). The trial by media is a contempt of court. The act makes it clear that innocent publication and distribution of any matter, fair and accurate reports pertaining to merits of a case, fair criticism on the judgments if media does not transgress its limits. The reporting or publishing of pre trial proceedings are granted immunity but after the issue of process, during the pendency of trial i.e when a case is *subjudice*, such publication would amount to contempt.
- **The Information Technology Act, 2000** has broadened its ambit with respect to the Freedom of Press/Media. In the global techno world, dissemination of information has resulted to the need to control such activities and also to check the contents of the information. Section 66 of the act made spreading of a following categories of messages as punishable, though, later it was declared as unconstitutional.<sup>11</sup> Although in the present act, the Cyber Appellate Tribunal is empowered to entertain complaints, yet again it is confined to dealing with cases of fraud and hacking. In 2013, the Election Commission laid down few guidelines to regulate the social media campaigns.

**IMPACT OF MEDIA TRIALS IN THE MODERN SOCIETY**

Media being regarded as the 4<sup>th</sup> pillar of democracy, is a fabric and a mirror to the society. It has the capacity to mould public opinion and can also bring revolution among the mass of people. The ink of pen and the sounds of the mices can make or break any situation, it can either build or tarnish the image of someone. It acts as a magical bullet which directly hits the minds of people. Now we are observing a different role of media where it is interfering with the judicial

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<sup>10</sup> The press Council Act, 1978, § 14, Acts of Parliament, 1978 (India).

<sup>11</sup> Shreya Singhal v. Union of India, (2012)12 SCC 673 (India).

proceedings where it ultra vires its domain and doesn't do what it is supposed to. It should play a constructive role in the interests of the society. But on the other side, on many occasions it has been that the media has helped an aggrieved person get justice, acting as a catalyst in the speedy trial process. This marks the difference between media activism and media trial.

#### ▪ **MEDIA ACTIVISM AND MEDIA TRIAL**

The media culture has laid its web into minds of almost everyone, as a result of this tremendous outreach everyone is aware of what is going all over the globe. Though it is a callous reality, it is exposing scams and busting all the secrets to the public through the process of constructive journalism in a positive way. The Mathura rape case judgment<sup>12</sup> which was highly criticized for being irrational and unreasonable, the Nirbhaya<sup>13</sup> rape case which sparked great upsurge by the media can be regarded as catalytic activity by the media towards the path of justice. After these two unfortunate cases we got our stringent Anti rape laws.

- In this regard, the **Priyadarshini Mattoo Case**<sup>14</sup> is worthy of mention where the accused, the son of an IPS officer was accused of raping the victim, the trial court acquitted him but he was convicted by the higher court and the Supreme Court. Justice Y.K. Sabharwal, the then Chief Justice of India praised the media which played an important role for being instrumental.
- The **Jessica Lal murder Case**<sup>15</sup> also needs to be mentioned here because in this case, the accused Manu Sharma was accused of killing the deceased and in this case many of the witnesses turned hostile and the result of the 7 year long trial was acquittal. But the case was reopened due to hue and cry by the public, publicised by the media. The Delhi High Court convicted the accused and sentenced him to imprisonment for life.
- The **Nitish Katara Murder Case**<sup>16</sup>, was an example of Honour Killing where the media gave a lot of attention to the case and brought aid to the secondary victims in the way of a speedy trial. It might have been also possible possible that without the craze, scrutiny and intervention of the media, the culprits would have gone unpunished.

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<sup>12</sup> Tukaram v. State of Maharashtra, (1979) 2 SCC 143 (India).

<sup>13</sup> Mukesh and Anr v. State for NCT of Delhi, (2017)6 SCC 1 (India).

<sup>14</sup> Santosh Kumar Singh v. State through CBI, 2010 (9) SCC 747 (India).

<sup>15</sup> Manu Sharma v. State, (2010) 6 SCC 1 (India).

<sup>16</sup> Vikas Yadav v. State of U.P., (2016) 9 SCC 541 (India).

These were just the positive aspects of media activism, but it has got a negative side too. Free and healthy press is necessary, but when it comes to administration of justice, the media trials, though it may act as a crusade should not come in between the administration of criminal justice. The media should not act as a judge as it can prejudice a judge, though not consciously but subconsciously. It creates other such problems like defaming a defense lawyer for taking up the case, which goes totally against principles of natural justice, publishing the images of witnesses which may cause threat to him/her. Also if a person is suspected of a crime and if media publicises his/her image, the test identification parade holds no value and even in case of a rape victim the media has been seen publishing her name many a times which goes against the law. A lot more cases exist where the same activism in the form of media trials brought about dangerous outcomes.

In this regard the **Double Murder case**<sup>17</sup> is noteworthy, where the media through aggressive journalism. Reached heights of irresponsibilities by spreading canards, defamatory words and published anticipated stories regarding day to day proceedings, though the CBI investigation came up with different results from media.

In **Parliament Attack case**<sup>18</sup>, though Mohd. Afzal, the accused self incriminated himself before a press conference, but the media had played a very negative role in moulding the conscience of the public at large even before he was tried. The attitude from media of such kind is highly unexpected and unacceptable.

### **CONCLUSION**

Many a times the media has prevented the miscarriage of justice. Jessica Lal case, Priyadarshini Mattoo, Ruchika Girhotra etc cases would have gone unpunished without media speculations. Still, it has reached a saturation level where trial and error methods are applied as to what to show and what not to.

Media plays the role of a Watch dog and brings about the facts in front of everyone acting as a mirror of the society. It brings events that are ongoing and make the legislatures and government

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<sup>17</sup> The Arushi Murder case; Nupur Talwar v. Central Bureau of Investigation and Another, AIR 2012 SC 1921 (India).

<sup>18</sup> State v. Mohd. Afzal and Others, (2005)11 SCC 600 (India).

answerable for their. We have right to information and media just acts as a platform to bring the voice of the society. But now days it is so much sensationalized that they just do it for their income and TRP's. Only few reporters are left who bring information for which they are being paid and not upon any political pressure. From the above situations it has become clear that the media has a more negative rather than a positive influence.

The most easiest way to regulate the media is to exercise the contempt jurisdiction of the courts for violating the basic code of conduct. The media cannot be granted freedom of speech and expression to an extent where it will prejudice the trial itself. It has become a trend now that media when finds a sensational news that all the channels come up with same stories but after few days when they find something more interesting they give importance to the latter by totally ignoring the former irrespective of its gravity. Trial is indeed affected by this sensation. Judges while deciding upon a case start considering criticism from media if they go opposite from their view. Any organ if it exceeds its jurisdictions and functions is liable to answer, same goes for media trials also.

But they can be a blessing in disguise as well as media keeps a watch over the investigations and police functions by means of revolutionary sting operations. Again, there should be prescribed limits and media should give due respect to fair trials with adequate sense of responsibilities. The moral duty should be to publish news that will create a positive impact on the spectator by bringing out the truth at the right time.

The media houses shall be given credits for extracting information which was so well guarded. Other advantages of having media are that people are now aware of their rights due to the fact that they are exposed to a lot of news. The credibility of news rests on impartial reporting. The media has to ensure that the administration of justice is not undermined. Trial by media can be called as a necessary evil. It cannot be denied that media is considered as a voice of the people. It plays a positive part whenever justice is denied. The Law Commission in its 200th report emphasised the need to strike a balance between the free press and fair trial. If media keeps on publishing anything and everything without substantial evidence then people would lose faith on the news channels and unnecessary things would arise creating unnecessary trouble. Media if stays within their domain in case of reporting only what is true and should be shown will be helpful as it will bring about more consciousness about the current issues prevailing and it should

not judge and reach a conclusion i.e.. trial by media before court pass the verdict. Few changes that should be made in order to restrict the media but at the same time to keep the people stay connected to the news so that the there is fair distribution of justice as well as information-

- 1) To bring amendments in the Press Council Act,1978 as it has got very limited powers and it only deals with print media.
- 2) To bring changes to the Contempt of Courts act,1971 where the media should be prevented from making prejudicial publications from the time of arrest. There should be proper punishments for violations because without fear of punitive provisions the media can extend their boundaries.
- 3) The people associated with the media world should be taught media ethics and responsive journalism and also the media laws.

Lastly, before any publication the media should bearing the responsibilities, should preserve its sanctity and keep in mind that whether their actions will be fruitful to the needs of people with regard to providing quality information which is their sole task.