

MEDIA TRIAL IN DEMOCRACY

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Introduction

Media Trial is a concept in the world of law that describes the influence of any situation or person's reputation through the media coverage precisely by television and newspaper, about the culpability behind the court's verdict. Media considered an essential pillar of democracy is doing a remarkable job as a type of connectivity from end to end and spreading awareness. The sole purpose of media is news reporting rather than news making, but some media platforms think that they possess some extra rights and can go on any beyond for TRP. Today leading platforms are taking support of some unreliable shows, like ghosts, future happening shows, soul and beast related shows, etc., to boost their TRP and popularity. Looking in the right way, these cannot be considered as wrong, but a news channel cannot be the suitable medium for it. Media is known as the most precise mirror for the reflection and perception of society's truth. There was an era when the journalist did not reveal any information without the proper consult and conviction, studying the charges, investigation and they give their independent conclusion without any force or fear. They do not become part of any politics neither than the hand of any bureaucrat; what we took is just a truth that can be trusted. Today the game changed in the name of Media Trial, or the system became the game, god only knows. Media should show every possible aspect of any circumstances, but we often observe that one side manipulates to serve their interest and use the same to hurt the rival. Often, media exposed various lacked issues in the system, either it can be a lack in the investigation or improper functioning of any public servant, which may result positively but often reveal the identity of any person can result in trouble for his/her life. Every person has the right to life and personal dignity, whether accused, suspect, or any ordinary person. However, sometimes without the court's final verdict, the media declares the culprit and steps towards the media verdict and media punishment, after which the accused cannot live an ordinary and peaceful life that everyone is desired to. Media Trial is not authorised in India; any case cannot be sorted out or be pre-decided by the media. Most of the time, media

takes the high publicity cases, at the time of any sensational crime or any celebrity involved in any case as a victim or accused then in such ground media tries to surround TRP¹.

In India, the proportionate of media trial overlooked in a noteworthy condition, i.e., it consisted of both positive and negative aspects. Before India got independence, media does not guarantee any particular rights or freedom that can be used further, but due to common law access, the press enhanced some freedom after the case of *Charming Arnold Vs. Emperor*. The rights of journalists are to be as decided as per the subject's sensitivity or as per the case. At the time of independence, the Indian leaders found significant support for media's rights and used it as a weapon for spreading their views all across the country. Under these circumstances, the media also guaranteed some rights, and from there, only somehow the concept of media trial sparkled in a way².

Constitutionality of Media Trial

❖ Freedom of Expression –

- In many developing nations like India, the judiciary always respected the media and authorised them with some proper rights that are the medium for their free and vibrant work. In some instances, the judiciary leads the contempt of court over the media, which is then challenged by the media as a violation of Article (19) (a) of the Indian Constitution, i.e. Right to Freedom of Speech and Expression. Unlike the US, Indian media does not grant any separate provision that could be accessed. In regarding some landmark cases as like *Brij Bhushan Vs. The State of Delhi*³ and *Romesh Thappar Vs. The state of Madras*⁴, the Supreme Court of India invoked some pre-steps in these cases and gave authority that media must be encompassed under Article 19. The court follows that any freedom must not be curtailed from any authority or any person on any reasonable grounds. For more considerable public interest, the Indian Judiciary always bend towards fair criticism, so courts have always respected the rights of fair comments and criticism. However, there is always a limit for anything; if any of the comments will be considered venomous or harm the image in people's eyes, then the court can condemn such action, and strict action will also be taken against it. The Constitution of India kindly mentions in Article 19 (2) that “any state can impose reasonable restrictions on any exercise in

¹ Hashmat Ali & Ghalif Nashter, *Role of Media: Education, Culture and Ethics in Modern India*, 20ALJ (2012-13) 312

² K.D. Gaur, *Constitutional Rights and Freedom of Media in India*, 36 JILI (1994) 429

³ *Brij Bhushan Vs. The State of Delhi* 1950 AIR 129

⁴ *Romesh Thappar Vs. The state of Madras* 1950 SCR 594

the interest of sovereignty and integrity of India, the security of the state, friendly relation with foreign states, public order, morality or in any relation to Contempt of Court, defamation or incitement to an offence". In the landmark case of Baradakanta Mishra Vs Registrar of Odisha High Court, Justice Krishna Iyer explained the dilemma as to how the judiciary has to maintain the proper balance between fair justice and equality of freedom. Both the media and judiciary must perform their role without any interference with another; media granted freedom for reporting the court proceeding neither giving any superstition that who is the culprit. The media must equitably educate the public, and the court has the right to preserve the owner and dignity of the judiciary. No doubt that media must be robust, and today we can see the same over the mighty access of radio, internet, and television in both governments and the private sector. For better performance and less corruption, it is mandatory to control the legitimacy and forward in the way of a fair trial⁵.

- This fact cannot be ignored that India, England, and United States are the common law countries that give value to their rights and especially fundamental rights like freedom of speech and expression. However, the side of the fair trial also cannot be ignored; many of the international authorities have given their concern about maintaining the proper balance between media's rights and fair trial. In the UN Basic Principles of Independence and Judiciary, everyone possesses the right to a fair trial in a public hearing against the common law whether the person is in suspect for any crime or not. In this way, we can observe that freedom of speech and expression is considered an essential concern on behalf of media's right at a global level, but this cannot give a license to media that they can be explicit of any kind in any manner⁶.
- In a country like India, the statute of the cut-off points on the media's privileges has been in line with the forms spread out by Article 19. In Harijai Singh V/s Vijay Kumar⁷, the Supreme Court expressed that the press enjoys no special right of freedom of expression and, therefore, the extent of this freedom was as equivalent as available to each citizen of the nation. In Union of India v. Naveen Jindal repeating the choice in Reliance Petrochemicals V. Owner of Indian Express, it was held that when Article 19(1)(a) is compared against the least limitation system revered by First Amendment in the US, it tends to be said to consider limitations reasonable under Article 19(2)(a). In this manner,

⁵ Shiv Kirti Singh, Freedom of Media vis-à-vis Independence of Judiciary, CNLU LJ (1) [2010] 103

⁶ Anshit Aggrawal, Critical Appraisal of Media Trial under Article 19 (1)(a), April 2020, Lawcirca.com

⁷ "Trial by Media. Free Speech and Fair Trial Under Criminal Procedure Code, 1973", 200th Report of the Law Commission of India, 2006, at 36.

even though they are fundamental to our popularity-based structure, the media's privileges are not consecrated while they have not been allowed any exceptional advantage or resistance from the law.

- In *M.P. Lohia v. the State of West*, a Bengal woman committed suicide in Calcutta in her parents' house, and a case was filed against the husband and in-laws under the Penal Code, 1860 for murder alleging that it had been a case of dowry death. The husband had filed several documents to prove that the lady was a schizophrenic psychotic patient and her parents filed documents to prove their allegations of dowry demands by the accused. While a Special Leave Petition was pending before the Supreme Court, according to the disposal of the appliance for anticipatory bail by the Calcutta supreme court, even then an article was published in a magazine called 'Saga' titled "Doomed by Dowry" written by Kakoli Poddar based on her interview of the family of the deceased. By extensively quoting her father, it presented a unilateral view, which the Supreme Court censured for beginning only the allegations made by her parents but not about the documents filed by the accused to prove that the deceased was a schizophrenic. While noting that the publishers were liable for "indulging in such trial by media when the difficulty is sub judice", the court recorded its displeasure at the interference with the administration of justice⁸.

❖ **Right to Privacy –**

- Privacy refers to a person's right to retain control over his/her personal life and is rooted in the idea of personal autonomy. People who lead their lives in some unique way that can be observed different from others may feel that such is concern about their privacy. Individuals may invoke rights of privacy present others from introducing into their personal space. Many people believe it is a fundamental right of privacy to prevent personal information from being communicated to others without their consent.
- For the aspect of news reporting, the media has the right to disclose personal information. Privacy claim is often used as a means of concealing illegal or immoral conduct. The media mainly should not publish intimate details about an individual's private life without good reason. The mere fact that readers wish to know about the private life of any celebrity is not in itself a sufficient reason to publish any information⁹. There is the law for balancing the person's right to ground his/her privacy against the public's right to know about a matter of general importance. It would be pretty clear that there is no law

⁸ R.K. ANAND V. REGISTRAR, DELHI HIGH COURT: AN EXAMINATION OF THE LAW ON MEDIA TRIALS by Sneha Mohanty and Vrinda Bhandari (2005) 2 SCC 686.

⁹ Fundamental Right, Article 21, Part III, Constitution of India

empowering the State or its officials to prohibit a prior restraint upon the media, and when a person is holding any public office, in that case, any criticism cannot be allowed. If such criticism were attempted to be avoided, it would amount to political censorship. Any personal conduct from the person who holds any governmental office for public administration is always open to criticism. Any publication made in the press that includes criticism of any act or conduct connected to his public office and life cannot be made any prior verification of facts. However, it should be mandatory that the media has published the same after a reasonable verification¹⁰.

Under Contempt of Court Act, 1971

The Contempt of Court law is a significant act or law as per the media's perspective of civil and criminal, which was amended in 2006. Under Exception 4, Section 499 of the IPC, 'no civil or criminal action will lie against any newspaper or journal in the case for publishing an accurate or fair report of the court's proceeding although the same can lead to disparaging any individual's character. Section 5 also protects the publication of fair criticism of any judicial activism or any other judicial decision. Section 2 (C) of this act clearly states that "publication whether by spoken, words, written, by signs or by any visible representation or otherwise of any matter or any other act whatsoever which scandalise or tends to lower the authority of any court, prejudice or tend to interfere with due course of any judicial proceeding or either tend to interfere with the expression". This law was enacted as a restriction of liberty for the press in many cases and gave a chance for malicious attack on any corrupt authority or any corrupt officer. Since the publishers do not possess any indefensible rights to put their statement, Section 3 of this Act spares any publication. As per the section, "a person shall not be guilty of contempt of court on the publication ground that interferes or any way obstructs the court of justice in collaboration with any civil or criminal proceeding that might be pending for publication. So as per the act, Section 4 mention that any judicial proceeding can be reported in a free and honest way¹¹.

Media's Jurisdiction in Human Rights

Media and journalists are considered a medium to spread the happenings from one place to another, and today we can state that media evolved a way of awareness in people's lives for not only news but also specific amazing facts. In any country, media sets up the economic, social, and cultural perspective for all others by its creativity, leading to a free mind over other peoples. As is the voice of democracy between government and

¹⁰ Bhaswat Prakash, Trial by Media - A Threat to Our Judicial System? legalserviceindia.com

¹¹ Shekhar Engti, Contempt of Court and Media, February 2018, The Sentinel

peoples, the media headed as the guardian for human rights. Instead of only focusing on the event, the media describes the law relating to such an incident, including the violation of rights, whether at the local or international level. Because of this helpful liability of media, government, bureaucrats, and other government initiatives work correctly, and the public gets corruption-free life. Media plays a central role in generating public opinion using the face of discussion that are broadcasted and supporting the same at judiciary and administration for the welfare of society. Media evolving as an essential factor for society in promoting social and economic welfare and looks over important issues like education, women empowerment, equality for all, children's welfare, and other vital initiatives. Most of the newspapers, news channels, NGOs are doing the very kind of promoting human rights to the maximum they can and trying to bring an issue out concerning the violation of human rights to be quickly resolved. In collaboration with certain other authorities, the National Human Rights Commission is doing its best regarding the protection of human rights. However, we all know that without media's kind help we cannot spread such kind of initiative at a large, media always provide publicity to such type of organisations and social workers which comes up with initiatives like that and because of such advertisement more people get motivated and be a part of it. Instead of just promoting the facts, the media always suggest a way to be out of such problems, and thus it empowers towards the protection of human rights. After this critical role, media also signifies an educative role as it helps people be aware of all the political, social, economic, and other issues that can be traced under the right to information. Media also plays a vital role as a public educator since it gives valuable information about various valuable issues such as cleanliness, peace, caste, tribes, legal reforms, laws, culture, and specific other vital issues as per human's perspective¹².

Impact over Democratic Nation

Media starts public investigation on how a prominent case is being dealt with in the criminal equity framework. This may impact the case preliminary system, which incorporates the cycle of social events and introduces confirmations, just as the observers and other significant court components are preliminary. Media association in a preliminary may impact the criminal equity activity either contrarily or decidedly dependent on the circumstance. Regardless of the impact of media on criminal cases in different nations, there have been no organised, logical examinations on the impacts that the media has had on the criminal equity framework in

¹² Mudassir Nazir & Mr. Tauseef Ahmad, Role of Media in Protecting the Human Rights of Marginalised Communities, 10 CPJLJ (2020) 123

India. There was a requirement for all the more academic exploration because of media in cases that are under preliminary in India. Discoveries may impel further conversation on this impact.

The Indian criminal equity framework has been delayed in letting the media in on its tasks and capacities. Notwithstanding, this is required to change as new media advances are utilised to pressure the framework for more access. There is a need to inspect how the media impacts the Indian criminal equity framework. Analysts have demonstrated that the media influences human convictions more than science. Strategy writing shows local discoveries on the effect of media-conveyed strategy accounts¹³.

The correlative investigation of each question on media preliminaries and its effect uncovers that the vast majority of the factors being referred to and variable effect allotted to subgroups are altogether related. Accordingly, the current investigation is substantial in reasoning that there is a positive connection between court decisions and media preliminaries in India, just as that the media preliminaries meddle with the arrangement of equity in the Indian criminal justice system.

The media impacts public talk and feeling concerning occasions in society. Columnists report stories in a way that will catch the public's consideration as to what is going on in various establishments. Of late, the media has likewise been including itself in criminal equity preliminaries, particularly prominent cases. There have been worries that media preliminaries have meddled with criminal equity measures. There is an inescapable understanding that criminal equity cycles should be taken care of cautiously by the media. The account strategy system guided the current examination. The system is valuable in deciding how strategy accounts identify with strategy changes. The examination incorporated a blended techniques configuration to analyse personal and quantitative information. The investigation was done to build up how media impedance influences the Indian criminal equity framework by deciding if there is a positive connection between court decisions and media preliminaries in India. Likewise, the investigation was completed to build up how media obstruction influences the Indian criminal equity framework by deciding the impacts of media preliminaries on the Indian criminal equity framework. Discoveries showed that media impedance influences the Indian criminal equity framework as some court decisions are moulded and affected by media preliminaries. Likewise, discoveries demonstrated that media impedance influences the Indian criminal equity framework as media preliminaries affect the framework; for example, the media now and again brushes off balance a few cases because of the encompassing occasions.

¹³ V.V.L.N. Sastry, Influence of Trial by Media on the Criminal Justice System in India, Walden University, 2019

Media Trial v. Free Trial

Trial as per Law is examination before a judicial assembly of the facts place in issue during a cause, usually together with problems with law furthermore as those of reality. Its additionally the determination of an individual's guilt or innocence by due process of law, associate in the nursing act of attempting testing, or golf stroke to the proof.

Media: Journalism is those elements of the mass media that specialise in delivering news to the general public or a target public. These include medium, broadcast news, and, more recently, the web¹⁴.

The press and media must enlighten the public, the masses, about the problems concerning public importance. This is why freedom of speech and expression within the Constitution has been extended to incorporate freedom of press and media. The true freedom of expression is contained in Article 19 of the Indian Constitution. However, this freedom is not outright. Reasonable restrictions are permitted by sub-clause (2) of an equivalent article. Article 19 (1) (a) of the Constitution of India guarantees freedom of speech and expression, and Article 19(2) permits reasonable restrictions to be imposed by statute for various matters, including 'Contempt of Court'. Article 19(2) does not ask for 'administration of justice, but the interference of the administration of justice is mentioned within the definition of 'criminal contempt' in section 2 and section 3 of the Contempt of Courts Act, 1971, amounting to contempt. Freedom of expression does not mean the liberty to commit contempt of court. The word 'expression' utilised in Article 19 (1) (a) of the constitution additionally to 'speech' is comprehensive enough to hide the press. It was said that media has no special rights – the editor and therefore the press manager are citizens of the country, and once they prefer to write, they are merely expressing their right to expression¹⁵.

The concept of media trial is not new, right from "Romesh Thappar v State of Madras¹⁶ and again in Prabhu Dutt v Union of India¹⁷, the Supreme Court laid down that Freedom of speech and, therefore the press, formed the very foundation of all democratic organisation. It also held that the proper to understand news and knowledge regarding the administration of the government is included within the freedom of the press. In M. Hassan v Government of Andhra Pradesh¹⁸, the court held that the denial by the jail authorities to a journalist

¹⁴ Aayushi Kiran, Do Media Trials Serve Any Purpose? www.latestlaws.com

¹⁵ Article 19 of the Constitution of India

¹⁶ Romesh Thappar v State of Madras 1950 AIR 124

¹⁷ Prabhu Dutt v Union of India 1982 SCR (1) 1184

¹⁸ M. Hassan v Government of Andhra Pradesh AIR 1998 AP 35

and a videographer to interview the condemned prisoners in jail amounts to deprivation of a citizen's Fundamental Right of Freedom of Speech. In *State of Uttar Pradesh vs Raj Narain*¹⁹, the court underlined the importance of the proper understanding it had been held that Article 19(1)(a) not only guarantees the liberty of speech and expression it also ensures and comprehends the proper of the citizens to understand and receive the knowledge regarding matters of public interest²⁰.

The Supreme Court opined that freedom of speech available to a Member of Parliament under Article 105(1) also on a member of a state legislature under Art. 194(1) is more comprehensive in amplitude; it is also in *Association for Democratic Reforms v. Union of India* acknowledged the importance of receiving information within the context of elections.

In *Indian Express v. Union of India*²¹, it has been held that the press plays a significant role within the democratic machinery. The courts must maintain the opportunity of press and negate all laws and managerial activities that compress that opportunity.

Freedom of the press has three essential elements. They are:

- Freedom of access to all or any sources of data,
- Freedom of publication, and
- Freedom of circulation

In *Sakal Papers Ltd. v. Union of India*²², the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a cost, was held to be violative of freedom of the press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. v. Union of India*, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Supreme Court of India, holding it to be violative of the provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court struck down the rebuttal of the government that it might help small newspapers to grow.

In the case of *Brij Bhushan v. the State of Delhi*, the validity of censorship previous to the publication of an English Weekly of Delhi, the organiser was questioned. The court struck down Section 7 of the East Punjab

¹⁹ *State of Uttar Pradesh vs Raj Narain* 1975 AIR 865

²⁰ Shalu Shravan Singh, *Media Trial and Its Impact On Evidence*, legalserviceindia.com

²¹ *Indian Express v. Union of India* 1986 AIR 515

²² *Sakal Papers Ltd. v. Union of India* 1962 AIR 305

Safety Act, 1949, which directed the editor and publisher of a newspaper “to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters all the matters and news and views about Pakistan, including photographs, and cartoons”, on the ground that was a limitation on the freedom of the Press²³.

Conclusion

In a country like India, media is praised as the fourth pillar of democracy, but it is only obedient till the heat enlightens rather than burn. The Constitution of India is framed over the democratic view that ensures the freedom of speech and expression, which scope out the rise of media trial. Being an essential pillar of a nation, media must serve independently and powerfully to maintain the essence of democracy. Media is indeed the best platform to express something for any individual, but the media’s duty not to broadcast anything; there are some limitations held by the jurisdiction for the same as the media cannot prejudice the court trial. Supreme Court justified the rule of Contempt of Court for the same purpose pointed in many of the cases. About many of the landmarks, judgments have witnessed that media eliminated the wrongs by performing their best and due to which the other three pillars of the nation been benefited to serve the nation in a well-behaved manner.

Freedom of speech and expression is a fundamental right in every democracy. Media also enjoys an equal right, and from a broad perspective, they exercise an equivalent for the betterment of society. During a competitive environment, the participants within the media industry try their utmost to draw in more audience and readers. They are going beyond mere facts statements and use many innovative techniques. Sensationalising news is not a replacement phenomenon, but assuming themselves within the role of police and judges by investigation, collecting any evidence, and making a choice may be a significant concern. When a criminal offence is committed, it is taken as something affecting the society, and hence state comes immediately because of the complainant and proceeds with the matter. Sometimes the judges also look over the media’s perspective towards the case and try their best to give justice which cannot be criticised anymore. Hence, it seems very tough to maintain a proper balance in the media trial and the free trial that somehow fails towards the Law and Justice. The fact cannot be ignored that the failure was not due to judicial lethargy but rather due to several extraneous factors like police indifference and wanton delaying tactics on the part of the

²³ Fair and Free Trial vs Media Trial by Maninder Gill Sudhiir and Rhea Sudhiir
Brij Bhushan v. State of Delhi AIR 1950 SC 129

defence. However, it is also true that ethics cannot be above the law. In that manner, the media must follow a line of control at the time of public trials. It should emphasise the reality and will help the court to project the proper verdict for right justice. Malpractice of unethical issues in media is not in the least ignorable matter. Media trial is additionally an appreciable effort, which has been ready to start a revolution.

Nevertheless, the revolution cannot overlook the welfare of society. Therefore, it is the moral duty of the media to point out the reality, which too at the proper time. Media has a crucial role to play in a democratic society. The work is to stay informed about the happenings that have an immediate or indirect impact and not conclude. Media should be a tool to realise justice and not defeat it.

