

## TRIAL BY MEDIA: A THREAT TO THE ADMINISTRATION OF JUSTICE

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### ABSTRACT

*The freedom of press has always been debated in a democratic nation. Indian is world's largest democracy and media is considered as the fourth estate of the government after Executive, Legislature, and Judiciary. There is no specific provision for the freedom of media and press in India constitution as such. But this right is implied from the Right to Speech and Expression guaranteed under Article 19(1) (a)<sup>2</sup>.*

*Media has undergone from being a simple medium of communication to the public to being a harbinger of change. Trial by media refers to pre trial exposure of a case by the media through communication means like television, internet, and radio. These kind of exposure leads to a deliberating over the ongoing clash between the Freedom of Press under Article 19 and the Right to Fair Trial under Article 21 of the Constitution.*

*The author would be discussing about the Right to Freedom of Press in detail and its contradiction with the Right to privacy and Right to have Fair Trial. The author would also be discussing about the negative as well as positive impact of the Trial conducted by the Media. The essay also contains the various cases decided by the Hon'ble Supreme Court in this regard.*

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<sup>2</sup> Sakal Papers (P) Ltd vs. Union of India, AIR 1962 SC 305

## INTRODUCTION

*“Were it left to me to decide whether we should have a government without newspaper, or newspaper without a government, I should not hesitate a moment to prefer the latter.”<sup>3</sup>*

The freedom of press has always been debated in a democratic nation. Indian is world’s largest democracy and media is considered as the fourth estate of the government after Executive, Legislature, and Judiciary. There is no specific provision for freedom of media and press in the Indian Constitution as such. The media derives its rights from the right to freedom of speech and expression available to the citizens under Article 19(1) (a) of the Indian Constitution. Thus, the media has the same rights—no more no less than any individual to write, publish, circulate or broadcast. In a case that arose in pre-independent India, the Privy Council held-

*“The freedom of the journalist is an ordinary part of the freedom of the subject and to whether lengths the subject in general may go, so also may the journalist, apart from the statute law, his privilege is no other and no higher..... No privilege attaches to his position.”<sup>4</sup>*

Although no special provision was made to safeguard the rights of the media, the honourable court has time and again confirmed that the rights of the press are implicit in the guarantee of freedom of speech and expression under Article 19(1) (a) of the Indian Constitution.<sup>5</sup> In fact, successive judgments of the Supreme Court of India have struck down laws that abridge the freedom of the press and media. In the *Sakal Newspaper vs. Union of India*, the Supreme Court held that the State could not make laws which directly affected the circulation of a newspaper for that would amount to a violation of the freedom of speech. The right to speech and expression also includes the right to criticise government, the requisite of a healthy democracy.

At present, under sec. 3(2) of the Contempt of Courts Act, 1971 read, full immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case, if by the date of publication, a charge sheet or challan is not filed or if summons or warrant are not issued. Such publications would be contempt only if a criminal

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<sup>3</sup> Thomas Jefferson in a letter to Edward Carrington, January 16, 1787

<sup>4</sup> Channing Arnold vs. Emperor, AIR 1914 PC 116.

<sup>5</sup> *Brij Bhushan vs. State of Delhi*, AIR 1950 SC 129; *Express Newspaper Ltd. vs. Union of India*, AIR 1958 SC 578; *Sakal Paper vs. Union of India*, AIR 1962 SC 305; *Maneka Gandhi vs. Union of India*, (1978) 1 SCC 248.

proceeding is actually pending i.e. if charge sheet or challan is filed or summons or warrant are issued by the Court by the date of publication.

### **Trial by Media**

*“Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.”<sup>6</sup>*

*-Jeremy Bentham*

The media being the forth pillar of the democracy has become the backbone of the news industry and plays the vital role of the public's eyes and ears. The prime question arises here that to what extend media can use the freedom given under Article 19(1) (a). There have been numerous instances where party has raised questions on media regarding violation of their Right to privacy enshrined upon them by constitution. Various judges in their decision have discussed this aspect that whether freedom of press violates right to privacy of individual.

Trial by media emerged as a term of colloquial origin, indicating perhaps the media's assignment to itself the adjudicatory process. The media is often found publishing opinion and spreading prejudice under the grab of 'news'. Owing to the colloquial origin of the term, there exists no comprehensive definition. The Hon'ble Supreme Court has made an attempt in R K Anand<sup>7</sup> to define the term in the following manner:

*“The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.”*

A trial by media amounts to travesty of justice if it causes impediments in the accepted judicious and fair investigation and trial.<sup>8</sup>

<sup>6</sup> Scott v. Scott(1911) ALL ER 1 p. 30; Samarias Trading Co Pvt Ltd v S. Samuel (1984) 4 SCC 666

<sup>7</sup> R.K Anand v. Registrar, Delhi High Court (2009) 8 SCC 106

<sup>8</sup> Manu Sharma Vs. State (NCT of Delhi) 2010(2)ACR1645(SC), AIR2010SC2352

There are numerous cases in which media has played vital role in discovering evidence, or properly analyzing witnesses and helped judiciary to meet ends of justice. This indispensable role of Media has made it Fourth pillar of democracy. But independent investigation of media into crime has been harshly criticized at many times and non interference with work of judiciary is encouraged. This paper aims to look into the aspects where media act as defendant for various charges raised against it regarding its work, accountability, interference and functioning.

In India, the media have played a historical role in providing information to the people about social and economic evils. The media have informed the public about the tremendous poverty in the country, the suicide of farmers in various States, the so called honour killing in many places by Khap Panchayats, corruption and so on. However, the media have a great responsibility also to see that the news they present is accurate and serve the interest of the people. If the media convey false news that may harm the reputation of a person or a section of society, it may do great damage since reputation of a valuable asset for a person. Even if the media subsequently correct a statement, the damage done by it may be irreparable. Hence, the media should take care and carefully investigate any news item before reporting it.

Media comments on pending cases, especially on criminal cases where the life and liberty of a citizen is involved, are a delicate issue and should be carefully considered. After all, judges are human being too, and sometimes it may become difficult for them not to get influenced by such news. Also, often the media publish correct news but place too much emphasis on the frivolous news such as those concerning the activities of the film stars, models, cricketers, and so on, while giving very little prominence to much more important issues that are basically socio-economic in nature.

## LEGAL IMPLICATIONS OF MEDIA TRIAL

- a. Freedom of Speech and Expression-** Article 19 of the International Convent on Civil Rights, 1966<sup>9</sup>, embodied the right to freedom of Speech, that is, “everyone shall have the right to hold opinions without interference” and the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontier, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>10</sup>

Article 19(1)(a) of Indian constitution guarantees to all citizens the right to freedom of Speech and Expression. Freedom of Speech and Expression includes within its scope the freedom of the press. To maintain the importance of Freedom of Press, The Hon’ble Court observed that there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation.<sup>11</sup> The Supreme Court also held in *Brij Bhushan vs State of Delhi*<sup>12</sup> that “there can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of Speech and Expression under Article 19(1) (a)..... Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy of the press.”

It must be borne in the mind that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal sense as to whittle them down. On the other hand the court must interpret the Constitution in a manner

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<sup>9</sup> International Covenant on Civil and Political Rights, 1966, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

<sup>10</sup> Article 19 of the International Covenant on Civil and Political Rights, 1966:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

<sup>11</sup> *Romesh Thapper v. State of Madras* AIR 1950 124 (Supreme Court of India)

<sup>12</sup> AIR 1950 SC 129

which would enable the citizen to enjoy the rights guaranteed by it in the fullest measures subject, of course, to permissible restrictions.<sup>13</sup> Bearing this principle in mind it would be clear that the right to Freedom of Speech and Expression carries with, it the right to publish and circulate the ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under Article 19(2) . The first decision of this court in which this was recognised is Romesh Thappar vs. State of Madras.<sup>14</sup> There this Court held that freedom of Speech and Expression includes freedom of propagation of ideas and that this freedom is ensured by the freedom of circulation. In Virendra vs. State of Punjab<sup>15</sup>, the Hon'ble Court has observed that:

*“It is certainly a serious encroachment of the valuable and cherished right of freedom of Speech and Expression if a newspaper is prevented from published its own or the view of its correspondents relating to or concerning what may be the burning topic of the day.”*

In Printers (Mysore) Ltd. v. CTO<sup>16</sup> the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of the press has always been a cherished right in all democratic countries and the press has rightly been described as the fourth chamber of democracy.

The Supreme Court of India, in Life Insurance Corporation of India v. Manubhai D Shah<sup>17</sup> has stated that the “freedom of speech and expression” in Article 19(1)(a) means the right to express one's convictions and opinions freely, by word of mouth, writing, printing, pictures or electronic media or in any other manner.

However, there are always two sides to a coin. With this increased role and importance attached to the media, the need for its accountability and professionalism in reportage cannot be emphasized enough. In a civil society no right to freedom, howsoever invaluable it might be, can be considered absolute, unlimited, or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the constitution has to be exercised within reasonable boundaries.

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<sup>13</sup> Article 19(2) of the Constitution of India.

<sup>14</sup> AIR 1950 SC 124

<sup>15</sup> (S) AIR 1957 SC 896

<sup>16</sup> (1994)2 SCC 434

<sup>17</sup> AIR1993 SC 171

## b. Media vs. Right to Privacy-

*“Civilization is the progress towards a society of privacy. The savage’s whole existence is public, rule by the laws of his tribe. Civilization is the progress of setting man free from man.”*<sup>18</sup>

Article 12 of the Universal Declaration of Human Rights (1948) defines privacy in the following terms:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The law of privacy is recognition of the individual’s right to be let alone and to have his personal space inviolate. The need for privacy and its recognition as a right is a modern phenomenon. It is a product of an increasingly individualistic society in which the focus has been shifted from society to the individual.

The right to freedom of Speech and Expression and the right to privacy are two sides of the same coin. One person’s right to know and be informed may violate another’s right to be left alone. The exponential growth of media, particularly the electronic media in recent years has brought into focus issues of privacy. The media has made it possible to bring the private life of an individual into the public domain, exposing him to the risk of an invasion of his space and privacy.

In India, the right to privacy is not a specific fundamental right but has nevertheless gained constitutional recognition. ‘Privacy’ is not enumerated amongst the various reasonable restrictions to the right to freedom of Speech and Expression enlisted under Article 19(2). However, this lacuna has not prevented the court carving out a constitutional right to privacy by a creative interpretation of the right to life under Article 21 and the right to freedom of movement under Article 19(1)(d).

The first case related to right to privacy was *Kharak Singh vs. State of U.P.*<sup>19</sup> In this case the majority were unreceptive to the idea of recognising a right to privacy and dismissed the claim on the ground that there could be no fundamental right to protect ‘mere personal

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<sup>18</sup> Ayn Rand: *The Fountainhead*, (1943).

<sup>19</sup> AIR 1963 SC 1295

sensitiveness<sup>7</sup>. But subsequently, the Court acknowledged a limited right to privacy in the case of Govind vs. State of M.P.<sup>20</sup>

The Supreme Court touched the rights of the individual to privacy vis-à-vis invasions by journalists in Sheela Barse vs. Union of India,<sup>21</sup> Prabha Dutt vs. Union of India,<sup>22</sup> and also in State vs. Charulata Joshi.<sup>23</sup> In all these cases, journalists sought permission from the Supreme Court to interview and photograph the prisoners. Although, the issue of privacy was not directly dealt with, the court implicitly acknowledged the right to privacy by holding that the press has no absolute right to interview or photograph a prisoner but could do so only with his consent.

In the Aarushi murder case also, the newspapers were flooded with the transcripts of the deceased girl's emails and casting aspersions on her character.

### **c. Right to Free Trail compromised**

The India Criminal justice system is based on two basic principles of “guilt to be proved beyond reasonable doubts”, and “presumption of innocence until proven guilty”.

In the case of T. Nagappa vs. Y.R. Muralidhar , the Supreme Court reiterated, “an accused has a right to fair trial. He has right to defend himself as part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India”.

The scope of the right of a news agency, or a news reporter, to interview the persons, who are facing criminal charges, fell for consideration by the courts in the recent past. A distinction has been maintained between the right to interview the person, who has already convicted of offences and are serving sentences, on the one hand, and those who are facing charges, but yet to be convicted, on the other hand. In the former category of cases, a relatively liberal approach was adopted and permission was accorded to interview them, so that the society at large would be appraised of the feelings of the convict, or the factors that led to his conviction, and the like.

But in the latter category of cases, the approach has been further cautious and careful. The reason is that any information touching upon the involvement or innocence of a person

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<sup>20</sup> (1975) 2 SCC 148: 1975 SCC (Cri) 468

<sup>21</sup> (1987) 4 SCC 373

<sup>22</sup> (1982) 1 SCC 1

<sup>23</sup> (1999) 4 SCC 65



accused in a crime, even while the trial is pending, is likely to hamper the investigation or impair the trial. Such instances may result in an unsatisfactory and imperfect disposal of the case. It also affect the right to fair trial of the accused.

### **IMPACT OF MEDIA TRIAL ON THE JUDICIAL PROCEEDINGS**

“No one killed Jessica”, “Dr. Talwar responsible for murdering daughter Aarushi”, “Sen charged for sedition , Ram Jeth Malani may take his case”. These are few headlines which can easily be found while browsing news channels. But these are not mere headlines; this is what is served to public by media with garnishing of interpretation and exaggeration which will add to their TRP. But the question arises is that to what extent Media is responsible and accountable to people.

Apart from these cases, there were other issues like 2G scam, Bofors scam, Commonwealth Games scam and Harshad Mehta stock market scam which do share a common ground of being driven by the media. This takes us to a very important question that how much interference may be passed off as the work of a healthy regulator and when does it begin to interfere with the process of the court.

The power of press can also be understood in the basis of how the people respond and react to the news. In few cases media has been quite powerful in forming public opinion. Jessica Lal and Priyadarshini Mattoo cases are the positive example of role of media in order to meet with ends of justice. There was widespread outrage and protests after both the murder cases were reported. People had realized that justice had been denied and it was necessary to protest and speak aloud. Both the cases involved high-profile people and this fact made the people all the more interested and aware of the proceedings of the cases. We see that media interference helped in the rightful and proper closure of the case. The two murder cases are classic examples of reactive and responsible journalism which helped citizens get their right.

- a. **Jessica Lal Murder Case-** This case is one of the best examples of how investigative journalism, if done right can change the whole case. The incident took place on the night of April 29, 1999 during a party thrown by one of the high profile socialite, Bina

Ramani at Tamarind Court where the model Jessica Lal used to work as a bartender. The night concluded with an intoxicated Sidharth Vashisht better known as Manu Sharma shooting Jessica Lal at point blank range as she refused to serve him a during after the closing hours. The important fact which could not be ignored here in this case was that Manu Sharma was the son of Vinod Sharma, a prominent Congress leader in Haryana.<sup>24</sup>

The murder was a high profile murder case which involved some influential people as well. But the sad part of the case was that all the witnesses were influenced by the father of Manu Sharma and a total of 32 witnesses became hostile. Manu Sharma requested to the court that someone from his family was ailing and after coming out from the jail he was seen partying in a night club in Delhi. The case was considered close as per the conclusion of judicial process and passing of a verdict. However, this thing did not seem to agree with the public. The public decided to use the pull of media to express their dissatisfaction with the verdict. There were protests in every part of the country and media acted like the most indispensable mouth piece to carry the momentum which changed the waves of injustice happened in the Jessica Lal case.

The drastic effect of media intervention led to pressuring the reopening of the case. Subsequently the case was reopened and the verdict was reversed with Manu Sharma being convicted for the murder of Jessica Lal. The whole case was driven by the media and had it not been for them, Jessica Lal's plea for justice would have gone unnoticed. It stands as an example of media intervention bringing about a positive impact.

- b. **Priyadarshini Mattoo Murder case-** The case of S.K. Singh vs. State through CBI<sup>25</sup> popularly known as the Priyadarshani Mattoo murder case was similar to the Jessica Lal murder case. The case started with Santosh Kumar harassing and following a 25 year old law student. Even after regular filing of complaints against him, no strict action was taken against him as his father was soon to be Additional Commissioner of Police in Delhi. Not being held for stalking or harassment, Santosh Kumar entered the house of Priyadarshini and brutally murdered her after raping her. The accused was earlier acquitted by the trial court.

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<sup>24</sup> Kathakali Nandi, Investigative Role Of Media: Responsibility To The Society, Global Media Journal – Indian Edition/ Summer Issue (June 2011), p1, available at <http://connection.ebscohost.com/c/articles/71947182/investigative-role-media-responsibility-society>, last visited on August 6<sup>th</sup>, 2014.

<sup>25</sup> Santosh Kumar Singh vs State Th. Cbi, CRIMINAL APPEAL NO. 87 OF 2007, Supreme Court of India

The whole case took place at the time when an order for acquittal had been passed for the Jessica Lal Murder case. At that point of time, the public outrage was at its peak and media decided to intervene to settle the matter. In the midst of all this, CBI appealed against the verdict and the case was reopened. The judgement delivered by the trial court was reversed and the Delhi High Court found Santosh Kumar guilty and sentenced him to death. The High Court decision was widely perceived in India as a landmark reversal.

In *State of Maharashtra v. Rajendra Jawanmal Gandhi*<sup>26</sup> Supreme Court held that a trial by press, electronic media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice. A Judge is to guard himself against such pressure.

In *Anukul Chandra Pradhan vs. Union of India*<sup>27</sup>, the Supreme Court observed that “No occasion should arise for an impression that the publicity attached to the hawala transactions has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial”

In *Saibal v. B.K. Sen*<sup>28</sup> it is said by apex court that “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 tribunal is going on, must be prevented.

## CONCLUSION

It may be said that Media Trial has its obvious fallouts. Media needs to be cautious and careful at its conduct. To curb the media freedom is not a solution but the solution lies in making media more responsible and accountable. As per the criminal jurisprudence, no person charged of any offence should be judged by the media. And, no one should be allowed to temper with the law, no one includes media too. Fair trial of any person who comes to the court of law seeking justice is the demand of the rule of law as well as the role of law.

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<sup>26</sup> (1997) 8 SCC 386.

<sup>27</sup> (1996) 6 SCC 354

<sup>28</sup> AIR 1961 SC 633

In India, the problem of the absolute right to freedom of Speech and Expression is yet to find its way. Today, there is a greater need to devise a delicate and due balance between freedom of speech and expression of the media on one hand and the due process right of the accused and suspect. Presently, there are no norms set for the media trial. A media trial generally consists of involvement of highly reputed personalities which forms the reason for the press to sensationalise the matter even more. The exposing of a case by the media must not be seen as the end but seen as a facilitator, the end to which shall be decided by the judiciary.

From the above account it becomes clear that the media had negative as well as positive influence. The positivity of the media can be seen in the Jessica Lal murder case, Arushi Talwar murder case, Delhi gang rape case and so many other cases. But at the same time media cannot be granted a free hand in the proceedings of the court of law, rather the media should be regulated by the courts itself.