



Media Trial and its impact on the process of justice: An Analytical study

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ABSTRACT

This Article examines how freedom of speech and expression a right to media turns into trial by media in relation with the exploitation of the process of Justice. "Freedom of Press" Sometimes results into "Media Trials" which has more negative impact on the process of justice rather than positive. The Role of Media is to help people to know about events happening in the society by disseminating it to the public. The media execute its right to information and freedom of press under freedom of speech and expression abut nowadays this right is being misused by Media leading to hindrance in process of courts by constituting its own alternative trial called Media Trials. Media Trial is a trial conducted by the Media in a case having great tendency to create a perception of guilt against an alleged person i.e. the accused declaring the accused as a convict even before the verdict of actual trial. Such trials by Media also affects the Administration of Justice. The paper focuses on the abuse of power of press in Media Trials. Such Trials harm the case rather than doing anything good. It also covers pros and cons of freedom of press. The Media trials violates the right of Fair trial of the accused due to the investigative journalism. The article also covers impacts of media trial on the process of justice along with the suggestion and measures to control such misconduct. As no person shall be deprived of its right to fair trial and from the principle of innocent until proven guilty...

Keywords: Media Trial, Freedom, Speech, Expression, Journalism.

1.1 Introduction

In a democratic form of government the government is responsible for transparency in work regarding to all the policies and frameworks.² That is why people in a democratic country are considered as supreme and sovereign for whom the government of the country works. Therefore, people of the country have every right to transparency about how system work, what the system is doing in their name so as to judge the performance of the government by getting information on each and every decision which has been taken by the government. Being a citizen, they have a right to know what, how and why of any decision, changes or continuity regarding or of its functioning and have right to express criticism on this note.

The citizens have the fundamental right to know what the government is doing in its name. Freedom of speech is considered to be the life-blood of democracy.³ In a democratic government system expect openness. Here comes the Role of Media in picture which helps the public to know about what is happening in the system. Media which is also known as sword arm of democratic society as it acts as watchdog to protect public interest against

² Dr. Sukanta K. Nanda, Media Law 2, Central Law Publications, Allahabad, 1st edn., 2014).

³ Part III of constitution of India, 1950.

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malpractice and create public awareness among people under freedom of speech and expression. Therefore this responsibility lies to the Media or Press to make the people aware of their rights and further provide information to the public in an organized manner.

1.2 Constitutional Right of Media

In Republic and Democratic country like India Constitution is the law of land and the country runs according to the Constitution i.e. Constitution of India. The preamble of constitution of India also guarantees "LIBERTY of thought, expression, belief, faith and Worship".⁴

Constitution of India guarantees freedom of expression i.e. Freedom of speech and expression under article 19(1)(a) to its citizens as a fundamental right which provides its citizens right to express themselves incorporating Freedom of Press which indicates that press is no less than a person and has equal status in the eyes of law to express and publish information to the people of the country. As expressed in the case of *Indian Express v. Union of India*, the SC has ruled that Freedom of press is implicit in the guarantee of Freedom of speech and expression which is guaranteed under Art.19 (1) (a) of the constitution, the court also talked about importance of press and media in the democratic society.

In *Printers (Mysore) Ltd. v. CTO*⁵, the Apex Court stated that freedom of the Press is not a fundamental right which has been expressly guaranteed by the constitution but it is contained and covered under Art 19(1) (a) and by means interpretation the Constitution implies that it is essential to give freedom of expression to the Press also likewise to citizen.

Therefore Media i.e. Freedom of press is not specifically mentioned under the constitution of India under Art. 19(1) (a) i.e. Freedom of speech and expression which has been described as the Mother of all liberties. It covers the Freedom of Press which means the Media can enjoy its right to express free opinion as a FR.

Although Freedom of speech and expression does not confer an absolute right to speak or disseminate. It does not give a right without responsibility to express or publish whatever one wishes to nor does it provide unrestricted or unbridled immunity for any wrong.⁶ In India the press cannot execute its power in absolute will as it is not absolutely free they have some reasonable restrictions i.e. under Article 19(2) of the Indian Constitution so the Media cannot act beyond such boundaries. Article 19(2) of the constitution provides restriction on Freedom of Speech and Expression on the grounds of sovereignty and integrity of India, the security of the state, friendly relation with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.⁷ Keeping this in view, in the case of *Express Newspapers (Bombay) (P) Ltd. v. UOI*⁸ the Supreme Court stated that "freedom of the press is the heart of social and political intercourse. Press has emerged as the educator to public, freedom of speech and expression are considered as heart and soul of political and social intercourse. Press can provide education on a large scale basically for development of world and other means of communication are still remote to some sections of community. Main objective of press must be to advance the topics relating to public interest, it can be done by publishing fact and views and with help of such opinions government can make fair judgments. Newspapers being the conveyor of issues and opinions should carry out operations which should be bearable by the public administration. Thus the above stated points made it clear to understand that freedom of press and media can become the fourth pillar for proper functioning of a nation's government Therefore, it is very important for Media to obey the restrictions and Media Ethics for its proper functioning even beyond laws as what is not illegal can be unethical.

1.3 Media Trial

As the Media keeps the people and citizen of awakened and there is no facts which denies that it has become instrument of the social change.⁹ But with the Increase in the role of Media the need to look in the professional conduct of Media and its ethics is very important so that the rights are not misused in the name of Freedom of Press That is why we need to learn what is Media Trials and how it impacts the process of justice.

The term **Media Trial** is popularly used in the late 20th century and early 21st century which is used to describe the effect Media i.e. television and newspaper coverage on the reputation of a person and capacity of creating a widespread perception of guilt or innocence before, or after, a verdict in a

⁴ The Constitution of India, 1950.

⁵ (1994) 6 SCC 632.

⁶ K.D. Gaur, "CONSTITUTIONAL RIGHTS AND FREEDOM OF MEDIA IN INDIA." Journal of the Indian Law Institute, vol. 36 no. 4 JILI 429 (1994).

⁷ *Supra* note 3.

⁸ (1994) 2 SCC 434.

⁹ Dr. Sukanta K. Nanda, *Media Law 2*, Central Law Publications, Allahabad, 1st edn., (2014).

court of law in process court trial. Also called as “JantaAdalat” In other words. Media Trial is a trial conducted by the Media regarding any case have great tendency to create a perception of guilt, declaring the accused as a convict even before the actual trial going on comes to a verdict i.e. irrespective of any verdict of the court whether court is considering him guilty or not a perception is made regarding the public

Media plays great role in attaining justice and in punishing the offender constituting a trial by Media by publicizing the cases which does not get so much support of the public or judiciary. But sometimes such when the Matter is Sub-judice and is pending in the court of law, trial by Media is not permissible by the courts. Supreme Court in the case of *Siddhartha Vashist v. State* (NCT of Delhi) cited that Article 19(1) (a) did not permit Media interference in the administration of justice if the matter is sub-judice. As Media keeps the people awakened and there is no facts which denies that it has become instrument of the social change.¹⁰ Therefore it can be both either a boon or a ban as it has a great capacity of changing the viewpoint and mind-set of the people.

Media trial leads can generally lead to public agitation and harsh behavior by the public with the person covered by media, which is very antithesis of the rule of justice and administration of justice in the society can surely hamper the Right to information which can be attained by the journalist from public authorities etc. in some cases. It can even lead to miscarriage of rule of law as it can create undue influence on the judiciary even the judicial officer hearing the case has to actually guard himself from any opinions made by the media and protect himself from such pressure and influences. Media trial can be a tool to help the people in some cases but at a proportion it can hamper the image of the victim and accused and act as a curse. It can easily affect the investigation, decision of court and even help the actual offender of the crime to run away, clear evidences.

In the judicial pronouncement of *R Rajagopalan v. the State of TN*,¹¹ the Court stated that this right extends to cases where public figures, public events, and issues are involved but a balance should be maintained between public events and private lives of people. Therefore, it is clear beyond the reasonable doubts that the freedom of speech and expression is also given to the Press which is conferred by Article 19 (1) (a) of the Constitution and as said by the chairman of the drafting committee in history, the Press does not stand any different from the other citizens of the country, no special restriction can be placed upon it and no special treatment should be imparted.

1.4 Impacts of Media Trial on the process of Justice

The participation of media in the cases which are put forward to ongoing trials is being considered as a basic element of a democratic society. Media acting as a promoter and an expediter in both ways affects the society differently in different matters.¹² There are various implications of Media playing an investigative role it can affect the case mostly in negative sense rather than positive as laying down mental trauma to parties, breach of privacy, publication of initial statements of victim on public domain, biased opinion, interference in court proceedings, creating public opinions etc.

Therefore Media should not act in investigative way and avoid aggressive and instinctive reporting of matters otherwise it can lead to severe consequences to the ongoing trial.

In India Media plays a vital role by exercising its power and therefore have significant proportions in accordance with the Freedom of Press. Media Trial has helped in solving many cases in India which were seeming impossible to be punished but was possibility solved by the Media such as Priyadarshani Mattoo case, Jessica Lal case, Nitish Katara murder case and Bijal Joshi rape case etc.¹³ However, there are cases also in which Media gain criticism for reporting them such as Aarushi Talwar Murder case and similarly Sushant Singh Rajput in which media used the death of late actor as an entertainment show for TRP.

- **Effect on the Victim and Accused**

The Media Trial affect the victim and the accused in the case equally. Media trial can help the victim to get public support or sympathy from the public but in most of the cases the Media for the sake of TRP's and spice the victim unwantedly to be part of the trial in the process of investigation and as key evidence of the prosecution leading to mental trauma and breach of their privacy of the victim. Mostly in the sexual offences case where people mentality can throughout hurt the emotions of victim. Similarly, any kind wrongful reporting or biased reporting about an accused in Media without any clear facts and declaring him or her clearly an offender only to gain TRP not only infringes the right of fair Trial of the accused but also harms his reputation in society and public hatred against the accused. Even in some cases after the clear verdict of the court or getting clean chit from the court the accused continuously face the feeling of hate. Such a perception in public can also make the accused take wrong steps like committing suicide etc. Media trial by making such controversies also affect in the justice delivery system infringing the principle of innocent until proven guilty.

¹⁰Dr. Sukanta K. Nanda, *Media Law 2*, Central Law Publications, Allahabad, 1st edn., 2014).

¹¹(1996) 6 SCC 466.

¹²Singh, Arun and Kumar, Anil, "Media Trials in India" SSRN Available at <https://papers.ssrn.com>.

¹³<https://timesofindia.com/india/Jessica-Lal-murder-case-All-9-accused-acquitted/articles> (visited on 30/06/2021).

- **Effect on Witnesses and Evidences**

As Media has effect on the accused and victims due to jantaadaalat that is trial by media due to controversial coverage of the matters it also equally effect the witnesses involved in trial. Sometimes in such proceedings by media the identity of witnesses may also be revealed by the media due to such investigative reporting and alternative trial which can actually interfere in the process of justice and can also put the life of witness in danger. In the cases of Media Trials the public or any other person start considering the case from the perspective of Media and believe. The perception is solely based on the stories or evidences which are put forward by the media on the news channels Or on the newspaper. The media trial also effect the evidences involved in the cases by releasing them in the public domain which can make the actual offender aware of such evidences and result into tempering of evidences. Evidently affected by the conduct of Media by constitution of Media Trials weakens the cases sometimes also leading towards misplacing of evidences and failure of Justice.

- **Effect on Society**

Media trial not only interferes the process of justice but also molds the opinion of the public According to their reporting and coverage the views of the public by disseminating false message to the society which forms public opinions based on the Media coverage and statements rather than relying on the judiciary which affects the perception of people towards the case solely on the media coverage. Even after the case in the court is decided declaring accused innocent then also people have the impact of the media on their minds. Thus the prejudices created by media influence the minds of the public violating the right of fair trial of the accused and other principles or justice. The most famous example of impact on the society is K.M Nanavati case in which media opinion drifted to the public opinion.

- **Effect on Judges and Advocates**

Trial by media also has a great impact on the judiciary i.e. on the judges and also on the bar The Advocates. The broadcasting and reporting by the Media in such a aggressive way sometimes might creates a perception of guilt of the person i.e. the accused. In such cases the judges get burdensome with publicity journalism by media to deliver decision in accordance the desire of the public and media demand. There is even chances if the judges goes against the demand it can lead to more severe concerns and public agitation. The Media coverage sometimes also influence the judge and made him think in such a way as portrayed by the media which can interfere in the justice deliver system. Same happen in the case of advocates, the Trials by Media also pressurize the lawyers and influence not to take up the cases in which due to the information and coverage of Media public already deems certain people as guilty even before the final verdict of the court which again violates the right of accused to have an advocate thereby forcing the accuse to go through the trial without having any defense.

1.5 Legal Remedies

Media Trial under certain circumstances can lead to misuse and that media trial result into public nuisance, injustice, and prejudice to fair trial, sedition, indecency or immorality, harming integrity, sovereignty, security or peace of India, contempt of court, creating a state or war or agitation, resulting into riot or affray, defamation, etc. Under all these cases such individual will be responsible for Misuse.

There are various legal remedies provide against the misconduct of Media during the reporting or publishing about any case or representing any news on the headlines. The constitution of India has already prescribed reasonable restriction which provides constitutional remedies in the cases of breach of such restrictions if media acts beyond the boundaries.

The Contempt of court Act, 1971 has also defined contempt of two type i.e. civil and criminal contempt¹⁴. Any publishing, reporting or broadcasting by media if is covered with in the definition of contempt will be treated under the contempt of court act and is punishable therein.

The press council Act, Indian Penal Code, 1860, Code of Criminal procedure, 1973 and many other legislation also covers the case where media rights are been limited and made punishable in case of non-compliance or wrong conduct.

The court has also stated and explicitly directed that there should be regulations on the Media house to regulate the content. It also stated that lack if regulation on the various mode of publishing and broadcasting especially electronic mode should be taken in consideration. And the central government should take appropriate action about any misconduct and also introduce various measures to control the problem of Media Trial by establishment of statutory body.

The Supreme Court has also stated that it is the right of public to know the correct news and facts thereby the media shouldn't make up stories to

¹⁴ Contempt of Court Act, 1971.

sensationalize matters to gain TRP. In *M. Hasan v. Government of Andhra Pradesh*,¹⁵ the Andhra Pradesh High Court held that refusal to journalist and videographer seeking interview with condemned prisoners amounted to deprivation of citizen's fundamental right to freedom of speech and expression under Article 19(1). In exercising the fundamental rights position of a condemned prisoner was on par with a free citizen. He had a right, to give his ideas and was entitled to be interviewed or to be televised. While interviewing a person the press must first obtain his willingness. It is further held that the right to interview the prisoners is not absolute and is on the discretion of the accused. In certain matters such as the commission of the offence of rape, unnecessary publicity, may lead to miscarriage of justice and a trial by press, electronic media or public. Agitation, was the very antithesis of rule of law and administration of Justice.¹⁶

1.6 Conclusion

It must be remembered that freedom of speech and expression is not an absolute right, it an exclusive right but limited. It come with certain reasonable restrictions. The citizens of a country are its main asset and they act as watchdog for it all actions. People in certain ways act as judges for government's action and procedures, and no judge is completely impartial they somewhat act under the hype created by the media also.

Media is nobody to judge or defame a person or give decision before the verdict of the court as it is against the rule of law and the principle of justice. As we know that media has a great influence upon the people and it should be exercised properly. It is expected by the media to provide true and valid information through which they should not be able to judge. For punishing the criminal judiciary is present in India, common man shall not have any right to pass a judgment prior to the completion of fair trial, as no person should be held guilty until proved. Strict actions should be taken towards any unwanted and unethical conduct by Media to protect the process of justice.

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¹⁵ AIR 1998 AP 35.

¹⁶ State of Maharashtra v. Rajendra Jawanwal Gandhi, AIR 1997 SC 3986 65 AIR 1950 SC 124.