

Media Trial - an Overview

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ABSTRACT

A day without the influence of media in our lives is implausible. We have become completely dependent on it in divergent ways. Media is not confined to one particular medium or unit. Its rapid advancement into digital media made it even hard to fix itself into a particular entity. Thanks to the evolution of media, it is now being considered as the fourth pillar of democracy along with the judiciary, executive and legislature. Apart from the tremendous assistance by media in the society, it has also brought in a lot of chaos by involving in the judicial proceedings. This article comes up with a detailed study on 'Media trial', which makes a mess of the judiciary. The authors have deciphered the rights and restrictions of the media after pondering over the history and evolution of media. This discussion is succeeded by the explanation on media trial and its consequences with regard to the right to fair trial and right to privacy. Subsequently, the authors have thrown a light on the cases regarding media trial and the reference of media trial in other countries. Meanwhile, various comments on media trial by the International conventions have also been inserted.

KEYWORDS: Privacy

1. INTRODUCTION

*The demi-world of journalism is like the fun house of mirrors that one finds in carnivals. In one reflection you are too fat; in another you are absurdly thin; in another reflection you appear to have an elongated neck; in another, a flat head, - in still another you have next to nobody. Yet there you are, standing in front of these bizarre reflections, fully formed and hearing little resemblance to any of the images before you. The difference is, however, that unlike the fun house of mirrors, the distortions of the media are rarely a joke.*¹

MEDIA AND ITS EVOLUTION:

'Media', the plural form of medium describes any channel of communication. Media is not confined to one particular medium. It can include anything from printed papers to digital data which encompasses art, news, educational content and various other forms of information. In the modern world, digital media makes up an increasingly wide range of communications. It includes intricately encoded signals which are transmitted over various forms of virtual and physical media. Fibre optic cable and computer networks are some of the examples.

The evolution of media has to be reflected upon here. The history of media is almost seen as a tautology, since the recorded history in itself requires some sort of media so that it can be captured and travels along through time. The upheaval of printing press technology reached its zenith in many different stretches in the Western culture, from intellectual domain to legal space and far beyond. The arrival of photography in the 19th century changed the media scene. By the late 19th century, the new technology paved way for the newspapers to print photographs. By the 20th century, the developing digital technologies gave rise to the digital media, which in turn assisted the devising of the internet. Academic research with the support of American military as well, equipped the evolution of ARPANET, whose

¹ TRIAL BY MEDIA AND TRIAL OF MEDIA : <http://www.rrtd.nic.in/MassMediaIndia2009.pdf>

decentralization in data and packet-switching technology overpowered the rise of the internet and thereby framing the modern digital media landscape.

RIGHTS AND RESTRICTIONS:

Media has become one of the most essential elements for the people of this generation to live in. Media has been given certain rights and restrictions that it has to be adhered to. Even the Indian Constitution has guaranteed fundamental right to the media under the purview of Article 19. The freedom of speech and expression under **Article 19(1)(a)** also includes the freedom of press in its scope, but this right is subject to restrictions under Article 19(2). The freedom of press is also limited by the laws such as the **Official Secrets Act** and the **Prevention of Terrorist Activities Act (POTA)**. However the POTA was repealed in 2006, the Official Secrets Act of 1923 still continues. The freedom of press is not an absolute right though.² The **Press Council Of India (PCI)** has also framed certain guidelines regarding the regulation of media.

WHAT IS MEDIA TRIAL?

Media trial means the pre-trial and in-trial reporting of case, whether civil or criminal, which is likely to prejudice the fair trial of every accused. *A trial by press, electronic media or public agitation is the very antithesis of rule of law.*³

CONSEQUENCES OF MEDIA TRIAL:

As a result of media trial, there are certain consequences such as the violation of the right to fair trial which includes destruction of the presumption of innocence of the victim of media trial, violation of the right to privacy and so on. Let us ponder over them here.

➤ VIOLATION OF RIGHT TO FAIR TRIAL:

Right to fair trial is a fundamental right guaranteed under Article 21 of the Indian Constitution. Media trial violates this

² Prabha Dutt v. Union of India, A.I.R. 1982 .S.C. 6.

³ State of Maharashtra v. Rajendra J. Gandhi, A.I.R. 1997 S.C. 3986.

fundamental right *per se*. Before entering into the discussion, we ought to know what is meant by 'fair trial'.

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.⁴ If however, 'bias' and 'partiality' be defined to mean the total absence of pre-conceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. A trial uninfluenced by extraneous pressures is recognized as a basic tenet of justice in India and is guaranteed under article 21. An accused has the right to get fair trial at every stage of the trial. Freedom of press under Article 19(1)(a) should not infringe upon the right to fair trial guaranteed under Article 21 of the Indian Constitution. It is much explicitly evident that the freedom given to the media is regarded as one of the greatest contributions of the democratic institution, guaranteed through Article 19(1)(a) of the Indian Constitution and has been further reaffirmed by the Supreme Court.⁵ However freedom of the Press is not an absolute right.

The law on contempt is well settled, when litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action. The Media is directed by the Press Council of India neither to give excessive publicity to accused, victims, and witnesses nor to disclose any confidential information that may hamper or prejudice investigation. The press to be a true servant of democracy should avoid true sensationalism, prejudicial publications, facts broadcast too early without verification and vilification of individuals. The freedom under Article 19(1) (a) is correlative with the duty not to violate any law. *To make a report tending to influence the result of a pending trial, whether civil or criminal is a grave contempt.*⁶ The interference in the judicial process even though an indirect one it is against the Constitutional right of fair trial of the accused.⁷ The Law Commission in its 200th report has recommended a law to debar the media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial.

In the case of *Shyam Singh v. State of Rajasthan*⁸, it was held that the question is not whether a bias has actually affected the judgment. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case. The trial judge while expediting the trial faced political pressure, societal pressure and prejudicial reports by media, such a situation accounts for a circumstance in which there is a substantial risk of prejudice.

PRESUMPTION OF INNOCENCE: The presumption of innocence of an accused is a legal presumption.⁹ It should

⁴ *Zahira Habibullah Sheikh v. State of Gujarat*, A.I.R 2004 S.C. 346.

⁵ *Brij Bhushan v. State of Delhi* A.I.R. 1950 S.C. 129.

⁶ *R. v. Gray*, (1900) 2 Q.B.D. 36.

⁷ Dr. N.S. Santhosh Kumar, *Trial By Media - Transgressing The Lakshmanrekha*, [2010] 5 M.L.J. 36.

⁸ 1973 Cri LJ 441.

⁹ *Parmeshwar Mandal v. The State of Bihar*, MANU/BH/0554/2018

not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. Yet that is also being negativized by the writings of the press which in turn corrupts the mind of the judge even before the guilt on the part of the accused is proved. In that event, it will be opposed to the very basic rule of law¹⁰, which in turn would impinge upon the protection granted to an accused under Article 21 of the Indian Constitution.¹¹ The right to be presumed innocent until proved guilty by a competent court or tribunal is also guaranteed under Article 7(1)(2) of African Charter of Human Rights (ACHR).

➤ PRIVACY AND MEDIA TRIAL:

Privacy means "right to be let alone, the right of a person to be free from unwarranted publicity and right to live without unwarranted interference by the public in matters which the public is not necessarily concerned".¹² Privacy is the right that determines the non-intervention of secret surveillance and the protection of an individual's information. The right to privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both State, and non-State actors and allows the individuals to make autonomous life choices. The right to privacy is a fundamental right enshrined under Art.21 and is the constitutional core of human dignity and thus privacy attached to the person is an essential facet of the dignity of human being.¹³

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Says Article 12 of the Universal Declaration Of Human Rights (UDHR), 1948

A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.¹⁴

Eventhough the media is given the fundamental right under Article 19(1)(a) to freedom of speech and expression, it is not an absolute right. It is subject to certain restrictions. The freedom under Article 19(1) (a) is correlative with the duty not to violate any law. Television channels in a bid to increase their TRP ratings are resorting to sensationalized journalism with a view to earn a competitive edge over the others. The freedom of press cannot mean an uncontrolled licence for or immunity to every possible use of language.¹⁵

¹⁰ *Bijoy Singh v. State of Bihar*, A.I.R. 2002 S.C. 1949.

¹¹ *Anukul Chandra Pradhan v. Union of India*, (1996) 6 S.C.C. 354.

¹² BLACK LAW'S DICTIONARY.

¹³ *Justice K.S.Puttaswamy v. Union of India*.

¹⁴ *R.Rajagopal v. State of Tamilnadu*.

¹⁵ *Santokh singh v. Delhi Administration* (1973) SC 1091; *Brij Bhushan v. State of Delhi*, (1950) SCR 605.

“Public disclosure of even true private facts may amount to an invasion of the Right of Privacy which may sometimes lead to the clash of one person's "right to be let alone" with another person's right to be informed. Disclosure of even true private facts has the tenancy to disturb a person's tranquillity. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities and as already held by this Court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others”.¹⁶ Also, the Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity.

In the *Jessica Lal murder case*, the media acted as a great facilitator of justice. In this case, the media whipped up public opinion antagonistic towards the accused and had held him guilty even though the trial court had acquitted the accused. The media took the responsibility of administering justice and ensuring the guilty are punished, candle light vigils and opinion polls on the case were organised by the media. Past history of the accused was gathered by the media, including photographs of the accused in bars and pubs in the city and were published after he was acquitted. Manu Sharma's photographs in pubs insinuated how he was celebrating after his acquittal. The Apex Court in its observation held that that the freedom of speech has to be carefully and cautiously used to avoid interference in the administration of justice. If trial by media obstructs fair investigation and prejudices the right of defence of the accused, it would amount to travesty of justice. The Court remarked that the media should not act as an agency of the court.¹⁷

RIGHT TO REPUTATION: Right to life includes right to live with human dignity and reputation. The State or its institutions shall not act in any manner in the discharge of its functions which might lead to infringement of any fundamental rights particularly the right to liberty. The right to reputation is a facet of the right to life of a citizen under Article 21 of the Constitution. The right under Article 21 is not merely a physical right to live, but includes within its ambit the right to live with human dignity.¹⁸ “Reputation of a person is one of the finer graces of human civilization that makes life worth living. Good reputation is an element of personal security and is protected by the Constitution, equally with the right to the enjoyment of life, liberty and property. One is entitled to have and preserve one's reputation and also had the right to protect it.”¹⁹ Thus, the media has no right to put down a person, tarnish his name and outrightly blame him. Media interference should be completely avoided particularly at a stage when the suspect is entitled to his constitutional protections and invasion of his rights is impermissible.

¹⁶ Mr. X v. Hospital Z.

¹⁷ Manu Sharma v. State (NCT of Delhi).

¹⁸ Maneka Gandhi v. Union of India, A.I.R.(1978) S.C. 579.

¹⁹ State of Bihar v. Lal Krishna Advani (2003) 8 S.C.C. 361.

CASES REGARDING MEDIA TRIAL:

- The trial by media in the **2g case** decided the figure to be as high as 8 lakh crore which is much higher than estimated as national loss in 2g spectrum scandal, but the accused were acquitted from their charges due to lack of evidences. Media played a lead role to create political capital that put the ruling party in power; and corruption, deflation allegations against the government led by the opponent party.
- In **K M Nanavathi** case, the role of journalist Erich Billimoria manipulated the jury by creating positive public figure for 'Rustom' (movie played by actor Akshay kumar). This proves that media portrays the accused as innocent or guilty to form a public opinion even during the trial to influence the judges.
- The Supreme court while confirming the death of the alone Pakistani terrorist **Ajmal Kasab**, many references were made in media and visuals on the television screen. The terrorist attack in Mumbai was shown live in tv by the media which helped in catching the collaborators even if it affected the freedom of speech.
- It was reported by the media that her own father Dr. Rajesh talwar and mother were involved in the murder of **Arushi talwar**, but it was later declared that Rajesh was not involved.
- In **R. Rajagopal v State of Tamil Nadu**, the accused Auto Shankar in his autobiography wrote his relations with certain police officials. The Supreme Court dealt with the question that this publication infringed his right to privacy. It was held that except when a person voluntarily invites controversy or such publication is based on public records, then there is no violation of privacy. This helped in many other convictions. The Supreme Court of India has held that “freedom of the press extends to engaging in uninhabited debate about the involvement of public figures in public issues and events”.
- In **Sheena bohra** murder, the agonizing eyes of media have pierced the personal life of the accused which kickstarted the debate about the scrutinizing trial by media. Every aspect of his private life and character which has nothing to do with the investigation of murder case, were put under public view by the media. The ethics of journalism was affected by their prying eyes in accused.
- *The Supreme Court in D.C. Saxena (Dr.) v. Chief Justice of India, held that no one has the power to influence or accuse the behaviour of judge under independence of judiciary so that they could decide upon the judgement without any fear or favour for dispersal of the case.*
- In **Sabail Kumar Gupta v. B. K. Sen**, the Supreme Court held that media cannot involve in a private investigation against an ongoing case and publish their reports on the arrested person. The basic view is that such action by the newspaper tend to interfere with the course of justice that prejudices whether the accused or the prosecution, the trial by the tribunals must be prevented.

IT'S REFERENCE IN OTHER COUNTRIES:

Article 6 of the UN Basic Principles on the Independence of the Judiciary states the judiciary is entitled and required “to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected”.

Even in United States, the judiciary has been of the view that the Court cannot function properly if a reporting is calculated to disturb the judicial mind.²⁰ Concurring to the US case, in *M.P. Lohia v. State of West Bengal*, the Supreme Court of India has strongly deprecated the media for interfering with the administration of justice by publishing touching on merits of cases pending in the Courts.

International Covenant on Civil and Political Rights (ICCPR), also provides that **"everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal" in the determination of any criminal charge or in a suit at law. The freedom of press cannot be exercised in such a manner as would jeopardize the fair or impartial administration of justice.**"²¹

United Kingdom:

The Press Complaints Commission (PCC) of the UK is a self-regulatory body. The PCC has laid down the code of ethics that are to be followed by journalists. The PCC guidelines enable that every person has the right to privacy and editors should provide reasons for intrusions to that person's privacy. This also includes capturing photographs of individuals in private places without their consent. It is very interesting to note that private places include public or private property, where there is a "reasonable expectation of privacy". Similar to the PCI norms, the PCC Code also provides guidelines that are to be followed when reporting on minors who are the victims of sexual assault. Further, United Kingdom is one of the members of the **European Convention on Human Rights (ECHR)**. It guarantees the right to privacy under Article 8 of the Convention. It states, "Everyone has the right to respect for his private and family life, his home and his correspondence."

France:

The French legal system protects the right to privacy under Article 9 of the Civil Code. It states, "Everyone has the right to respect for his private life. Without prejudice to compensation for injury suffered, the court may prescribe any measures, such as sequestration, seizure and others, appropriate to prevent or put an end to an invasion of personal privacy; in case of an emergency those measures may be provided for by an interim order." Article 9 covers both public and private spheres. It does not include merely the publication of information, but also the methods of gathering information. Also, violation of one's privacy is a criminal offence in France.

Sweden:

In Sweden, privacy is protected by its Constitution. All the four fundamental laws of Sweden, i.e., the Act of Succession, the Instrument of Government, the Fundamental Law on Freedom of Expression and the Freedom of the Press Act protect privacy. The Instrument of Government Act of 1974 states that freedom of expression is limited under Article 13 of the Constitution. A Press Council was established in Sweden in 1916. Also an office of the Press Ombudsman was established in 1969. Additionally, Sweden has a Code of Ethics. It applies to press, television and radio. On account of crime reporting or court reporting, the Code provides that the Court's final judgement should be reported and given

emphasis, as opposed to conducting a media trial. Sweden, in addition, has incorporated the ECHR in 1994.

Japan:

Nihon Shinbun Kyokai (NSK) or The Japan Newspaper Publishers & Editors Association was established in 1946 as a voluntary and independent organisation to equip the standard of reporting, and to protect and promote the interests of media. The organisation has enhanced the Canon of Journalism, which provides the ethics and codes that the members of the body should follow.

Netherlands:

The Netherlands Constitution protects the right to privacy under Article 10. Further, the Article provides for the enactment of Rules for dissemination of personal data and the right of the persons to be informed when personal data is being recorded. Netherlands also has the Netherlands Press Council which keeps the media in check.

CONCLUSION:

The media and judiciary are the two vital pillars of democracy and natural allies, where one compliments another towards the goal of a successful democracy. The judiciary has certain duties to perform in the democracy, so as the media. The democracy will be successful if these two pillars perform their duties concurrently, but not together. The judiciary should neither be influenced by the media nor be given a chance to get influenced. Let the pillar of judiciary stand erect without the support of the other pillar, i.e., the media.

²⁰ *John D. Pennekamp v. State of Florida*, (1946) 328 U.S. 331.