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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SENSATIONALISM VS. JUSTICE: AN ANALYSIS OF THE IMPACT OF MEDIA TRIAL ON DEMOCRACY

AUTHORED BY - CELIN PRISCILLA T

ABSTRACT

Media, which is regarded as the fourth pillar of democracy, is seen as extremely important for maintaining democratic values and public welfare. Underpinning this ability are provisions such as freedom of speech including press article 19(1)(a) of the Indian constitution. Nevertheless, when this liberty is misused, it can lead to total chaos and anarchy which is evident in the case of media trials. In fact, media trials contravene the very basic notion of “innocent until proven guilty” by influencing legal processes through swaying public opinion leading to miscarriage of justice in most cases. The issue has been compounded by privatization and commercialization of mass-media that have treated it like a money-making business rather than an industry constantly focusing on sensationalism instead of facts.

This analytical article examines the role of the media with an emphasis on the necessity for it to present the facts without passing judgment. It also discusses the legal framework surrounding media freedom and its limitations, focusing on key judicial pronouncements that support press freedom but emphasizes reasonable restrictions in order to prevent misuse. Furthermore, it examines how conflict exists between right to fair trial and freedom of speech, demonstrating how media trials can be harmful towards the judiciary system, judges themselves as well as those who are accused.

In relation to this, the article also sheds light on Law Commission’s 200th report, which provides some possible solutions aimed at mitigating these negative effects of sensationalism by recommending amendments or changes in Contempt of Court Act for a better definition encompassing all aspects of any form of media communication. In conclusion, the article calls for the press to respect individual rights as well as judicial authority while upholding its independence and responsibility towards a democratic society.

Key words: Media trial, Freedom of Expression, Restrictions, Fair trial, Judicial independence

INTRODUCTION

The media is often seen as the fourth arm of democracy, complementing the legislative, executive and judiciary. True democracy cannot exist without press freedom, which is a fundamental element as stated in Article 19(1)(a) of the Indian Constitution. This role played by the media is in upholding basic principles of a nation while also ensuring public welfare and protecting democratic values.¹ In order to effectively function as watchdogs and represent the issues such as; social, political, moral and economic perspectives concerning a nation, certain exceptions are made for them. However, like all liberties freedom of press can be misused or abused. An uncontrolled freedom of press could lead to anarchy.²

The problem has gained more attention recently and is probably going to continue to be so, as media keeps on failing to strike a balance between its powers and responsibilities. The development of media companies into big corporate enterprises has only served to aggravate this issue. Although originally aimed at promoting free speech and ensuring independence of the press, the current mainstream media is caught up in corporatization and commercialization. In today's world, Media becomes a corporate body where news is bought based on how much sensationalism it can bring along with it. When favouritism replaces the pursuit of truth, the core integrity of media crumbles away.

In these contemporary times, media trial is one of the most talked about and argued issues. It directly undermines the very essential principle of "innocent until proven guilty" in criminal justice systems. To put it simply, a media trial is when media houses themselves investigate matters that are still in court resulting to the accused being prejudiced by public opinion hence miscarriage of justice.³

Nowadays, media has got great influence over high profile cases including gauging and commenting on the efficacy of the court where those trials take place. A number of studies have successfully demonstrated how direct or indirect effect on judicial system can be achieved through media trials. In India, media trials have become a matter of concern which must be addressed as soon as possible because they are destructive to society in general.

¹ Mohd. Aqib & Utkarsh Dwivedi, *Judiciary and Media Trial: A Need for Balance*, 5(2) *INDIAN JOURNAL OF LAW AND HUMAN BEHAVIOUR* 155 (2019)

² Ishika Jain, *Media Trial in India fair or not?*, 2(1) *NYAAYSHASTRA LAW REVIEW* 1 (2021)

³ Nikitha Suresh & Lucy Sara George, *Trial by Media: An Overview*, 4(2) *INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES* 267 (2021).

ROLE OF MEDIA

The role of the media is just to convey information. Plain facts, not someone's perception, opinions or inferences. This becomes a problem when media stops this line and chooses instead to act like a judge on facts and law rather than being an institution responsible for disseminating information. The media decides what justice is through these processes. While it is appropriate to hold conversations and debates to dispute opposing viewpoints and interpretations of a topic, one should refrain from interpreting mere provisions of our country's constitution which is the work of our judiciary and not journalists⁴. Yes, as the fourth pillar of democracy, media has freedom of expression therefore it must have freedom of speech, but it must know where to draw the line concerning statements made by journalists about public affairs.

The words "informative expression" and "trial by media" which were used in the Sidharth Vashisht judgment⁵ reflect the main distinction. It is a legitimate expression that cannot be restrained, however unpalatable it may be to some, where the people are informed of news and views. In criminal cases it is a fundamental right that is as important as free speech and any claim or statement made in public can be considered as contempt of court. The media encroaches into areas meant for courts when it meets the threshold set for subjudice rule since this is not its role. Free press does not mean determining guilt or innocence before the court makes its final decision; hence, their choice of words will have consequences on how justice is administered. Therefore, trial through media has neither competence nor jurisdiction in holding trials.

The prevalence of free speech is vital to a democratic society it enables individuals to communicate their ideas, participate in discussions, exchange information, and express their opinions. If people were prevented from expressing their social, political, and economic opinions, their fundamental right to free speech and expression would be violated. Free speech is unquestionably the cornerstone of a democratic society. However, the media must exercise discipline and avoid generating views based on its own investigations and parallel trials. Certain newspapers' reportage on actor Sushant Singh Rajput's alleged suicide violates the Press Council's suicide reporting guidelines. These guidelines

⁴ Mona Mahecha, *Media Trial: A Threat to Fair Trial*, 5(3) *AMITY JOURNAL OF MEDIA & COMMUNICATION STUDIES* 196 (2016).

⁵ *Sidhartha Vashisht vs State (Nct Of Delhi) Criminal Appeal No.197 of 2007*

ban the conspicuous publication of suicide stories and urge against the excessive repeating of such stories.⁶

In the case, *Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India*⁷, the Hon'ble Supreme Court of India debated whether it could establish norms for visual media. The court noted that deferring publication of matters pending trial could be ordered. However, the Supreme Court rejected to issue orders directing the creation of norms for visual media reporting. There is an urgent need to develop particular criteria for visual media reporting. In cases of media trials, justice is not only denied, but also compromised, converting a tragedy to sensationalized spectacle. The media frequently writes about topics that pique readers' interest, spark debate, and stir conflict.

FREEDOM OF PRESS

Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression⁸. This includes the ability of citizens to freely express their views via various modes, including voice, images, writing, pictures or other media forms. As such, it may take the form of any visible representation or communicable medium such as signs, gestures etc⁹. The concept of expression also means publication including freedom for press under this provision.

The Indian Constitution lacks an explicit provision for press and media freedom as opposed to its American counterpart. Dr B.R Ambedkar during Constituent Assembly debates saw no need for a separate law on press freedom because he believed that the press was in fact individuals exercising their right to free speech and expression alike. Even if it does not mention about press and media freedom in India, inclusion by implication in Article 19 (1)(a) has greatly enhanced the scope of freedom of speech and expression.

The constitution of India lays high emphasis to freedom of the press under Article 19(1)(a) and this is supported by various judicial pronouncements. According to the Supreme Court in *Romesh Thappar v State of Madras*, press freedom is an integral part of a democratic country. Media freedom

⁶ *Press Council of India, Norms of Journalistic Conduct, edition 2019.*

⁷ *Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India, (2012) 6 MLJ 772.*

⁸ *LIC v Manobhai D Shah (1992) 3 SCC 637*

⁹ *Lowell v. Griffin, (1939) 303 US 444*

can't be compromised as it contributes in ensuring effective working of democracy by bringing out serious matters. Therefore, it should be noted that Article 19(1) (a) is not an absolute right and must be exercised subject to some reasonable restrictions set forth in Article 19(2).¹⁰ There should not be any separate media court on sub judice matters within the realm of constitutional guarantee of free press. A fair trial is necessary for one's life with dignity; thus, if there is a conflict between one's life and speech rights, the former shall prevail. It is vital for the media to know that people will lose confidence in judiciary if a fair trial is not conducted because it forms the core foundation upon which criminal justice system stands.

MEDIA TRIAL VS. FAIR TRIAL

It can be justifiably asserted that the media has initiated a conflict between the freedom of the press and the right to a fair trial. The media contends that a free press is essential to democracy, citing the public's right to know about how their elected government is run on matters that directly impact them. But in order to increase viewing, the media frequently distorts the truth, which frequently leads to judicial process irregularities in the name of justice. These departures from the norm and intrusions into the purview of the judiciary compromises the right of litigants to a fair trial.

Even though there have been situations when media intervention has served justice for victims and the accused, the question of whether freedom of speech can go so far as to override a fair trial right remains key. The principle of *audi alteram partem* is violated as many times as the media fails to create a distinction between an accused and convicted person. In most cases, it is often too early for one to say that an accused is guilty before court verdicts have been given; this may lead to public fear which may even ruin the life of an innocent person who may be acquitted later on.

The media has become some sort of a public court where they twist facts, give their opinions with biasness while at the same time putting undue pressure on courts trying to make them align themselves with their reports and views.¹¹ Democracy cannot exist without a fair trial right which is also covered in our Constitution along with other rights like presumption of innocence until proved guilty, right to legal representation and speedy trial amongst others. This right is essential not only for the accused

¹⁰ *Supra note at 4*

¹¹ Zehra Khan, Trial-By-Media: Derailing Judicial Process in India, 1 MLR (2010)

but also in maintaining the good name and transparency of the court system if confidence within society has to be built up towards it.

➤ **RIGHT TO FAIR TRIAL**

The right to a fair trial is an unequivocal right and constitutes an essential aspect of human life as enriched in Article 21 of the Constitution. This article guarantees that life is more than just an animal's existence; it includes all the rights required for a dignified life. The idea of a "fair trial" is based on the idea that all defendants are innocent until and until they are proven guilty. Its goals are to stop arbitrary limitations on the accused's fundamental rights and to eradicate any bias or prejudice towards them.

In *Zahira Habibullah Sheikh v. State of Gujarat*,¹² "Denial of a fair trial is as much an injustice to the accused as it is to the victim and to society, said the Supreme Court. There is no fair trial without a neutral judge, a just prosecutor, and an environment of judicial peace." A fair trial encompasses not only the right to be a legal representative, enough time to prepare for a defence, a trial without unnecessary delay, and free legal help but also includes various other rights. The state is constitutionally obligated to design a framework that gives every accused person the right to a fair trial.

➤ **RIGHTS TO INFORMATION V. RIGHT OF THE ACCUSED: DOES THE PUBLIC REALLY NEED TO KNOW?**

There is still disagreement over how much information about trials should be released to the public and covered by the media. Although every Indian person has a legal right to access information, the purpose of this right was to stop authorities from hiding important information that directly affects citizens' rights, such how public money is used. Nonetheless, it is important to give some thought to whether cases involving people whose guilt or innocence does not immediately affect the public must be covered by the media. But it is important to think carefully about whether the public needs to be informed about cases involving people whose guilt or innocence does not immediately affect them.

It is crucial to strike a balance between the accused's right to a dignified life and freedom of expression

¹² *Zahira Habibullah Sheikh v. State of Gujarat*, MANU/SC/1344/2006.

and media rights. The identity of an accused person should never be revealed before the trial is over and the accused person is found guilty. If the public's faith in the legal system and judges' ability is maintained, there will be no need for a multitude of irrational, biased, and passionate opinions to establish an accused person's guilt. Therefore, determining precise limits between media attention and protecting the dignity of the accused is crucial.

MEDIA TRIAL AND THE CONTEMPT OF THE COURT

Anything that restricts or undermines the independence of the judiciary will inevitably make it more difficult to administer the law and interfere with the proper administration of justice¹³. It is commonly known that, when necessary, reasonable restrictions can be placed on fundamental rights, and one such justifiable restriction on the right to free speech and expression is the imposition of contempt of court. According to the contempt of court act of 1971, media publications that disagree with court rulings may be held in criminal contempt, which may only be avoided by enforcing reasonable limitations.

While not all trials are considered contempt of court, those who defy a court's ruling are covered by this legal doctrine. The justification for this is that the judiciary has a set procedure that it must adhere to in order for the court to render a decision. Unlike media reports, court rulings are not predicated on the presumption of fact. Articles 129 and 215 of the Indian Constitution, as well as the Contempt of Courts Act, 1971, both contain provisions protecting the right to a fair trial and grant the Supreme Court and High Courts the authority to penalize for contempt of themselves.

Consequently, a journalist may be held accountable for contempt of court if they publish anything that could jeopardize a "fair trial" or undermine the ability of the court to determine a case impartially.¹⁴ The media's encroachment on the operations of judicial bodies has a negative impact on the criminal justice administration system and on section 2 of the Contempt of Court Act, which defines criminal and civil contempt. The Supreme Court harshly condemned the media in M.P. Lohia

¹³ Rituraj Chopra, *The Concept of the Contempt of Court*, available at <http://www.legalserviceindia.com/article/I255-Contempt-of-Court.html>, last accessed on June 21 2024, 6:50Pm.

¹⁴ Arunav Talukdar, *Media Trial and Right To Freedom of Speech and Expression (2018)*, available at <http://www.dlnluassam.ndl.iitkgp.ac.in/bitstream/handle/123456789/171/Arunav%20talukdar%20Diss%202018.pdf?sequence=1&isAllowed=y>, last accessed on June 21 2024, 6:50Pm.

V. State of West Bengal¹⁵ for meddling in the administration of justice by releasing biased articles discussing the merits of cases that were still pending in the Court.

The Andhra Pradesh High Court's Chief Justice Gopal Rao Ekkbote made a brilliant observation in the case of Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr.¹⁶ The learned judge noted that during a pending litigation, no one should comment on it in a way that could seriously jeopardize the trial of the action by, for example, influencing the judge, the witnesses, or by harming the public's perception of a party involved in the case. Prejudicing the truth before it is determined in the proceedings is a contempt of court offense, even if the individual making the comment honestly thinks it to be true.

"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 that investigation," the Supreme Court stated in Saibal v. B.K. Sen.¹⁷ The reason for this is that a media trial must be avoided while a trial by one of the nation's regular tribunals is ongoing. This perspective is based on the idea that a newspaper's actions of this kind often impede the administration of justice.

EFFECT OF MEDIA TRIAL ON JUDGES

The question that emerges is whether judges, being human, are not subject to such indirect influences, at least sub consciously or unconsciously, and whether a publication or news item that is promoted by the media can "unconsciously influence judges." One of the main accusations is that it influences the judge making the decision in the case or topic at hand.

There are various perspectives on this. One perspective holds that "judges are not liable to be influenced by the media publications." This is the American perspective. The Anglo-Saxon perspective is an alternative viewpoint that asserts that "judges at any rate may still be unconsciously (though not consciously) influenced and members of the public may perceive that judges are influenced by such publications and such a situation it has been held attracts the principle that, justice may not only be done but must be seen to be done".

¹⁵ MANU/SC/0081/200

¹⁶ AIR1975 AP 30

¹⁷ AIR 1961 SC 633

The Anglo-Saxon perspective seems to have been adopted by the Indian Supreme Court in its ruling in *Reliance Petro Chemicals Ltd. vs. Proprietors of Indian Express News Papers*¹⁸. The P.C. Sen case¹⁹, which the court cited in the *Reliance Petro Chemicals* case, demonstrates the acceptance of the Anglo-Saxon viewpoint. According to the Supreme Court, "no distinction is in our judgment warranted that comment on a pending case or abuse of a party may amount to contempt when the case is triable by a judge or judges and not when the case is triable with the assistance of a jury." The judge hears arguments and considers the facts before making any conclusions. Though judges are just human and enforcing the law is a delicate task, careless publications may tempt them and divert them from the road of justice.

MEDIA TRIAL: LAW COMMISSION'S 200TH REPORT

In August 2006, the Law Commission of India published its 200th Report²⁰, which covers a number of general topics related to people's rights, including the freedom of speech, the freedom of the press, and the right to a fair trial. The most comprehensive analysis into on the positive and negative parts of media preliminary has been expounded in this report of the Law Commission. The study offers recommendations for mitigating the negative effects of sensationalized news articles concerning the equity organization. According to the Law Commission's recommendation, the media should refrain from publishing any information that could jeopardize the accused's rights in criminal proceedings as soon as the accused is taken into custody and throughout examination and trial. It has recommended that the Contempt of Court Act be amended and that the term "pending" be given a broader definition in order to establish contempt from the moment the accused is arrested. The Commission also suggested giving the High Court the power to order the media to pause reporting or television broadcasts on criminal cases. As of the now, a charge sheet in a criminal case is the only requirement to begin a contempt procedure. According to section 3(2) of the Contempt of Court Act, 1971, the Commission recommended that a matter be deemed to be within the scope of a contempt proceeding from the moment the accused is arrested.

¹⁸ *Reliance Petro Chemicals Ltd vs. Proprietors of Indian Express News Papers*, (1989) A.I.R. SC 190, (1988) 4 SCC 592

¹⁹ *In re P.C. Sen*, A.I.R 1970 SC 1821, 1970, CriLJ 1525.

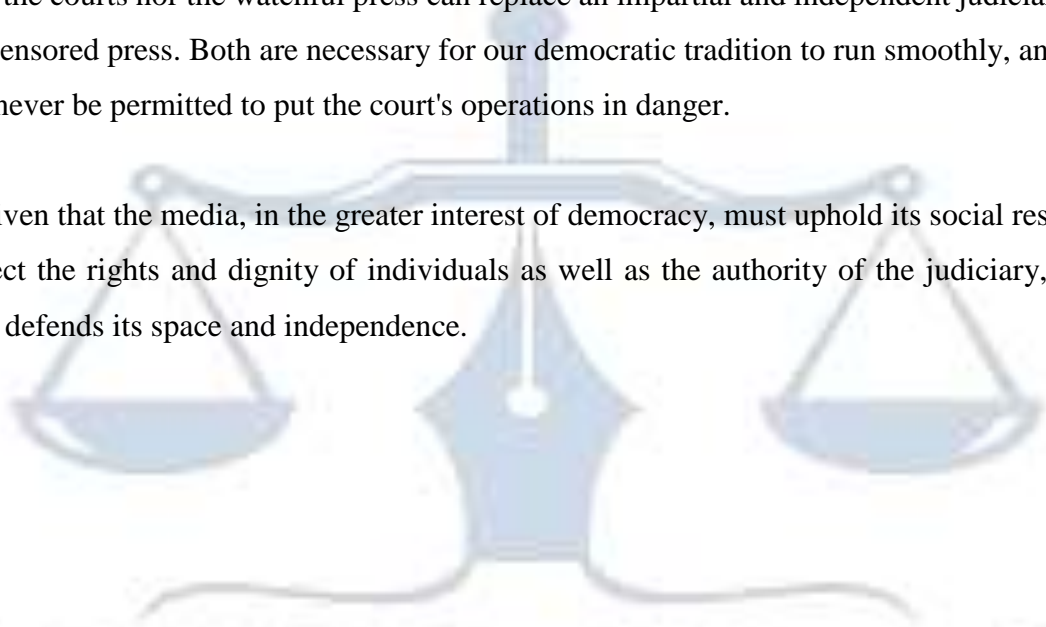
²⁰ *Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendment to the Contempt of Court Act, 1971) Law Commission 200th Report.*

CONCLUSION

In conclusion, as no freedom can be regarded as absolute, there are limitations on even press and media freedom in order to protect the public interest. The press is granted freedom in a democratic society, yet this freedom is not unrestricted. The right to hold media trials is not granted by the "freedom of the press". The practice of media trials damages an individual's reputation when they are accused of a crime by its articles prior to trial. It results in breach of his right to a fair trial, has a negative impact on the witnesses, and subtly influences the judges as well.

Neither the courts nor the watchful press can replace an impartial and independent judiciary or a free and uncensored press. Both are necessary for our democratic tradition to run smoothly, and the press should never be permitted to put the court's operations in danger.

It is a given that the media, in the greater interest of democracy, must uphold its social responsibility to respect the rights and dignity of individuals as well as the authority of the judiciary, even as it fiercely defends its space and independence.



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