

“MEDIA TRIALS: A THREAT TO JUDICIAL INDEPENDENCE OR A SYMBOL OF FREEDOM TO SPEECH AND EXPRESSION?”

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INTRODUCTION

There is no denying the fact that media is one of the important pillars of democracy in the present era. Media plays a crucial role in the decision making and opinion building of the society and is capable of changing the whole viewpoint and scenario, in light of which, general masses perceive various events. Right from Freedom struggle movement of America, France, India and across the globe, media has played a great role in raising voice of the inhabitants against the exploiters. It is yet again an established fact that a free and a healthy press are indispensable to the functioning of democracy. In a democratic set up there has to be active participation of people in all affairs of their community and the state. It is their right to be kept informed about the current political social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider forming broad opinion in which they are being managed, tackled and administered by the government and their functionaries. To achieve this objective people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their future course of action. Media has wide ranging roles and plays a vital role in shaping the opinion of the society, but like every other freedom and liberty, this freedom of speech and expression is also seen to be misused by the media. Every institution is liable to be abused, and every liberty, if left uncontrolled, has the tendency to become a license that would lead to disorder and anarchy. Before discussing any prevailing and ongoing cases concerning media trial in India context, it is very important to understand what media actually constitute and what media trial brings in the democratic regime.

UNDERSTANDING MEDIA

According to its strict and dictionary meaning, *“Media means Communication channels through which news, entertainment, education, data, or promotional messages are disseminated. Media includes every broadcasting and narrowcasting medium such as newspapers, magazines, TV, radio, billboards, direct mail, telephone, fax, and internet. Media is the plural of medium and can take a plural or singular verb, depending on the sense*

intended.” Oxford Dictionary defines Media as, “*The main means of mass communication (broadcasting, publishing, and the Internet) regarded collectively.*”² The very beginning of human communication started possibly through designed channels, i.e. not vocalization or gestures, but rather to ancient cave paintings, drawn maps, and writing. The Persian Empire played an important role in the field of communication. It has the first real mail or postal system, which is said to have been developed by the Persian emperor. In the recent times, with the invent of Internet Technology and advancement in Computer systems, Electronic Media is something which has almost brought a drastic change in the overall system of imparting information and connecting people through source of providing knowledge about various events and happenings around. The so called ‘IT and Internet Revolution’ has greatly altered and transformed the communication by providing new media equipments and gadgets for long distance communication based on satellite and radio transmitted waves. Yet again drastic revolution which can be referred as an extended form of Electronic Media is Social Media. Popular Social Media sites including Facebook, Google+, MySpace, Instagram, LinkedIn, Pinterest, Tumblr, Twitter, Viber, WhatsApp, Snapchat and YouTube actually fit into the actual and real definition of Media in the present times, taking into consideration its huge usage and role played by these social sites in the opinion building and decision making of the general masses.

THE ROLE PLAYED BY MEDIA & MEDIA TRIAL

Media has undoubtedly played a tremendous role in bringing justice to the disadvantaged people. It is often quoted that without media, various disadvantaged, poor and needy sections of the society would have gone unheard and justice would not have reached to the nook and corner of the society without the presence of Media, highlighting various issues of public concern and bringing into limelight the faults prevailing in the Administrative and Judicial setup of the country in actual sense. Without an active media, the cries of the victims of brutal khap killings of Haryana would have gone unheard. The fear of khap and the backing of police and politicians allowed this barbaric tradition to continue for long till they came out in front of the world through the media. Similarly, many other cases like the Arushi Murder Case, Jessica Lal Murder Case, Ruchika Girhotra Case, IPL Row would not have come to the limelight without the laudable efforts of media. But, it is always said that, *‘there are three side to every story: yours, theirs and the truth.’* The opposite side of the coin depicts a negative, different, corrupt image of the Media, preparing and making news from the point of view of a full-fledged business. Media has come up as the game of mere ratings, maximum viewership, eyeballs and advertisements. This means

¹ Definition of Media, <http://www.businessdictionary.com/definition/media.html>

² Definition of Media, <https://en.oxforddictionaries.com/definition/media>

anything that catches and grabs the attention of people. The present day trend in news reporting manifestly points out that Journalism and ethics stand apart. The ethics that the media must embrace includes virtues like accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect and autonomy. These virtues are very much part and parcel of the democratic process. It is unfortunate that these days the media people are overcome by materialistic considerations rather than professional ethics and sincerity towards the profession. Similar concept is the notion of Trial by Media, a phrase popular in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence even before, or after, a verdict in a court of law.

MEDIA TRIAL - A PART OF FREEDOM TO SPEECH AND EXPRESSION OR AMOUNTS TO CONTEMPT OF COURT

Article 19 of the International Covenant on Civil and Political Rights, 1966³, embodies 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 frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*” Nonetheless, this freedom comes with a rider that the exercise of this right comes with “*special duties and responsibilities*” and is subject to “*the rights or reputations of others*”. The right to freedom of speech and expression has been guaranteed under Article 19(1) (a) of the Constitution of India. Even though freedom of press is not a separately guaranteed right in India unlike the United States of America, the Supreme Court of India has recognized freedom of press under the umbrella right of freedom of speech and expression as envisaged under Article 19(1)(a) of the Constitution of India. But, it cannot be and should not be forgotten here that Article 19(1)(a) itself comes with certain restrictions contained from within Article 19(2) to 19(6) of the Indian Constitution. Now, the major question which is required to be answered here is that whether Media Trial is included within the meaning of Freedom of Press keeping in view various positive aspects of the media trial and the role played by media to bring forth the actual realities of the society into limelight or they consider Media Trial a contradiction to fair trial and constituting it as a contempt of court itself. Jeremy Bentham, has said, “*In the darkness of secrecy, sinister interest and evil in every shape are in full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate.*”

³ Article 19, ICCPR : Article 19 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, Available At : [http://www.hkhrm.org.hk/PSB/02.%20ICCPR%20\[UN\].pdf](http://www.hkhrm.org.hk/PSB/02.%20ICCPR%20[UN].pdf)

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.”

The second opinion regarding Trial by Media is that it constitutes Contempt of Court and needs to be punished. The Contempt of Court Act defines contempt by identifying it as civil and criminal. Criminal contempt has further been divided into three types i.e Scandalizing, Prejudicing trial, and Hindering the administration of justice. Further the provision prejudice or interference with the judicial process owes its origin to the principle of natural justice i.e. ‘*every accused has a right to a fair trial*’ clubbed with the principle that ‘*Justice may not only be done it must also seem to be done*’. There are multiple ways in which attempts are made to prejudice trial. If such cases are allowed to be successful will be that the persons will be convicted of offences which they have not committed. Contempt of court has been introduced in order to prevent such unjust and unfair trials. No publication, which is calculated to poison the minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt. Commenting on the pending cases or abuse of party may amount to contempt only when a case is triable by a judge. No editor has the right to assume the role of an investigator to try to prejudice the court against any person.

THE IMPORTANT DECIDED CASES CONCERNING/ BASED ON MEDIA TRIALS

Honorable Supreme Court of India and various High Courts, at various times have decided upon the validity of Media Trial. In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr*⁴, it was held by the Supreme Court that: “No doubt 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. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case.” In *Anukul Chandra Pradban v. Union of India*⁵, The Supreme Court observed that “No occasion should arise for an impression that the publicity attached to these matters 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

⁴ 1961 AIR 633, 1961 SCR (3) 460

⁵ 1997 (6) SCC 1 : AIR 1997 SC 2814

the accused unless found guilty at the end of the trial.” In the famous *Jessica Lal Murder*⁶⁷ case, where Manu Sharma was tried and convicted for murder, the court held that “There is danger, of serious risk of prejudice if media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if media publishes statements which out rightly hold the suspect or accused guilty even before such an order has been passed by the court.” In *Zabira Habibullah Sheikh v. State of Gujarat*⁸, the Supreme Court explained that a “Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. 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.” In *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr*⁹., it was observed by the learned judge that: “*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, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings.*” In *Sushil Sharma v. The State (Delhi Administration) and Ors.*¹⁰, it was held by the Delhi High Court that, “*Conviction, if any, would be based not on media’s report but what facts are placed on record. Judge dealing with the case is supposed to be neutral. Now if what petitioner contends regarding denial of fair trial because of these news items is accepted it would cause aspiration on the Judge being not neutral. Press report or no reports, the charge to be framed has to be based on the basis of the material available on record. The charge cannot be framed on extraneous circumstances or facts dehors the material available on record. While framing the charge the Court will from prima facie view on the basis of the material available on record.*”

THE NEED TO REGULATE/ CONCLUSION

It cannot be forgotten in any case that freedom of expression is not absolute, unlimited or unfettered. The judiciary is regulated by judges who are human, and being human they are occasionally motivated by considerations other than an objective view of law and justice. The media must exercise better self-regulation. It is expected that the persons at the helm of the affairs in the field of media must ensure that the trial by media does not hamper fair investigation by the investigating agency, and more importantly does not prejudice the defence of accused in

⁶ Trial By Media: *A Legal Dilemma Resolved With Reference To Jessica Lal*, Available At : <http://www.legalserviceindia.com/article/1237-Trial-By-Media.html>

⁷ State Of Manipur vs Vikas Yadav, 2000 CriLJ 4229

⁸ Available At : <https://www.scribd.com/doc/239681658/Zahira-Habibullah-Sheikh-Anr-vs-State-Of-Gujarat-Ors>

⁹ AIR 1975 AP 30

¹⁰ 1996 CriLJ 3944

any manner whatsoever.¹¹ It will amount to breach of the very principle of Fair and Just Trial and will wither away from the notion of justice and fairness. If government starts maintaining and regulating the media, the whole purpose would be defeated. Instead the better option would be bringing and ensuring more engagement by the people with their polity and political class. Only in that case can media actually perform the task of being the watchdog of the whole administrative setup and system and the fourth pillar of democracy in real sense.

¹¹ *Trial by Media by Justice V Rammkumar*, Available At : <http://www.livelaw.in/trial-by-media/>
