



## **Media coverage of trials: A legal uncertainty**

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### **Abstract**

To understand the antagonism of free trial and free media one needs to contemplate the developments of court and media and its present situation. There exists a typical connection between the Judiciary and the media and both assume an admiring share to each other where man is the principal point of their universe. Both the judiciary and media are employed with the same obligation; to find reality, to maintain the democratic based esteems and to manage social, political and financial issues. Media has been described by many as the "eyes and ears of the general public". Media intervention in under trial cases has turned out to be exceptionally typical in the general public. Judges are somehow constrained in some way or another to take choice as indicated by the follow up of Media feedback because of which, an assertion of a decision by media turns into the last decision in trial courts particularly in numerous high profile cases. Revived as an open court, media independently begins investigation and form the general supposition in the minds of the general public. It is obvious that to run the democratic form of governance easily and smoothly, a free and sound media functionary is required. But if we critically analyse the provisions enshrined under sub-clause 2, article 19 of the Constitution of India. We could see that the freedom of expression enjoyed by the media fraternity is usually taken to mean in a much more advanced way. That is to say that this freedom of expression by the media is not an absolute one and it could be said that it doesn't promote the flexibility to commit contempt of court. This paper is a modest push to discover the need and extent of media inclusion in the cases which are subjudice before the courts of Law and assuming a significant part thereto in setting up the fairness and justice in the general public.

**Keywords:** media, political and financial issues

### **Introduction**

Media is viewed as one of the pillars of majority rules system i.e. democracy. Media plays an important role in the society. It assumes a fundamental part in shaping the mood of the public<sup>[1]</sup> and it is equipped for changing the entire perspective through which individuals see different circumstances. The media can be praised for launching an operation where the media assumes a dynamic character in getting the accused to trap. Freedom of media is the flexibility of individuals to be educated of open issues<sup>[2]</sup>. Free and sound press is key for the working of majority rules system i.e. democracy. In popularity democratic based set up there must be dynamic participation of individuals in all undertakings of their community and the state. It is their entitlement to be kept educated about the current political social, financial and social life and also the intense matters and vital issues of the day to day life keeping in mind the end goal to empower them to consider determining wide suggestions in which they are being administered, handled and regulated by the administration and their functionaries.

To achieve this target individuals require an evident and authentic record of occasions, with the goal that they may frame their own sentiment and offer their own particular remarks and perspectives on such matters and issues and

select their future strategy. The privilege to freedom of speech and expression or we can say the right to speak freely and articulation is contained in Article 19 of the constitution of India. However the freedom isn't absolute as it is bound by the sub-clause (2) of the same Article. However the right to freedom of speech and expression does not entitle any person or agency to commit contempt of court.

Media interruption is a moral dilemma for the developing countries of the globe. It has grown up to be a pattern that media should approach to explore reality in a given situation. 'Trial by media' is an expression which became popular in the late twentieth century and early 21st century to portray the effect of TV and daily news-paper reporting on a man's reputation by making a boundless impression of blame or honesty before or on the other hand after, a decision in a courtroom is pronounced- ("Trial by media - Wikipedia, the free reference book"). As the legal framework in our country has the key obligation in the general public, there have been built up different courts at all levels to get the justice legitimately and fairly in a stipulated time. Legal system is meant for the litigants to get their issues resolved before the court of law. But the reality of our legal system is well known in a practical sense and the main objective of our legal system is hardly seen. It has turned into a coin in the hands of legal counsellors, judges and obviously legitimate and persuasive people. Not just individuals sit tight to acquire justice for a considerable length of time, yet in addition they now and again end up their hope and become headed for oblation to

<sup>1</sup> In Re: Harijai Singh and Anr. v. In Re: Vijay Kumar, (1996) 6 SCC 466, para 10.

<sup>2</sup> Express Publications (Madurai) Ltd. v. Union of India, AIR 2004 SC 1950, para 29

secure the justice. The distress of the litigants during the ongoing proceedings in a court of law is nearly not felt by anybody. "Justice delayed is justice denied"<sup>3</sup> (Dutta and Ray, 2012).

Thereby, the real concern is, and which is the centre issue of this work is the need to check biased impact caused by an amazing itemizing or show-off by the media of a subjudice matter pending before the court of law. So far as a criminal trial is concerned, media publicising has a more negative impact as opposed to a helpful outcome. Consequently, media can't be granted a free shot in court proceedings. The media must be legitimately regulated. Although our legal framework depends on the capability, fairness and valour of the trial judge and one can contend for unreasonable media focalize of court proceedings on the ground that it won't impact the judgment. Along these lines, in such a situation there is a critical requirement for the news-media to regard the harmony between the 'flexibility of press' and the 'right to judicious trial'.

### Freedom of media

"Right to Freedom of Speech and Expression" is a primary and fundamental right of the citizens of India. This is understood in Part III of the Constitution of India - Article 19(1). This Article is so wide in scope that Freedom of the Press is incorporated into Freedom of Speech and Expression. It incorporates the freedom of free spread and free flow with no past restriction on distribution or publication.

The Article 19 (2) of the Constitution imposes sensible confinements on the activity of the privilege offered by the said sub-clause in light of a legitimate concern for the supremacy, integrity and uprightness of India, the security of the state, friendly relations with far-flung states, public order, decency or morality or in connection to disrespect of court, defaming or instigation to an offense. At whatever point, crisis is pronounced in a nation, these rights stay suspended. Every one of our administrations has favoured press flexibility to be connected with social and basic duties and the commitment to report equitably.

### Media Trial

The predominance of an autonomous legal system and in addition a free press are both basic and essential in a constitutional popular democracy. In the recent years, with the development of Satellite TV and Stations, Local Radios, News Papers and Magazines, network Systems and Web connectivity the range and reach of media has expanded a considerable extent. Not at all like Western countries, the circulation of daily news-papers and magazines also been continuously rising in India because of quickly expanding literacy levels. This continually extending readership and viewership has given our news-media associations an exceptional part in shaping prevalent thoughts and preferences. There have been various examples in which media has led the trial of an accused and has passed the decision even under the watchful eye of the court passes its judgment. This sensation is prevalently called as media trial. Trial is a word, which is related with the procedure of equity

and justice.

Earlier, news coverage or simply we can say the journalism profession was not under strain to push up TRP evaluations or deals, so the journalists did their work with genuine dedication and belief, with courage and honesty. They didn't articulate individuals guilty without influencing a genuine attempt to study and analyse the charges, to examine them, and come to their own particular autonomous conclusions, without fear or support. They didn't aimlessly print what law masters asserted, what the organization said or what lawmakers planted on to them. That is the reason public believed them. However, now we are seeing an alternate self-procured part of media in the nature of 'media trial'. Everybody controls the media to serve their own particular advantages or hurt their opponents. The matter does not lie in media's uncovering the lacuna of an awful investigation by cops, or mal-execution of the obligations appointed to the government workers but the eyebrows begin to raise when the media *ultra vires* its factual and legitimate jurisdiction and does what it must not do.

Media has now resurrected itself into a public court' (Janta Adalat) and has begun interfering into court procedures. It totally ignores the key hole between a blamed and a convict keeping in question the golden principles of "*presumption of innocence until guilt is proved*"<sup>[4]</sup> and "*guilt beyond reasonable doubt*". Presently, what we see in media trial phenomena is that the media itself initiates a separate investigation, constructs a popular Opinion among the general public against the accused person even before the court takes cognizance of the case. By along these lines, it prejudices people in general and some of the time even judges and as a result the accused person, who ought to be presumed honest and innocent, is presumed as a criminal leaving every one of his rights and liberties unprotected. The print and electronic media have gone into nasty and heartless rivalry, as we call it "*aggressive reporting*" that a large number of cameras are flashed at the suspects or the accused and the police are not even permitted to take the suspects or accused from their vehicle into the courts or the other way around. The most unpleasant part, and terrible as well, of the recently incarnated role of media is that the coverage of a sensational crime and its showing of evidence starts early, mostly even before the individual who will undergo a trial in the end takes insight of the offense charged against him, and secondly that the media isn't bound by the conventional principles of evidence which would regulate them as to what material can, and can't be utilized to convict an accused.

In this manner, trial by media, regardless, be it a campaign or generally isn't acceptable. Media has an essential part to educate individuals about the genuine aspects of a case. It acts as a mirror for the general public. It brings just what is occurring around and make the assemblies and government responsible for the demonstration of them. But it can't legitimize appreciating proof, arriving at a conclusion or restoring a decision. It is within the limits of specific confinements; this right comes to an end when the man's freedom of privacy and reasonableness starts. That has been unquestionably differentiated by the press board and by the law itself. A newspaper report of a verifiable occasion

<sup>3</sup> Hussainara Khatoun vs. State of Bihar [AIR 1979 SC 1364].

<sup>4</sup> State of U.P. v. Naresh and Ors. (2001) 4 SCC 324.

occurring or if an accused is being questioned in light of the said report is admissible and permissible. However, going beyond that i.e. to accumulate evidence, to analyse it and to restore a finding or even unkindly give crossing remarks on whatever is accessible with the police is again crossing that *Laksman-rekha* where the privileges of another person are prejudiced.

### Concept of “right to fair trial”

Right to a fair trial is an absolute right of every person within the territorial limits of India vide Articles 14 and 20, 21 and 22 of the Constitution. It is pertinent to mention here that fair trial is more essential as it is an absolute right which streams from Article 21 of the constitution to be read with Article 14. One's life with dignity is constantly given a priority in contrast with one's entitlement to the right to freedom of speech and expression. Media ought to likewise consider upon these actualities. Fair trial isn't absolutely private advantage for an accused. The privilege to a fair trial is at the core of the Indian criminal justice system. It envelops a few different rights counting the privilege to be assumed innocent until proven guilty, the privilege not to be forced to be a witness against oneself, the privilege to an open trial, the privilege to legitimate legal representation, the privilege to fast trial, the privilege to be available amid trial and inspect witnesses, and so forth. The media treats habitual criminals and the ordinary one, sometimes even the innocents, alike with no sensible separation. Regardless of whether they are acquitted by the court on the grounds of proof beyond sensible doubt, they can't revive their past reputation in the society. Such sort of publicity given to them is likely to risk all their esteemed basic rights going with freedom.

In the case of *Zahira Habibullah Sheikh v. State of Gujarat and Ors* <sup>[5]</sup>

The Supreme Court has held, “*the principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices.... 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.*”

This right of fair trial may likewise be defeated if the media while publicising an issue use such a dialect which may have an impact to influence the brain of a Judge and somehow control the judicial processes. It is pertinent to mention here that in the recent times the media starts naming and blaming the accused, keeping in mind the end goal to sensationalize the publicising and to increment its commercial esteem. Photos and different materials in the form of meetings are published and circulated on the TV channels and are also highlighted alongside public reaction. The matter is more noticeable when the issues include high profile names and famous celebrities. In such cases media revealing can swing prominent feelings in any case.

### Interference with the court proceedings

The main concern trending today between the courts and the media spins around two general concerns. The first is that

<sup>5</sup> (2005) 2 SCC (Jour) 75.

there ought to be no 'trial by media'; and the second is that it isn't for the press or anybody else to 'prejudge' a case. Justice demands that individuals ought to be tried by courts of law alone and not to be humiliated by the press."

Media Trial or adjudication by media in cases before or after the decision of court has turned into a pattern in the present situation to expand the distribution and TRP of newspapers and news channels. Media has flouted the key hole between an accused and a criminal! Today, it impacts the majority of people by making an innocent a guilty one thereby changing the mind setup of the people. Indeed, Various Judges of Court have criticised the role played by media under the fashion of “trial by media” as it stimulates psychological variations while giving any degree. There is no uncertainty that media trial has uncovered numerous culprits of the prominent cases like *Jessica Lal Murder* <sup>[6]</sup>, *Priyadarshini Mattoo case* <sup>[7]</sup>, *Bijal Joshi rape case* <sup>[8]</sup> and *Nitish Katara case* <sup>[9]</sup> but it is unlawful because of the limitations imposed on the right to freedom of speech and expression in the Indian Constitution. It is pertinent to mention here that Media has helped many needy people in getting justice. But in the meantime the pre-judgement given by the media in Aarushi Talwar's Murder case <sup>[10]</sup> was not praiseworthy. As we have seen that the statements made by media changed each and every day and publicised Aarushi's parents as her murderer's. However, CBI didn't found any sign and the court's final judgement came after many years.

Media has been defined as a magic shot that directly hits the psyche of the general population. We accordingly accept what media demonstrate us. And it is this influence that we did believe, yes! It was her parents who murdered Aarushi', and we easily relied on this before the last judgment of the court that put a question mark on the social commitment of the media. But somehow the reputation, esteem and dignity of a person involved do suffer even after you have been proved innocent. On the off chance, if the media's publicity about an accused or suspect compromises with the judicial process of the court, then it amounts to undue interference with the “administration of justice”, which in turn give rise to the proceedings for contempt of court by media. Sadly saying, rules which are intended to control journalistic approach are deficient to prevent the infringement of social rights and liberties.

### Media trial is contempt of court and needs to be punished

The Contempt of Courts Act defines contempt by identifying it as civil and criminal. *Criminal contempt* has further been divided into three types:

- Scandalizing
- Prejudicing trial, and
- Hindering the administration of justice.

The provisions mentioned above owes its starting point to the rule of natural justice; 'each accused has a privilege to a

<sup>6</sup> State of Manipur vs. Vikas Yadav, Guwahati HC 2000 CriLJ 4229

<sup>7</sup> (2010) 9 SCC 747.

<sup>8</sup> Bijal Revashanker Joshi vs. State Of Gujarat, (1997) 2 GLR 1147.

<sup>9</sup> Editorial, “Nitish katara's killers” NDTV, OCT. 3 2016.

<sup>10</sup> Aniruddha Ghosal, Kaunain Sheriff M, “Aarushi express, October 22, 2017.

reasonable and fair trial' clubbed with the rule that 'Justice may not exclusively be done it must likewise seem to be done. There are numerous ways in which attempts are made to cause hindrances to the process of trial. In the event that such cases are permitted to be effective then the people will be prosecuted for the offenses which they have never committed. Contempt of court has been enacted all together to neutralize such unjustifiable and unfair trials. Any distribution, circulation or demonstration which is likely to harm the psyches of legal hearers, threaten witnesses or parties or to make a climate in which the administration of justice would be troublesome or unimaginable, leads up to contempt of court. Remarking on the pending cases or abuse of party may amount to contempt only when a case is triable by a judge. The law, as to interference with the due process of justice has been well stated by the chief Justice Gopal Rao of Andhra Pradesh High Court in the case of *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr* <sup>[11]</sup> where in 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.”*

The conclusions of various judicial decisions from time to time can be summed as follows:

In another case of *Saibal Kumar Gupta and Others vs. B. K. Sen and Another* <sup>[12]</sup>, the learned judge stated.....

*“.....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.”*

In another case of, *State of Maharashtra vs. Rajendra Jawanmal Gandhi* <sup>[13]</sup>, the learned judge held that.....

*“.....There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence*

*he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.”*

### **200<sup>th</sup> Law commission report on ‘Media Trial’**

The Law Commission in its 200th report, *Trial by Media: Free Speech versus Fair Trial under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)* <sup>[14]</sup>, has prescribed a law to suspend the media from detailing anything unfair to the privileges of the accused in criminal cases, from the time of arrest to examination and trial.

The commission has stated, *"Today there is feeling that in perspective of the broad utilization of the TV and cable networks, the entire example of production of news has changed and a few such circulations by the media are probably going to prejudicially affect the suspects, accused, witnesses and even judges and as a whole on the administration of justice and equity".*

This is criminal contempt of court, as per the commission; if the provisions of the Act impose sensible or reasonable limitations on the right to speak freely, such confinements would be valid.

### **Conclusion**

From the above record it turns out to be evident that the media had a more negative impact instead of a beneficial outcome (with the exception of a couple of instances all over). The media must be legitimately regulated by the courts. The media can't be given a free hand in the court procedures as they are not an exempted body. The law commission likewise has made a report regarding *"Trial by Media: Free Speech versus fair Trial under Criminal Procedure"* (*Amendments to the Contempt of Court Act, 1971*), [Report number 200 arranged in 2006].

The most reasonable approach to manage the media will be to exercise the contempt jurisdiction of the court to punish the individuals who abuse the fundamental set of recognized rules of conduct. The application of contempt powers against the media channels and daily papers by courts have been affirmed by the Supreme Court in various cases as has been mentioned before. The media can't be permitted the right to speak freely and expression to a degree as to prejudice the trial itself. Almost everybody influences the media to serve their own particular advantages or hurt their opponents. The issue does not lie in media's uncovering the lacuna of a bad investigation by police, or mal-execution of the obligations appointed to the government workers however the eye-brows begin to raise when the media ultra vires its legitimate jurisdiction and does what it must not do. The media trial has now proceeded onward to media decision and media punishment which is no doubt an ill-conceived utilization of opportunity and contravening the reasonable outline of legitimate limits <sup>[15]</sup>. In spite of the fact that media act as a watch dog and act as a platform to convey individuals voice to the notice of society

<sup>11</sup> AIR 1975 AP 30.

<sup>12</sup> AIR 1961 SC 633, 1961 SCR (3) 460.

<sup>13</sup> (1997) (8) SCC 386

<sup>14</sup> Justice M. Jagannadha Rao, Law Commission of India, August, 2006

<sup>15</sup> Rajendra Sail v. M.P. High Court Bar Asstn. (2005) 6 SCC 109 per Y.K. Sabharwal, J.

and government. On one hand we have a few renowned criminal cases which would have gone unpunished but for the intervention of media those cases came into forward; while on the other hand, media has caused unrest among the public by interfering with the court process and additionally for unreliable and wrong enlightening. Now and again they build-up the news which annoys the procedure of the court. They have reasonable right to remark on judgments; however remarking amid the trial vitiates the very reason for justice. "All things considered, judges too are human beings and they get diverted when they read the remarks on the cases they are hearing.

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