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Freedom of Press and Trial by Media

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ABSTRACT

The growth of the technological advancement has significantly increased the reach of media to every part of India. With this the need of free speech has become relevant and requirement of time so that every citizen can keep his or her opinion or idea without any fear. It also became important for the press or media to display opinions, ideas, and philosophies without any terror of censorship. Therefore, they were guaranteed freedom of speech and expression by the Constitution of India as the fundamental right. Due to this right, media which is considered to be the fourth pillar in Indian democracy, has efficiently worked as the watchdog and has vigilantly looked upon the working of legislature and executive and in time to time has revealed the loopholes in the system and wrongdoings of the government. It has become a channel of communication between normal citizen and the government. The problems of a common man are put forward to the government by media, but due to no proper channel for regulation of news, the media has many a times violated this right. It has also intervened in the working of the judiciary by starting the parallel trial of cases time to time which has been famously phrased as 'Media Trial'. Many a time's media's coverage on any case has deeply impacted the real trial which is undergoing in the court of law by creating a biased environment towards one party, which in result impacts the psychological state of the judges who are undertaking the trial. Therefore this article focuses on freedom of speech and expression and analysis media trial and its affect. It also analysis the freedom of press under the ambit of freedom of speech and expression which is guaranteed as a fundamental right enshrined in the Constitution of India.

Keywords: *Freedom of speech and expression, freedom of press, trial by media.*

I. INTRODUCTION

The renowned American lawyer and former 16th US President Abraham Lincoln very famously quoted the democracy as "a rule of the people, for the people and by the people". The social ideal of democracy wherein mutual respect and freedom lies in its core is the basal for this particular theory to behold the philosophies for which it was meant i.e. to curb the inequalities, to eradicate poverty and oppression of underprivileged category of people, etc. This very philosophical thought or theory has been adopted by our country India.

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The most diverse and culturally rich country India is also world's largest democracy. But it is not only due to its sheer size or population, but also due to the pillars over which it is based namely, Legislature, Executive and judiciary. Apart from these classically recognized pillars, the recognition of the 4th pillar is given to the 'Media' which is considered as one of the most dynamic and powerful pillar (Media as fourth pillar was coined by Thomas Carlyle). It is a connecting link between government and citizens because in a way it provides every information about policies, inefficiencies, problems faced by a common citizen, ensuring the accountability of the government, also spreading awareness and education among the citizens, maintaining the idea of good governance by transparent reporting.

In the recent years, where the technology has advanced, the institution of media has also progressed. Its role and responsibility in shaping the future of India has increased gradually and has become an inalienable part of our democracy. The quality of media acting as a watchdog for uncovering every wrongdoings, loopholes and errors in system is vital to keep democracy alive. But since the advent of social media and due to very flexible laws, it has become difficult to keep a check and regulate media. Many unethical practices are being performed by the media and unfortunately there is no particular law to restrict such practices.

Since past few decades the zero restrictions or no restrictions on media is affecting the judicial institutions which in turn is affecting the health of democracy. The media is influencing the trials of most cases and significantly of most high-profile cases. It is effecting the court procedures both way directly and indirectly, due to which the efficacy of judges are also sometime questioned, for example as happened recently in Nupur Sharma's case, when the Hon'ble Supreme court reprimanded Nupur Sharma.

Since it is significant for the judiciary that all the accused must have a fair trial, in oppose to this the media has incarnated itself as a public court, judging the accused socially and not legally, thereby creating an aspersion environment in the society against the accused before the actual judgment of the real courts come. And majorly such environment creates an unnecessary pressure upon the judicial institutions too and effect there working.

Although the free media is an important requirement of a democracy, but should this be at cost of affecting the other pillars of democracy and most significantly the Judiciary? Also does media has right to show, publish or print anything under freedom of speech and expression? Therefore in this context this article tries to analyses the freedom of press under freedom of speech and expression as guaranteed a fundamental right by our constitution under and also tries to analyses the famous phrase of 'Media Trial' and it's positive and negative effects on our

judiciary.

II. FREEDOM OF SPEECH AND EXPRESSION

“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.” -George Washington

Our constitution guarantees every citizen the six fundamental rights under Part III from Article 12 to Article 35. All these rights protect the citizen from the arbitrary practices of the state and one such major fundamental right is ‘Freedom of speech and expression’ which is given under Article 19(1)(a) and reads as follows:-

Article 19: Protection of certain rights regarding freedom of speech etc.

(1) All citizens shall have the right

(a) to freedom of speech and expression;²

The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression. It has been said that it is a basic right which is also recognized as a natural right which are inherent in the status of a citizen of a free country. Therefore, the freedom of speech and expression is also considered as the first requirement of liberty where citizens have the privilege of expressing their ideas, emotions, thoughts freely and under no pressure, no fear or terror of censorship as it gives access and open the channels of free discussion of problems or issues and which is significant for any democratic nation. It is thus truly said that it is the mother of all other liberties.³

The Hon’ble Justice Bhagwati in the case of *Maneka Gandhi v. Union of India*⁴, emphasized on the importance of freedom of speech and expression and said that *“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential”*.

Democracy thrives through vigilant eye of Legislature, care and guidance of public opinion and press par excellence. The freedom of speech and expression plays a vital and crucial role in forming the public opinion on various social, political issues; etc. It has a broad area of working.

²INDIA CONST. art. 19.

³1 K.K. MATHEW, REPORT OF THE SECOND PRESS COMMISSION 34-35 (1954).

⁴*Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597: (1978) 1 S.C.C. 248 (India).

It not only provide liberty in way of speech but also in way of publishing, painting, dancing, movies, pictures, films, banners or to write literature or poetry; etc.

The right to speech also implies the right to remain silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends the freedom to be free from what one desires to be free from. It also includes the right to acquire information and disseminate the same. Therefore the right to information is indisputably a Fundamental Right.

III. FREEDOM OF THE PRESS

“Freedom of the press is not just important to democracy, it is democracy”. -Walter Cronkite

For a democratic country, the free press is like a foundation and is important for strengthening the democracy. An independent press and news-media press acts as an important check on government and administrators. It is also responsible to raise voice against any social ill or wrong. Media reporting on public affairs and investigations into wrongdoing of the government and administrators is must for a healthy democracy. This includes exposing frauds or corruption cases that personally benefit politicians. This help citizens to vote the best government, defeating corrupt and dishonest government. If media is honest and free democracy is bound to function more efficiently. If media is biased, corrupt and favours only a particular party or few individuals, it can prove to be very dangerous for the smooth functioning of democracy.

The freedom of the press is regarded as a species of which freedom of expression is a genus.⁵ It is as such not expressly mentioned in the constitution but is implicit in the freedom of speech and expression. Freedom of press has always been a cherished right in all democratic countries and the democratic credentials of a state are judged by the extent of freedom the press enjoys in that state⁶. Since the press or media is considered as the fourth pillar of our democracy it becomes very important that the press works without any fear or terror of censorship and without any antagonism towards the media which is openly encouraged by political leaders which in result poses a great threat to democracy.

The Hon’ble Supreme Court in its two renowned cases of *Brij Bhushan v. Delhi*⁷ and *Virendra v. State of Punjab*⁸ held that imposition of pre-censorship on a newspaper, and prohibiting it from publishing its own views or those of its correspondents on a burning topic of the day, respectively, constitute an encroachment on the freedom of speech and expression.

⁵Sakal Papers v. Union of India, A.I.R. 1962 S.C. 305: (1962) 3 S.C.R. 842 (India).

⁶Printers (Mysore) Ltd. v. Assistant Commercial Tax officer, (1994) 2 S.C.C. 434 (India).

⁷ Brij Bhushan v. Delhi, A.I.R. 1950 SC 129:1950 S.C.R. 605 (India).

⁸Virendra v. State of Punjab, A.I.R. 1957 SC 896:1958 S.C.R. 308 (India).

Also in the very famous case of *Romesh Thapar v. State of Madras*⁹, it was held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as a publication is of little value without circulation. Thus, imposition of a ban upon entry and circulation of a journal within a State is restriction of Article 19(1)(a). The rationale behind this judgement set a healthy precedent both in terms of protecting press freedom and defining the scope of reasonable restrictions on the fundamental rights as provided in Part III of the Constitution. One more case of great significance is of *Bennett Coleman and Co. v. Union of India*¹⁰, where the Hon'ble Supreme court held that the freedom of speech and expression is not only in the volume of circulation but also in the volume of news and views.

In the case of *Indian Express newspapers v. Union of India*¹¹, the Hon'ble apex court has made the following observations:

The expression "freedom of press" has not been used in Article 19 but it is comprehended within Article 19(1)(a). The expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

The former Prime Minister of India Shri Rajeev Gandhi also expressed his views on freedom of the press as, "*Freedom of the Press is an article of faith with us, sanctioned by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation*¹²." Therefore, it is also considered as the bulwark of the democratic government.

But in the recent report of the World Press Freedom Index 2022, India's ranking dropped to 150th position among 180 countries from last year's 142nd rank¹³, and there are multiple reasons for the same as according to the index the media in India, among nations reputed to be more democratic, faces pressure from "increasingly authoritarian or nationalist governments". More

⁹Romesh Thapar v. State of Madras, A.I.R. 1950 SC 124:1950 S.C.R. 594 (India).

¹⁰ Bennett Coleman and Co. v. Union of India, A.I.R. 1973 SC 106:1972 2 S.C.C. 788 (India).

¹¹ Indian Express newspapers v. Union of India, A.I.R. (1985) 2 S.C.R. 287 (India).

¹²Mayukh Gupta, *Freedom of Press In India*, LEGAL SERVICE INDIA (Aug. 22, 2023, 11:01 AM), <http://www.legalservicesindia.com/article/217/Freedom-of-Press-In-India.html#:~:text=As%20being%20a%20subject%20of,our%20future%20as%20a%20Nation.%E2%80%9D>.

¹³PTI, *Methodology Questionable: India on Findings of World Press Freedom Index 2022*, THE QUINT (Aug. 22, 2023, 11:12 AM), <https://www.thequint.com/news/india/government-rejects-world-press-freedom-index-2022-india-rank-methodology#:~:text=As%20per%20World%20Press%20Freedom,from%20last%20year's%20142nd%20rank.&text=The%20government%20on%20Thursday%2C%2021,India%20150th%20among%20180%20nations>.

importantly it resorts to using defamation, sedition, contempt of court. And this is what raises the question on the credibility of Indian media and moreover their interference on the judicial system in India.

IV. RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION WITH REGARD TO PRESS

Although the press enjoys the freedom of speech and which is important in the democracy, but this right or freedom is not absolute in nature i.e. it comes with some restrictions as enshrined in Article 19(2) of the constitution which reads as follows:-

*“Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”.*¹⁴

Thus it empowers the State to instil reasonable restrictions on the following grounds:

1. Security of the State;
2. Friendly Relation with Foreign States;
3. Public Order;
4. Decency and morality;
5. Contempt of court;
6. Defamation;
7. Incitement to offence;
8. Integrity and Sovereignty of India.

It became necessary to place some curb or restrictions on this freedom so that one should use Freedom of expression in a way that it should not provoke any person or incite violence or create disturbance in the society and therefore the social order is maintained. The restriction given under this article is very stringent and must always be adhere.

Therefore the freedom given to press is curtailed if it is found violating the right. Specifically the contempt of court is too added in the restrictions because it is very essential to maintain the

¹⁴INDIA CONST. art. 19, cl. 2.

independence and integrity of judiciary and the faith of the public on the judicial institutions. Therefore, power has been conferred on the Supreme Court under Article 129 as well as each High Court under Article 215 to punish for its contempt. The freedom of speech and expression guaranteed by Article 19(1)(a) is thus subject to Article 19(2), 129 and 215.

The Hon'ble Supreme Court in case of *Narmada Bachao Andolan v. Union of India*¹⁵, said that, "We wish to emphasize that under the cover of freedom of speech and expression no party can be given a license to misrepresent the proceedings and orders of the court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the court and bring it into dispute."

But unfortunately, in today's time, the fourth pillar of our democracy is sometimes indulged in the shoe of other i.e. interfering in the working and administration of our judiciary by forming public opinion on high-profile cases which create unnecessary burden upon the courts to pass the judgement as per 'media verdict' or opinion waves in the society or by starting parallel trial to the actual trial going on in the courts or by making personal allegations on lack of ability or integrity against a judge; etc.

V. TRIAL BY MEDIA: A HINDRANCE TO FAIR TRIAL

The instances of media trials have been increasing in 21st century. Right from beginning of any trial in a court, the media starts its known trial and a separate investigation as soon as an accused is caught. Here, the media forgets the thin line difference between an accused and a convict, and therefore telecasts his or her personality and the advancements around the case in such a way that even if he hasn't committed the offence it seems that he or she is only the potential person to do such heinous act. It hinders the right to fair trial which is an absolute right of every individual within the territorial limits of India under articles 14 and 20, 21 and 22 of the constitution and is also the heart of our criminal justice system, because the principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt' are breached.

The Hon'ble Supreme Court took the view on trial by media in the case of *M.P. Lohia v. State of West Bengal*¹⁶ that the scurrilous articles on judiciary appearing in the media would certainly interfere with the administration of justice. It cautioned the publisher, editor and the journalist against indulging in such trial by media when the issue was sub-judice.

¹⁵Narmada Bachao Andolan v. Union of India, A.I.R. 1999 S.C. 3345, 3347:(1999) 8 S.C.C. 308 (India).

¹⁶M.P. Lohia v. State of West Bengal, (2005) 2 S.C.C. 686:A.I.R. 2005 S.C. 790 (India).

The bombardment done by media with cameras on an accused while he or she is going to present before the court from police vehicle or vice versa, and the tremendous pressure put by the media on judges shows that media only works upon the emotions and not senses, but law is governed by senses and not emotions. The media is in such a pressure to maintain or to raise the TRP that it even do not hesitate in interfering the judicial proceedings by running a parallel trial. This impute improper motives and burden over the court proceedings and creates unnecessary pressure on administration of justice. While any case is sub judice, the media using its power ultra vires, keep the judicial sanctity at stake affect the case and right to life with dignity of an accused. In the era of technology the past events of accused get easily accessible. For instance in the Sheena Bora Murder Case¹⁷, the eyes of media have pierced the personal life of the main accused Indirani Mukherjee which was fully accused by the media. Every aspect of her personal life and character was in public lens of examination via media. Not only accused, the victims are also disturbed for example any victim of sexual offence gets psychological pain and trauma because the media repeatedly delves in the sexual history of victim and telecast or publishes it at times. The media trial makes witness more susceptible to danger.

The media trial also subconsciously affects the judges. The trend in society greatly affects the judge because they are also inseparable part of society. In case of *State of Maharashtra v. Rajendra Jawanmal Gandhi*,¹⁸ that trial by electronic media, press or by way of public agitation is anti-thesis to the rule of law and can lead to a miscarriage of justice.¹⁹

The media trial also affects the due process of law and creates a problem for the witnesses called for 'identification parade' as there is the danger of their identity getting leaked in the media. Also the identification parade of identifying the suspect gets affect if his or her images get leaked in media. Therefore, the trial by media creates very unfavourable atmosphere for the administration of justice as judicial calmness is disturbed.

In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr.*,²⁰ the Hon'ble Supreme Court held, "there's no doubt that it would be mischievous for a newspaper to intrude into a crime and execute an independent investigation for which the accused or suspect has been arrested and then to publish the outcomes of that investigation".

¹⁷Sachinlawstudent, *Famous Cases of Media Trail*, LEGAL SERVICE INDIA (Aug. 22, 2023, 11:56 AM), <https://www.legalserviceindia.com/legal/article-8027-famous-cases-of-media-trail.html>.

¹⁸*State of Maharashtra v. Rajendra Jawanmal Gandhi*, A.I.R. 1997 8 S.C.C. 386 (India).

¹⁹Hari Mudgil, *Media Trial: The Time to Regulate the 4th Pillar*, LEGAL SERVICE INDIA (Aug. 22, 2023, 12:23 PM),

<https://www.legalserviceindia.com/legal/article-8709-media-trial-the-time-to-regulate-the-4th-pillar.html>.

²⁰*Kumar Gupta and Ors. v. B.K. Sen and Anr.*, (1961) 3 S.C.R. 460 (India).

This is mischievous because when there is an ongoing trial by one of the regular tribunals of the country then trial by newspapers must be prohibited. This is based upon the view that such action by the newspaper of doing an investigation tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.

The recent case of media trial includes the case of Aryan Khan, son of great actor Shahrukh Khan in a drug case, where he was given the clean chit by Narcotics Bureau. Also due to media trial in the case of Nupur Sharma, scurrilous remarks against the judges of the Hon'ble Supreme Court were made by a sect of society who reprimanded her for her controversial remark on the prophet and in consequence of it the pandemonium raised out within a section of society which disturbed the public peace. Also in the case of Sushant Singh's death where the alleged accused i.e. his girlfriend Rhea was forced to file a plea in the Supreme court against the unfair media trial and that how she had been projected by the media as the murderer of the deceased. The media channels had projected the mysterious death of the actor as a 'murder' and Rhea as the 'murderer' up until the day the reports had given an affirmation to the death being a suicide. Not only limited to this other cases which faced media trials includes Sanjay Dutt case under TADA, Sheena Bora, Jessica Lal, Aarushi Talwar and Sunanda Pushkar murder case, Nithari Kand and Ayodhya dispute among others. There are many other cases like Priyadarshini Mattoo also which faced media trial.

The former Chief Justice of India N.V. Ramana too said that media trials affect freedom of judiciary. To express his concern on this issue he further said, *“Of late, we see the media running kangaroo courts, at times on issues even experienced judges find difficult to decide. Ill-informed and agenda-driven debates on issues involving justice delivery are proving to be detrimental to the health of democracy. Biased views being propagated by the media are affecting the people, weakening democracy, and harming the system”*.²¹

VI. CONCLUSION AND SUGGESTIONS

“Every right is married to a duty, every freedom owes a corresponding responsibility”. –Russell Kirk

Every right comes with some restrictions and therefore no right is absolute. The freedom of speech and expression is therefore not absolute. There are restrictions imposed on it too. But such restrictions are not enough to regulate every aspect of it. The freedom of press which is

²¹Dhananjay Mahapatra, *Media trials affect freedom of judiciary: CJI*, THE TIMES OF INDIA (Aug. 22, 2023, 12:30 PM), <https://timesofindia.indiatimes.com/india/media-trials-affect-freedom-of-judiciary-cji/articleshow/93080929.cms>.

under its ambit is untouched of such regulations in case of trial of cases outside the actual court of law.

Although media is very important part of a democracy, as it keeps democracy alive and increase the participation of citizens in day to day affairs of country as well as keep the check on working of government and local administration but it should not overstep its boundaries specifically in matters related to judiciary.

Manipulating the news and showing only one side of it should be avoided by media. Due to this any accused no longer remain accused; he or she becomes a guilty person even before the actual judgement of court comes. Also in this era of social media, certain restrictions must be strictly imposed on various social media sites so that no unnecessary hate against anyone happens. Consent of victim or accused must be taken in an appropriate way to telecast their past. Media should understand the difference between helping the court in a case to provide justice and hampering the court in administering justice by interfering and running a parallel trial in studio. It should exercise liberties responsibly.

Media should also understand that it is not about win of either party in a case but it is about the win of justice i.e. at last justice must win, justice will prevail.
