

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 2

2021

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Trial by Media: An Overview

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ABSTRACT

Trial by media is 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 before, or after, a verdict in a court of law. In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. The Supreme Court reiterated that the media and the judiciary are institutions inhabiting separate spheres and their functions do not overlap. One cannot and must not use the other for discharge of its functions. It was observed that media should only engage in acts of journalism and not act as a special agency for the court. The impermissibility of freedom of speech and expression amounting to interference with the administration of justice due to the prejudicial nature of certain media coverage is highlighted through this paper.

Keywords: media trial, fourth pillar, click-bait journalism, fair trial, miscarriage of justice

I. INTRODUCTION

Media is considered to be the fourth pillar of democracy, after Legislature, Executive and Judiciary. Media as fourth pillar was coined by Thomas Carlyle.

A responsible press is the handmaiden of effective judicial administration³. The press does not simply publish information about cases and trials but subjects the entire hierarchy of the administration of justice (police, prosecutors, lawyers, judges, courts), as well as the judicial processes, to public scrutiny. Free and robust reporting, criticism and debate contribute to public understanding of the rule of law, and to a better comprehension of the entire justice system. It also helps improve the quality of that system by subjecting it to the cleansing effect of exposure and public accountability. "Sunlight" as Justice Brandeis once said "is the best of disinfectants, electric light the most efficient policeman."⁴

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³ State of Maharashtra v/s Rajendrajawanmal Gandhi., (1997) 8 SCC 386

⁴ Nariman, Fali S., Are Impediments to Free Expression in the Interest of Justice, CIJL Yearbook, Vol 4, 1995.

II. LAWS GOVERNING MEDIA IN INDIA

There was regulation for Press until the British East India Company began ruling a portion of India in 1757 after the Battle of Plassey. The enactment of the Press and Registration of Books Act, 1867 was a very significant event in the field of laws governing Media. The aforementioned Act is still in force and the same was enacted to regulate the printing press along with periodicals which contained news, further the objective of the act was to preserve copies of books and for the registration of Books.

In 1869-70, when Media played a huge role during the Wahabi Conspiracy, Sedition was incorporated as an offence as Section 124 A in the Indian Penal Code, 1870 wherein exciting or even attempting to excite any feeling of disaffection/feeling of enmity to the Government was labelled as an offence which as of today, is punishable with imprisonment of life to which fine maybe added. In pursuance to the above, the Dramatics Performances Act, 1876 was brought into force so as to keep a check on public dramatic performances which had the possibility of provoking people against the Government. When the then Government sensed the press becoming bold by use of their Indian Language, so as to ascertain and achieve “better control” of the language press, the Vernacular Press Act, 1878 was enacted and brought into force.

In 1851 the telegraph was introduced, pursuant to which the Indian Telegraph Act was enforced in 1885. Consequently, the then Government in 1908 passed the Newspaper (Incitement to Offences) Act which empowered the local authorities to take an action against editor of any newspaper wherein it was suspected/observed that the articles contained in the newspaper, had the tendency to incite rebellion. Subsequently, the Press Act, 1910 was enforced wherein the Government was authorised/empowered to claim an amount under the garb of security from any Newspaper. In furtherance, to the aforementioned act, the Government enacted/passed the Copyright Act, 1957 and the Cinematograph Act in 1952.

Lately, the Right to Information Act was introduced in 2005 and the implementation of the same has stretched out the freedom of press which made India a liberal country, when it comes to Freedom of Press. There are numerous laws that control and regulate the performance of Press in India. The Constitution of India, 1950 has not laid down any specific provision for the Freedom of Press separately but the same can be derived from Article 19(1)(a) of the Constitution of India, 1950 which guarantees Freedom of Speech and Expression to the citizens of India. Article 19(1) (a) of the Constitution of India 1950

‘Trial by media’ is 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 before, or after, a verdict in a court of law. In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. Some famous criminal cases that would have gone unpunished but for the intervention of media, are *Priyadarshini Mattoo case*, *Jessica Lal case*, *Nitish Katara murder case* and *Bijal Joshi rape case*⁵.

III. JUDICIAL DECISIONS

The Hon'ble Supreme Court in the many cases has ruled that freedom of press is a fundamental right covered by the right to freedom of speech and expression. In the case of *Brij Bhushan v. State of Delhi*⁶, held that in India under Art.19(1)(a) freedom of speech and expression authoritatively includes the freedom of press print and electronic media and affecting the right of freedom of speech and expression.

And in the case of *Romesh Thapar v. State of Madras*⁷, Supreme Court held that freedom of speech or freedom of press lays the foundation of all the democratic organization without political discussion, no public education is possible which is necessary for proper functioning of popular government. In the case of *India Express Newspaper Ltd. v. Union of India*⁸, Justice Venkatrana of Supreme Court of India stated that the freedom of press is an essential for the proper functioning of the democracy.

In *LIC v. Manubhai Shah*⁹, the Supreme Court reiterated that the freedom of speech and expression must be broadly construed to include the freedom to circulate one's views by word of mouth, or in writing, or through audio visual media. This includes the right to propagate one's views through the print or other media. The Apex Court observed: “Freedom to air one's view is the lifeline of any democratic institution and any attempt to stifle, or suffocate, or gag this right would sound a death knell to democracy and would hold usher in autocracy or dictatorship.”

In the case of *Printers (Mysore) Ltd. v. Assistant Commercial Trade Officer*¹⁰, the Supreme Court of India held that though freedom of press is not under Fundamental Right, but it is an

⁵ <http://docs.manupatra.in/newsline/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf>

⁶ *Brij Bhushan v. State of Delhi* AIR 1950 SC 129

⁷ *Romesh Thapar v. State of Madras* AIR 1950 SC 124

⁸ *India Express Newspaper Ltd. v. Union of India* AIR 1986 SC 515

⁹ *LIC v. Manubhai Shah* (1992) 3 SCC 637.

¹⁰ *Printers (Mysore) Ltd. v. Assistant Commercial Trade Officer* 1994 SCR (1) 682

implicit in the freedom of speech and expression. In ***R.Rajagopal v. State of Tamil Nadu***¹¹, the Supreme Court held that neither the Government nor the officials had any authority to impose a prior restraint upon publication of a material on the ground that such material was likely to be defamatory of them. In ***Re: Vijay Kumar***¹², the Supreme Court recognized the scope of freedom of press as an essential prerequisite of a democratic form of democratic form of government and regarded it as the mother of all other liberties in democratic society.

In the matter of ***Sahara India Real Estate Corpn. Ltd. v. SEBI***¹³ the Supreme Court discussed postponement orders i.e., judicial orders restraining the media on reporting regarding matters. This is done with the motive of ensuring proper administration of justice and fairness of trial. Another important aspect highlighted was that even in matters where fair and accurate reporting takes place there is also a real and substantial risk of serious prejudice to connected trials. Also, postponement orders are also a means to avoid contempt. This is for the protection of media lest it commit contempt in its zeal to pursue a story. These orders are also a useful tool to balance conflicting public interests in terms of both safeguarding the sanctity of the judicial process and the right of freedom of speech and expression being exercised by the media. The Supreme Court had another word of caution in the matter of ***Satish bhushan Bariyar v. State of Maharashtra***¹⁴ held that if media trial is a possibility, sentencing by media cannot be ruled out.

IV. MEDIA AND THEIR INFLUENCE IN SOCIETY

The paid news which is given by any political party or any other big organisation easily deviate the media from the real objective and the media being the mirror to the world or being an eye opener, becomes a puppet in the hand of powers. Hence media being working for the people, by the people and of the people become for the sponsor, by the sponsor and of the sponsor. Sometimes these issues give birth to the media trials in which the media proof someone guilty before the judgement of the court.

In the matter of ***State of Maharashtra v. Rajendra Jawanmal Gandhi***¹⁵ the Supreme Court while considering the issue of sentencing observed that a trial by press, electronic media or public agitation is the very antithesis of the rule of law. This may very well lead to miscarriage of justice and therefore, a Judge should guard himself against any such pressure and should

¹¹ R.Rajagopal v. State of Tamil Nadu AIR 1995 SC 264

¹² (1996) 6 SCC 466

¹³ *Sahara India Real Estate Corpn. Ltd. v. SEBI*; (2012) 10 SCC 603

¹⁴ *Satish bhushan Bariyar v. State of Maharashtra*; (2009) 6 SCC 498

¹⁵ *State of Maharashtra v. RajendraJawanmal Gandhi*; (1997) 8 SCC 386

strictly be guided by the rules of law. Parties have a constitutional right to have a fair trial in the court of law, by an impartial tribunal, uninfluenced by newspaper dictation or popular Glamour.

In the Sheena Bohra Murder Case, 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. There have been numerous instances in which media has conducted trials of an accused and they had been verdict even before the judgement passed by the judiciary.

In 20th century a famous celebrity Fatty Arbuvckle was proved guilty by the media trial but he was proved not guilty by the Hon'ble Court but due to the media trial his entire career and his reputation was against him due to all the wrong media coverage. In the case of Arushi Talwar Murder Case the media has verdict that the murder has been done by her parents Rajesh Talwar and Nupur Talwar, he was not guilty but the media proved him guilty.

The Law Commission in its 200th report, Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendment to the Contempt of Courts Act, 1971), has recommended a law to debar media from reporting anything prejudicial to the rights of the accused from time to arrest to investigation and trial in criminal proceedings.¹⁶

On November 2006, the former Chief Justice of India Y K Sabharwal expressed his views on media trials as:

According to law a accused is presumed to be innocent till proven guilty in the court of law, and is entitled to be a fair trial. So, it is legitimate to demand that nobody can be allowed to prejudge or prejudice one's case? Why should judges be swayed by public opinion?

The Supreme Court reiterated that the media and the judiciary are institutions inhabiting separate spheres and their functions do not overlap. One cannot and must not use the other for discharge of its functions. It was observed that media should only engage in acts of journalism and not act as a special agency for the court. The impermissibility of freedom of speech and expression amounting to interference with the administration of justice due to the prejudicial nature of certain media coverage was also highlighted.¹⁷

Attorney General of India, K.K.Venugopal while appearing in his personal capacity in the 2009 contempt of court case against lawyer Prashant Bhushan, said that the manner in which court

¹⁶ <http://docs.manupatra.in/newsline/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf>

¹⁷ *R.K. Anand v. Delhi High Court*; (2009) 8 SCC 106

SEE ALSO: *M.P. Lohia v. State of W.B.*; (2005) 2 SCC 686.

news is being reported by media has serious implications¹⁸ has been held to quote “*Today electronic and print media are freely commenting on pending cases in an attempt to influence judges and public perception. This is doing great damage to the institution,*”.

To conclude, Freedom of press has always been a cherished right in all democratic countries and the press has rightly been described as the Fourth Pillar of Democracy. Media can be regarded as the fourth pillar of democracy until and unless the transparency will be there and in this era the media is considered as the daily necessity because the day starts with the media and ends with the same whether its social media or print media or electronic media. Upon a collective assessment of the judgments of the Supreme Court of India on the aspect of media trial it is clear that the risk that they pose is real. The State and the Fourth Estate have a responsibility to defer to each other's respective domains. While the State should be circumspect regarding any censorship or penal action against the media, at the same time the media should refrain from any unwarranted transgressions. Media trials entail the possibility of subverting administration of justice right from the stage of investigation, trial and finally sentencing. In today's age of click-bait journalism aimed at satisfying the increasingly short attention span of viewers there exists a subtle but clearly defined line which should not be crossed. Factual narration in itself is safe, however done with a pre-disposed view towards guilt or innocence without any official indictment is clear case of overreach by the media.

¹⁸ <https://www.hindustantimes.com/india-news/media-trial-causing-great-damage-to-judiciary-attorney-general-kk-venugopal/story-XXroXLeMrdHYAKP85SjsgL.h>