
TRIAL BY MEDIA AND ITS EFFECT ON FAIR TRIAL

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ABSTRACT

Media judgment is a popular phrase from the late 20th and early 21st centuries 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 court. In recent times there have been numerous cases where the media carried out the trial of a defendant and delivered the verdict even before the court handed down the sentence. The Supreme Court reiterated that the media and the judiciary are institutions that inhabit separate areas and their functions do not overlap. It was pointed out that the media should only engage in journalistic acts but not act as a special agency for the court.

News developments in India in recent months, culminating in coverage of the Sushant Singh Rajput case, have highlighted the question of how the media should be regulated when it comes to reporting on ongoing criminal investigations and trials. Media today is no longer what it was then. The role of the media has not only changed dramatically but also it has now become part of the investigative journalism that has begun to interfere with the workings of the court. The freedom of the media and the seductive sounds of its anchor have the ability to turn a villain into a hero or vice versa, which is enough to destroy or create a person's position in society. This paper tries to analyze the impact of the Judgment and how freedom of speech and expression is taken as a habit to continue undue interference in the administration of justice. This paper also highlights the inadmissibility of freedom of speech and expression that is equivalent to interference in the administration of justice due to the harmful nature of some media coverage.

Keywords: media trial, fair trial, miscarriage of justice

INTRODUCTION

The media is considered the fourth pillar of democracy, after the legislative, the executive and the judiciary. Media as fourth pillar was coined by Thomas Caryle.

A responsible press is the handmaiden of an effective judicial administration¹. The press does not limit itself to publishing information on cases and trials, but submits the entire hierarchy to the administration of justice (police, prosecutors, lawyers, judges, courts), as well as judicial processes, to public scrutiny. Free and robust information, criticism and debate contribute to public understanding of the rule of law and a better understanding of the entire justice system. It also helps improve the quality of that system by subjecting it to the cleansing effect of public exposure and accountability. "Sunlight," as Justice Brandeis once said, "is the best of disinfectants, electric light is the most efficient policeman."²

ROLE OF MEDIA AND CONSTITUTION

“In the country like India we consider the rights of the press to be at such level of eminence that we do not want to curtail them; no statute can curtail them, but that does not mean there is complete lawlessness; there should be self-regulations”- Justice Uday Umesh Lalit³

Freedom of the press is essential to a democratic society. The press provides the platform for a multiplicity of voices to be heard. At the national, regional, and local levels, he is a public watchdog, activist, and mentor, as well as an educator, entertainer, and contemporary chronicler. This freedom of the press is not expressly mentioned anywhere in the constitution, but it is implicitly mentioned in section 19(1)(a) of the Indian constitution, namely freedom of speech. Freedom of the press is considered a “species of which freedom of expression is a genus. Therefore, being only a right that derives from freedom of speech, the freedom of the press in India has no higher basis than the freedom of speech of a citizen.” The Indian Press Commission has stated that "the Democracy can flourish not only under the watchful eye of its legislator, but also under the care and guidance of public opinion, and the press is par excellence the vehicle through which opinion can be expressed."

¹ State of Maharashtra v/s Rajendrajawanmal Gandhi., (1997) 8 SCC 386.

² Nariman, Fali S., They are impediments to free expression in the interest of justice, IYCL Yearbook, Vol 4, 1995.

³ Financial Express, “ Media mustself-regulate when reporting on criminal trial, Says Supreme Court Justice UU Lalit” (September 08,2018 11:57PM) <https://www.financialexpress.com/india-news/media-must-self-regulatewhen-reporting-on-criminal-trial-says-supreme-court-judge-uu-lalit/1307007/>.

The High Court of India has highlighted several cases for maintaining press freedom in a democratic society. In **Indian Express Newspaper (Bombay) Pvt. Ltd. v. Union of India**⁴, the court noted that: "Various articles and news are frequently published in the press which cause weaknesses in the government and many times the government seeks to suppress the freedom of the press. It is, therefore, the primary duty of the court to defend said freedom and render null and void all laws and administrative acts that interfere with the freedom of the press in contravention of the constitutional mandate.

In the case **Romesh Thapar v. State of Madras**⁵ it was observed that "freedom of expression and of the press is the basis of any democratic organization, since without free political discussions there is no public education, so essential for the proper functioning of the popular government process is possible".

Printers (Mysore) Ltd. V. Assistant Commercial Tax Officer⁶ the Supreme Court observed that "the very form of democratic government requires the active and intelligent participation of its citizens in the affairs of the company. Public debate with the participation of the people is the fundamental characteristic and the rational process of democracy"

In **LIC of India v. Manubhai D Shah**⁷, it was stated that "Every citizen has the undoubted right to expose their feelings to the public. The freedom to express one's point of view is the lifeline of any democratic institution and any attempt to stifle, suffocate or muzzle this right would sound a death knell for democracy and help usher in autocracy or dictatorship."

In **Maneka Gandhi v. union of india**⁸ Judge Bhagwati highlighted the importance of freedom of speech and expression as follows; "Democracy is essentially based on free debate and open discussion, because this is the only corrective for government action in a democratic order. If democracy means government of the people, by the people it is evident that every citizen must have the right to participate in the democratic process and in order for them to intelligently exercise their right to choose, public and free discussion is absolutely essential".

Having turned to the aforementioned observation of the Supreme Court, it can be found that in India "freedom of the press cannot be restricted unless such restriction is excessive or

⁴ A.I.R 1986 S.C 515 (India)

⁵ A.I.R 1950 S.C.124

⁶ (1994) 2 S.C.C. 434

⁷ A.I.R. 1993 S.C. 171

⁸ A.I R 1978 S.C. 597

reasonable. It takes an hour to preserve and maintain the freedom of the press, but at the same time it is also necessary to put some restrictions on the freedom of the press that are allowed on your freedom. The restrictions cannot be unreasonable for the reason mentioned in Article 19(2) of the Indian Constitution, which is the only reason to impose a limitation on freedom of speech and expression.

In Constitutional Assembly Debates, Dr. Bhim Rao Ambedkar was of the opinion that, "Press has no special rights which are not to be given or which are not to be exercised by the citizens in his individual capacity. The editor of press or manager is merely exercising the right of the expression and therefore no special mention is necessary of the freedom of press."⁹

Therefore, the freedom of the press is not absolute and is also subject to certain reasonable restrictions mentioned in section 19(2) of the Indian Constitution.

MEDIA LAW IN INDIA

There was regulation for the press until the British East India Company began to rule a part of India in 1757 after the Battle of Plassey. The enactment of the Book and Press Registration Act of 1867 was a very significant event in the field of laws governing the media. The aforementioned law is still in force and was enacted to regulate the press and newspapers that contained news, in addition the purpose of the law was the conservation of copies of books and the registration of books.

In 1869-70, when the media played a pivotal role during the Wahhabi conspiracy, sedition was made an offense under section 124 A of the Indian Penal Code, 1870 where it aroused or even attempted to arouse any feelings of disaffection / feeling of enmity against the government has been classified as a crime that, to date, is punishable by life imprisonment to which a fine may be added. In light of the above, the Dramatic Performances Act of 1876 was put into effect to control public theatrical performances that had the potential to provoke people against the government. When the then government felt that the press was becoming bold in using its Indian language to determine and gain "better control" of the language press, the Vernacular Press Act of 1878 was enacted and came into force.

In 1851, the telegraph was introduced, under which the Indian Telegraph Act of 1885 was enforced. to take action against the publisher of any newspaper. in which it was

⁹ Dr. Ambedkar's Speech in Constituent Assembly Debates, VII, 980

suspected/observed that the articles contained in the newspaper tended to incite rebellion. Subsequently, the Press Act of 1910 was enforced in which the government was authorized to demand an amount under the guise of security from any newspaper. In addition to the aforementioned law, the government enacted/passed the Copyright Act of 1957 and the Motion Picture Act in 1952.

Lately, the Right to Information Act was introduced in 2005 and its implementation has expanded the freedom of the press, which has made India a liberal country when it comes to freedom of the press. There are numerous laws that control and regulate the performance of printing in India. The Indian Constitution of 1950 did not make any specific provision for freedom of press separately, but the same can be derived from Article 19 (1) (a) of the Indian Constitution of 1950 which guarantees freedom of speech to the citizens of India. Article 19 (1) (a) of the Constitution of India, 1950.

"Trial by the media" is a popular phrase from the late 20th and early 21st centuries to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence sooner or later. of a verdict in a court of law. In recent times there have been numerous cases where the media carried out the trial of a defendant and delivered the verdict even before the court handed down the sentence. Some famous criminal cases that would have gone unpunished without media intervention are the Priyadarshini Mattoo case, the Jessica Lal case, the Nitish Katara murder case, and the Bijal Joshi rape case.

JUDICIAL DECISIONS

The Honorable Supreme Court has ruled in many cases that freedom of the press is a fundamental right protected by the right to freedom of speech and expression.

In the case of **Brij Bhushan v. State of Delhi**¹⁰, stated that in India, under article 19 (1) (a), freedom of expression authoritatively includes freedom of the press, press and electronic media and that it prejudices the right to freedom of expression and expression.

And in the case of **Romesh Thapar v. Madras State**¹¹, The Supreme Court affirmed that freedom of expression or freedom of the press lays the foundation for any democratic

¹⁰ AIR 1950 SC 129

¹¹ AIR 1950 SC 124

organization without political discussion, public education necessary for the proper functioning of popular government is not possible.

In the case of **India Express Newspaper Ltd. v. Union of India**¹², Justice Venkatrana of the Supreme Court of India stated that freedom of the press is essential to the proper functioning of democracy.

In **LIC v. Manubhai Shah**¹³, The Supreme Court reiterated that freedom of speech and expression must be interpreted broadly to include the freedom to circulate one's opinions by word of mouth, in writing, or through audiovisual media. This includes the right to disseminate one's opinions through the press or other means. The Supreme Court noted: "The freedom to express one's point of view is the lifeblood of any democratic institution and any attempt to stifle, suffocate or muzzle this right would sound a death knell for democracy and usher in autocracy or dictatorship."

In the case of **Printers (Mysore) Ltd. v. Assistant Commercial Trade Officer**¹⁴, the Supreme Court of India held that although freedom of the press is not a fundamental right, it is implicit in freedom of speech and expression.

In **R.Rajagopal v. State of Tamil Nadu**¹⁵, the Supreme Court found that neither the government nor officials had the authority to place a precautionary restriction on the publication of material on the grounds that the material might be defamatory to them. **In Re: Vijay Kumar**, the Supreme Court recognized the scope of press freedom as an essential prerequisite of a democratic form of government and considered it the mother of all other democratic freedoms. In the matter of **Sahara India Real Estate Corpn. Ltd. v SEBI**¹⁶, the Supreme Court has discussed diversion orders, that is, court orders that restrict the media from reporting on matters. This is done for the purpose of ensuring the correct administration of justice and the fairness of the trial. Another important aspect that stands out is that, even when it comes to correct and correct disclosure, there is also a real and substantial risk of serious harm to the related processes. In addition, stay orders are also a means of avoiding contempt. This is for the protection of the media from committing contempt in their zeal to follow a story.

¹² AIR 1986 SC 515

¹³ (1992) 3 SCC 637

¹⁴ 1994 SCR (1) 682

¹⁵ AIR 1995 SC 264

¹⁶ (2012) 10 SCC 603

These ordinances are also a useful tool in balancing conflicting public interests in terms of protecting the sanctity of the judicial process and the right to freedom of expression exercised by the media. The Supreme Court has issued another word of warning in the case of **Satish bhushan Bariyar v. State of Maharashtra** (2009) 6 SCC 498 argued that while media judgment is a possibility, media condemnation cannot be ruled out.

TRIAL BY MEDIA AND FAIR TRIAL:

The paid news provided by any political party or any other large organization easily diverts the media from the true objective and the media, being the mirror of the world or opening its eyes, becomes a puppet in the hands of power. So the media that work for the people, for the people and for the people become for the sponsor, for the sponsor and for the sponsor. Sometimes these issues lead to media trials where the media proves someone guilty before a court ruling is handed down.

In the matter of the **State of Maharashtra v. Rajendra Jawanmal Gandhi**¹⁷, the Supreme Court, examining the issue of sentencing, noted that a trial by print media, electronic media, or public agitation is precisely the antithesis of the rule of law. This may very well lead to a mistrial and therefore a judge must guard against any such pressure and must be strictly guided by the rules of law. The parties have a constitutional right to have a fair trial in court, by an impartial tribunal, that is not affected by newspaper dictation or popular appeal.

In the case of the murder of Sheena Bohra, the eyes of the media crossed the personal life of the main accused Indirani Mukherjee, who was accused entirely by the media. Every aspect of his personal life and character has come under public scrutiny through the media. There have been numerous cases in which the media carried out trials against an accused and had pronounced themselves even before the sentence was handed down by the judiciary.

In the 20th century, a famous celebrity, Fatty Arbuvckle, was found guilty by the media trial, but the Honorable Court proved that he was not guilty, but because of the media trial, his entire career and reputation were against him due to to all the wrong media. coverage. In the case of the Arushi Talwar murder case, the media has a verdict that the murder was committed by his parents Rajesh Talwar and Nupur Talwar, he was not guilty, but the media proved him guilty.

¹⁷ (1997) 8 SCC 386

The Law Commission in its 200th report, *Trial by the Media: Freedom of Expression Versus a Fair Trial in Criminal Procedure (Contempt of Courts Amendment Act, 1971)*, recommended a law banning the media report anything that is detrimental to the rights of the accused. time for arrest for investigation and trial in criminal proceedings.

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

Under the law, a defendant is presumed innocent until proven guilty in court and is entitled to a fair trial. So is it legitimate to claim that no one is allowed to harm or harm your case? Why should judges be influenced by public opinion?

The Supreme Court reiterated that the media and the judiciary are institutions that inhabit separate areas and their functions do not overlap. One cannot and should not use the other for the performance of their functions. It was pointed out that the media should only engage in journalistic acts and not act as a special agency for the court. The inadmissibility of freedom of speech and expression was also underlined, which amounts to interference in the administration of justice due to the detrimental nature of some media coverage¹⁸. India's Attorney General, KKVenugopal, while appearing in his own capacity in the 2009 contempt lawsuit against lawyer Prashant Bhushan, said that the way judicial news is reported in the media has serious implications. "Today the electronic and paper media are freely commenting on pending cases in an attempt to influence judges and public perception. This is doing great harm to the institution."

CONCLUSION AND SUGGESTION

"The media must show conscientious efforts to the public regarding the responsibilities they must raise by building the public's confidence in their reliability and must follow ethics to affirm their reliability beyond all speculation." The importance of a free press and strong media in a true democracy is undeniable. No democracy can function without effective means of communication. The media has a lot of power and if this power is abused it can seriously damage a nation. No external body can be set up to monitor media professionals and make sure they are not doing harm rather than good. Freedom should not be absolute and the rule of law guarantees that no one has arbitrary power, it also applies to the media. "There should be some

¹⁸ *R.K. Anand v. Delhi High Court; (2009) 8 SCC 106*

reasonable restrictions on the media so that they do not violate the rights of others and the court should be the one to set the Lakshman Rekha on the media that should not be violated."

To conclude, freedom of the press has always been a cherished right in all democratic countries and the press has rightly been called the fourth pillar of democracy. The media can be considered the fourth pillar of democracy until there is transparency and in this era the media is conered the daily necessity because the day begins with the media and ends with the media, whether it is social networks or print or electronic media. . From a collective assessment of the Indian Supreme Court's rulings on the aspect of the media process, it is clear that the risk involved is real. The State and the Fourth State are in charge of referring to their respective domains. While the state must be cautious about any censorship or prosecution against the media, at the same time the media must refrain from any unwarranted transgression. Media trials imply the possibility of subverting the administration of justice from the stage of investigation, trial and finally sentence. In today's age of click-bait journalism aimed at satisfying viewers' ever-shrinking attention span, there is a fine, clearly defined line that must not be crossed. The narration itself is safe, however, made with a predisposed gaze of guilt or innocence without any official charge, it is a clear case of media overdraft.