

*Original Article***Checks and Balances between Judiciary and Media Trail****S Kavin¹, S Priyanka²**

<p>Author Affiliation ^{1,2}BCA LLB, The Tamil Nadu Dr. Ambedkar Law University, Chennai, Chennai, Tamil Nadu 600028, India.</p> <p>Corresponding Author S. Priyanka, BCA LLB, The Tamil Nadu Dr. Ambedkar Law University, Chennai, Chennai, Tamil Nadu 600028, India. E-mail: kavinsakthi18@gmail.com</p>	<p>Abstract</p> <p>Journalism is considered as fourth pillar of democracy, the other three being legislature, executive and judiciary. The freedom of press is of utmost importance for a democratic society to be a effective one. A free exchange of information and knowledge, debating, ideas and expression of different viewpoints is important for smooth functioning of democracy. Only when there is a swirl of different thoughts and information, people will be able to exercise their rights and questioning decisions of government¹. Such environment can be created only when there is freedom of press. Journalism which was previously limited only to press, now includes even electronic media, also freedom of writing, printing, drawing, pictures, film, movie, word of mouth, communication and right etc. Legal provisions and constitutions take up the responsibility to protect freedom of press. There is no express provisions anywhere that states or protects the freedom of press, but there is one implied provision that confers this right i.e, under article 19(1)(a)², which states- "All citizen shall have the right to freedom of Speech and Expression." No freedom can be absolute, even right to freedom of press is not absolute.</p> <p>Keywords: Media trial; Freedom of press; Judiciary; Fair trial.</p>
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Introduction

Media is regarded as one of the Pillars of democracy. The freedom of press is regarded as "The mother of all liberties in a democratic society"³. Media has wide roles and plays a key importance in shaping the opinion of the society⁴, but like every other freedom and liberty, this freedom of speech and expression enshrined in the constitution is also seen to be misused by the media. 'Trial by Media' is a term that is being recently coined one. The impact in the minds of the people of the news that are published in television and newspaper coverage on a person's reputation⁵, by inducing perception of guilt regardless of any verdict in a Court of law will not change at any point of time.

There is no legal system where the media is given the authority to try a case. Sometimes this media acts as a eves-dropper pointing the unnoticed

cases like

- Priyadarshini Mattoo case.
- Jessica Lal case, and.
- Bijal Joshi rape case.

It is using this freedom of expression in Article 19(1) of the Indian Constitution that media is able to function. Freedom of media is the freedom of people as they should be informed of public matters⁶.

Media: The Watchdog of Democracy

Media has undoubtedly played a tremendous role in bringing justice to the disadvantage people. The media cannot be underestimated because of heroic played on the cases like 'Billa Ranga case', 'Baba Nirankar', 'Sudha Gupta' and of 'Shalini Malhotra'.

In absence of 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 support given by Police and politicians allowed this barbaric tradition to continue for long⁷, they come out in lights to the world through this active media. This is certainly a very positive and welcome act for the part of the media⁸. The media is now become a full-fledged business. The main game here is the ratings, eyeballs and advertisements. In their view news is whatever that sells. This means anything that catches and grabs the attention of people. Or, in other words, 'sensation'. Journalist and media persons are supposed to be distinctive facilitators for the democratic process to function without obstacles. The ethics that a media must take in their arms includes virtues like accuracy, honesty, truth, objectively, balanced reporting, and autonomy. It is unfortunate that these days the media people are chasing towards their materialistic considerations than professional ethics and sincerity towards the profession which was considered a main merit in olden days⁹. The journalists and reporters are forced to meet deadlines, satisfy media managers by attaining the growing targets and so on. Coupled with this there is also cut throat competition between different media house and newspaper organizations. To win the race, they have begun to publish and present what the 'public is interested in' rather than what is for the 'public interest'.¹⁰

A History of Media Trials

Media Trial, a recently coined term, but the idea that popular media can have a strong impact on the judicial process can be traced back certainly to the advent of the printing press and probably much further¹¹. To criminalize political opponents the state control press is not included, but in its commonly understood meaning covers all occasions where the reputations of a person has been drastically affected by ostensibly non-political publications.

20th Century:

One of the first celebrities in the 20th century to be arguably tried by media was Roscoe 'Fatty' Arbuckle who was acquitted by the courts but nevertheless lost his career and reputation due to the media coverage. Parallels we look into the cases of O.J. Simson. The concern is less about guilt or innocence but about the impact of the media coverage in the public mind over and above the status of the court¹².

Even where a criminal court finds somebody guilty the media can still appear to sit in judgment over their sentence. Example of these include Myra Hindley¹³ who was proposed to be released from prison after thirty years was widely condemned by the British press (the argument became moot when she died in 2002); Maxine Carr who, having served the sentence, was released, and was condemned according to some commentators being "demonised by the press". One such a case that was emphasized by the media in the year of 1980 and 1982 was the trial for murder of Lindy Chamberlain in Australia who was, but later released in 1986 based on new evidence showing that a dingo had in fact committed the act as was originally claimed by Chamberlain¹⁴. The motion picture 'A Cry in the dark' depicted Chamberlain, as played by actress Meryl Streep, caught in a "trial by media" which fed the public's, and subsequently the jury's false conviction of her.

Often the coverage in the press can be said to reflect the views of the person across the globe. The responsibility of the press to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher standards¹⁵. Families and friends of persons convicted of crimes have apparently successfully used the power of the media to reopen cases.

Is Media Really Free?

Freedom of speech and expression means expression of own's conviction and opinion freely without any intervention with few restrictions. According to the Halsbury's Law of England-Freedom of expression includes all functions like to receive and express the ideas and to maintain the secrecy of private communications received by them¹⁶. The United Nations assembly has declared *May 3rd as the World press day*¹⁷. Freedom to Speech in India has lead to many controversies recently. Is media actually free? Do they actually enjoy the freedom they deserve?

In India, freedom of the press has been treated as part of the freedom of speech and expression that is guaranteed by Article 19(1)(a) of the Constitution, refer the cases of *Brij Bhushan and Another vs. The state of Delhi*¹⁸ and *Sakal papers (pvt) Ltd vs. Union of India*¹⁹, among others. However as mentioned in Article 19(2), reasonable restrictions can be placed on this right, in the interest of the security of the State, public order, decency or morality, or in relation to contempt of court, incitement to an offence. Hence, the freedom granted to media is

not an absolute freedom. The media have another responsibility of performing a check on the news presented by them, because they serve the interest of the people. If they convey false news they may damage the reputation of person. Reputation is considered to be the greatest asset of Human. Even if later they correct it, the damage done may be irreparable. Hence, they should take utmost care in managing their role in a democratic society. They must carefully investigate any news before reporting it, only then will they gain value to what they publish.

India ranks a lowly of 133 among 180 countries in the World Press Freedom Index 2016 of Reporters without Borders. Freedom Houses has put India on its watch list of regions where censorship is on the rise, along with China, which ranks 176. The reporter is chased by his or her own demons. Everyone has a price and by price, I here don't mean people are paid to plant stories, that do happen, but the price one talks about here is a different kind of price. If a journalist cannot be brought or cultivated, then they can be threatened, or attacked. An upright journalist with fire in his belly could turn into damp squib if his family is threatened²⁰.

Constitutionality of media trials in India

The role the media plays its importance and the strong impression it creates in peoples mind are well recognized. Article 19 (1) (a) of the Indian Constitution- gives freedom of speech and expression which includes includes within it the "freedom of press". The existences of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India. The vital role of the media is its ability to mobilize the thinking process of millions²¹. The media in recent case of Ram Rahim and Hanipreet, Arushi case, Sheena Bohra case and in many more have pierced the personal life of the parties. The ethics of journalism have been again in a controversial area due to their prying eyes on the accused.

The pursuit of commercial interests also motivates the use of intrusive news gathering practices which tend to impede the privacy of the people who are the subject of such coverage. The problem finds its worst demonstration when the media extensively covers sub judice matters by publishing information and opinions that are clearly prejudicial to the interests of the parties involved in litigation pending before the Courts. In the recent times there have be instances where the

cases have been tried and given judgment by the media, even before those cases were taken up by the courts and trial have been conducted in full.

Some famous criminal cases that would have gone unpunished and unnoticed without the intervention of media, are *Priyadarshini Mattoo case*, *Jessica Lal case*²², *Nithish Katara murder case* and *Bijal Joshi rape case*. The media however failed to take caution in the reporting of the murder of Aarushi Talwar, when it anticipated the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder, the CBI and HC later declared that Rajesh Nupur Talwar were not the killer. Only because of the media trial in 2G Spectrum allocation scam case, the UPA government lost general election in 2014 and finally on 21th of December, 2017 Central Bureau of Investigation (CBI) special court in New Delhi acquitted all accused, including former telecom minister A Raja and DMK MP Kanimozhi²³.

Media is now a day famous for rebelling any person terrorist without any evidence and trial before the court. Many innocent boys are lost their life and reputation only because of the wrong presentation of media before society. The media trial has become a day - day occurrence in the life of people. This system which was first started to show the truth to the people has now become a practice which is largely interfering at large the justice delivery system.

Media trial vs. Fair trial

Trial by media has created a "problem" because it involves two conflicting principles:-

1. Free press and
2. Free trial

The people are interested in both of these. The freedom of the press find its root from the right of the public in a democracy to be involved on the issues of the day, which affect them. This is the justification for investigative and campaign journalism.²⁴

At the same time, the "Right to Fair Trial", I.e., a trial that is free from extraneous pressures is recognized as key of justice system in India. There are certain provision that are for safeguarding the right of fair trail, the provisions are included in the Contempt of Court Act, 1971 and also under Articles 129 and 215 of the Constitution which confers power on the Supreme Court and the High Court to punish for Contempt of itself respectively. In particular if we take there are certain restrictions

imposed on the discussion or publication on matters relating to any case that are pending before the Court. A journalist may thus be liable for contempt of Court if he publishes anything which might affect or be prejudicial to 'fair trial' or anything which creates an impartiality of the court to decide a cause on its merits. Right to a fair trial considered as absolute and fundamental right of every individual within the territory of India according to articles 14 and 20, 21 and 22 of the Constitution. Article 19(1)(a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression. In accordance with Article 19(2), this right can be restricted by law only 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."²⁵

International Convention on Media Trial

In the International context, the UN Basic Principles on the Independence of the Judiciary, Article 6, which states the "judiciary is entitled and required "to ensure that there is fair proceedings and the rights of the parties are respected."²⁶ The principles stated in this Article are also stated in the international covenant on Civil and Political Rights (ICCPR), which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal," in case of any criminal charge or in a suit at law.²⁷ There is no right that is given absolute enjoyment, the ICCPR acknowledges this and imposes certain restrictions on on the public access in the "Right to Public Trial." If ICCPR confirms that Article 19 freedom of expression is also treated as a fundamental part of a democratic society, It emphasis that freedom of expression would also include the freedom of the press and states that "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."

Under article 10 of the European convention on Human Rights, to which the UK and its other signatories are morally committed, the Freedom of Press is paramount. Exceptions to that freedom may be made only as such are "necessary in a democratic society", permissible only to the extent that they correspond to "a pressing social need", and are proportionate to the end to be achieved²⁸.

Regulatory Measures

As we concern with the restrictions imposed upon the media, it is clear from the above that, In the process of a court evaluating the reasonableness of the restrictions imposed on the fundamental right guaranteed under Article 19 faces a lot of discretion in this matter. It is the Constitutional obligation imposed on all courts to ensure that the restriction imposed on the media are reasonable and related to the purposes stated in Article 19(2).

In *Papnasam Labour Union V. Madura Coats Ltd.*,²⁹ The Supreme Court in its judgement in the above mentioned case has laid down certain principles and guidelines which are to be and kept in view while considering the constitutionality of statutory provision imposing restrictions on the fundamental rights guaranteed by Article 19(1)(a) to (g) when they are challenged on the grounds of unreasonableness of restrictions imposed by it.

In *Arundhati Roy, In re*³⁰ the Supreme Court has considered the view taken by Frankfurter, J. in *Pennekamp V. Florida*³¹ in which Judge of the United States observed:

"If men, including judges and journalists, were angels, there would be no problem of contempt of court. Judges would discharge their duty peacefully without any external influences and the journalists would not seek to influences them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community at large impartially as is given to the lot of men to decide, is not a privilege accorded to judges as persons but for the functions which they exercise."

In *D.C. Saxena (Dr.) V. Chief Justice of India*³² the Supreme Court held that no one else has the power to accuse a judge of his behaviour, partiality or incapacity. The main aim of giving such a protection is to pave way for the judges to give them their due protection and ensure there is independence of judiciary in disposing of the cases without any fear and favour and ensuring due justice for the community at large. From the observations and the judgment of the above cases we can say that restriction imposed by Article 19 (2) upon the freedom of speech and expression guaranteed by Article 19 (1) (a) including the freedom of press serve a two- fold effect viz. On one hand, they project that this freedom is not absolute and are subject to certain conditions and on the other hand, they impose certain limitation on the power of litigation to restrict this freedom beyond the requirements of Article 19 (2) and must be ensured

that each of the restrictions must be reasonable and can be imposed only by or under the authority of a law, not by executive action alone.³³

The Press Council of India (PCI) was first established to preserve and protect the freedom of the press and to improve the standards of news reporting in India. Under the Press Council Act 1978, if a person believes that a news agency has committed any fraud or professional misconduct, and if the PCI finds the happening as a true one then they can “warn, admonish or censure the newspaper”, or direct the newspaper to, “publish or negate the complaint in its forthcoming issue.” Along with these powers, the PCI has established a set of suggested norms for journalistic conduct. The norms urge that any criticism of the judiciary should be published with great caution. These norms further recommend that reports should avoid one-sided interference’s, and attempt to maintain an impartial and softer tone at all times. But these norms cannot be legally enforced. Lastly, the PCI also has the power to deal with criminal contempt’s. However, the PCI can only exercise its contempt powers with respect to pending civil or criminal cases. This limitation again is dependent on the extent to which pre-trial reporting can impact the administration of justice.³⁴

Is media trial a Contempt of Court

Trial held by Media is Contempt of Court which needs to be punished. The Contempt of Court Act defines contempt by recognizing it as civil and criminal. Any publication, which is sow poison in the minds of the jurors, intimidate witnesses or parties or to create an atmosphere in which the administrations of justice would be difficult or impossible, amounts to contempt.³⁵ Commenting on the pending cases or abuse of party may amount to contempt only when a case is triable by a judge³⁶. The law as to interference with the due course of justice Gopal Rao Ekkbote of Andhra Pradesh High Court in the case of *Y.V. Hanumantha Rao V. K.R. Pattabhiram and Anr.*³⁷ has stated it.

Constitution imposes certain right to the parties to have a fair trial in the court of law, by an impartial tribunal, not influenced by newspaper comments in any form. The obstruction or interference in the administration of justice vis a vis a person facing trial. Prejudicial publication affects the mind of the judge and also the minds of the public which may lead to denial of fair trial, and that influence suggests the court as to in what manner the case

should be preceded.

In *Saibal Kumar Gupta and Ors. V. B.K. Sen and Anr.*³⁸ It was held by the Supreme Court that:

“No doubt it would be mischievous activity for a newspaper to conduct an investigation for a criminal case which resulted in that a man was arrested the results were published relating to the investigation. This was all because of trial by newspaper. When a trial by one of the regular tribunals of the country is going on, the intervention or the investigation by the media must be prevented. The basic for this view is that such action of investigation on the part of a journalist tends to interfere with the course of justice. There is no comparison between a trial and a newspaper and what has happened in this case.”

In *M.P. Lohia VS. State of West Bengal*³⁹ the Supreme Court has strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the courts.

Conclusion

From all the above observation that have been made it becomes clear that the media had a more negative influence rather than a positive effect, except for a few exceptions here and there. There is an emergency need for the media has to be properly regulated by the courts. The media cannot be given a free or upper hand in the court proceedings. The best way to regulate the media will be to exercise and enforce the contempt jurisdiction of the court in strict manner and punish those who violate the basic code of conduct. In the earlier cases we have seen that the Supreme Court have approved the use of this Contempt Act for regulating this interference of the Media. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself.

Suggestion

- ❖ The printing press and the digital media have gone into strong competition, as we call them ‘aggressive journalism’ that a multitude of cameras are flashed at the suspects and the police are not even able to take the suspects or accused from their transport vehicles into the courts or vice versa.
- ❖ In the previous days, journalism was not under any pressure or they were not pushed to increase their TRP ratings or sales.

- ❖ So the journalist did their work faithfully and with conviction, with courage and to their satisfaction.
- ❖ The journalist while they report or pronounce anything about any accused or the suspects do not publish them without any proper investigation and come to their own conclusion.
- ❖ Now a days the media people are also not protected, they effectively suffer with all the political pressure they have.
- ❖ They did not blindly print what law enforcers claimed or what politicians planted on to them. That is why people trusted them.
- ❖ But now we are seeing a different self acquired role of media in form of "media trial."
- ❖ Restriction on media trial is necessary so that the people may not have a wrong incitement on the administration of Justice system.
- ❖ The media has to be regulated properly.
- ❖ One way is the recourse to the Law of Contempt.
- ❖ But, in the interest of democracy, it is better to have a self- regulated and self disciplined media in comparison to a media regulated by the court and the state.

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