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Media Trial in India

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ABSTRACT

Media trial is a phrase that has become popular in the late 20th century and early 21st century. It basically describes the impact of electronic media and print media coverage on a person's reputation. It can either built or even malign the image of a person by creating a widespread perception of innocence or guilt before or after a verdict in a court of law. Media is regarded as the fourth pillar of democracy which has been playing a vital role in molding the opinion of society in various aspects. The freedom of speech and expression under the Constitution of India has broadened to include the media. But with the passage of time media has started usurping the functions of judiciary and its encroachment has started to be realized by the common people and the judiciary. This research paper attempts to focus on the impacts of media trial on judiciary and the democratic society.

I. INTRODUCTION

The modern media particularly the print media marked its beginning only after the advent of European Civilization in India. Portuguese were the first Europeans to introduce it. During British rule, Indians enjoyed no fundamental rights therefore there was no question of guarantee of freedom of expression. The Bengal gazette popularly known as Hicky's Gazette started in the 18th century as a first newspaper however, it was conferred no privileges or special liabilities. Post independence, the Constitution of India comprehended the freedom of press within the Right to Freedom of speech and expression under Article 19(1) (a) as the need for such freedom was well realized and accepted by civil society of India and therefore the Supreme Court declared this freedom in 1950.

The development of media can be divided into four phases starting in the early 20th century and continued till 1980. These phases were marked by the growth of audiences and powerful media with strong and direct effects on individuals. There was growing popularity of cinema and radio. The third phase from 1970 marked the advent of electronic media in India which gradually spread across the country with the passage of time. Since then, long time has elapsed and with passage of time there has been paradigm shift in the functioning of media. Consequently, the term "accountability" is heard more often than 'freedom' in the context of

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today's media.

The purpose of media is to raise consciousness among individuals, to inform the public locally or globally, to help them create public opinion to circulate the government policies among the people etc., but with the passage of time and technological advancements a new chapter of 'trial by media' has emerged in the history of media. Media trial can be defined as 'the media publishing judgments beforehand i.e. even before the judgment is pronounced by the court, it creates its own finality and unjustified opinion on a case, it publishes headlines that are defamatory, influencing or even bias. This tends to infringe the judiciary role and it is responsible for formulating one sided public opinion which degrades or disrepute the individual. Unfortunately, this new form of journalism has often being misused to settle personal score damage the image of the individuals and most of the time media acts under the political influence. Today the media trial influences the masses by making an innocent person a culprit and victim of, influenced public opinion thereby changing the actual perception.

The Supreme Court has stated that the main objective in giving the freedom to the Press is that the public has the right to know what is happening in the society. The Apex Court elaborated on the principle and opined that the main function of the Press is to provide all-encompassing and objective information to the society which relates to country's social, economic, political and cultural life. The media has an educative role to play while dispensing this function. The Court also stated that the public has the right to know the 'correct news' and the media shouldn't make up stories to sensationalize matters.² The pre-decision given by the media in Aarushi's murder case was not praiseworthy, and the manipulations made and published by them declared Aarushi's parents as her murderers even before the judgment of the court. Media has a great influence on the minds of the people. We automatically believe what media shows. 'It was her parents who killed Aarushi'. People concluded this before the final judgment of the court arrived. Another instance of media trial was Godhra riots of 2002, when Narendra Modi was accused of killing Muslims in Gujarat. The media declared him the culprit. However in 2014, the High Court of Gujarat gave him a clean chit in this regard but still some people believe or have an opinion that he was the mastermind behind those riots in 2002.

Therefore this aspect of journalism is becoming more and more dangerous. The media especially the electronic media has been very enthusiastic to grab any news beforehand. This way the reputation, respect and dignity of an individual suffers a lot even after he has been

² In Re: Harijan Singh and another; In Re: Vijay Kumar, (1996) 6 SCC 466

proved innocent. It also influences the judicial opinion and therefore it needs to be checked and controlled.

Hypothesis- “*Right to speech and expression gives excessive power to Media which leads to affect Public opinion as well the opinion of judiciary of a Democratic state*”.

Research Objectives-

1. To know the relation between Media trial and right to speech and expression.
2. To know the impact of the Media trial on the accused person as well as on the judiciary.
3. To know how Media Trial is a Contempt of Court.

Research Questions-

1. How Media Trial is related to the Right to speech and expression?
2. What is the impact on a Media trial on the accused person and on people of a Democratic Country?
3. Why Media trial is a contempt of Court?

II. MEDIA TRIAL AND ‘FREEDOM OF SPEECH AND EXPRESSION’

Freedom of Speech and Expression is indispensable in a democracy. Similarly, freedom of the press is the heart of a democratic society. Therefore, the freedom of the press is implicit in the right of freedom of speech and expression under Article 19(1) (a) of the Indian Constitution. The Supreme Court in *Romesh Thapper v/s State of Madras*³ stated that Freedom of Speech and Expression includes freedom of press, this way the court increased the ambit of the freedom of press.

In *Printers (Mysore) Ltd. v. CTO*⁴ the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of the press has always been a cherished right in all democratic countries and the press has rightly been described as the fourth chamber of democracy.

Freedom of press in the context of public interest includes the print media and the broadcast media. Freedom of speech plays a significant role in the formation of public opinion in various social, political and economic matters. The press with its increased freedom acquired

³ 1950 SCR 594

⁴ (1994)2 SCC 434

certain obligations as well. The free press or media acts as public educator, helps people in formulating public opinion, plays the vital role of a conscious keeper, watch dog of the functionaries of the government and attempts to analyze the wrongs in the system and tries to bring them to the knowledge of people therefore it has been placed as a fourth pillar of democracy. However in recent times the need for its accountability and professionalism in reportage is a growing concern. Over past few years media of our country has risen to a great extent, it can make or break people. The two major concerns of the democratic society are that there should be no 'trial by media' and the second is that it is not for the press or anyone else to 'prejudge' a case, as they have resulted in severe consequences in various high publicity cases where media has often been accused of provoking an atmosphere of public hysteria resulting in mob lynching or prejudiced public opinion which not only affects the right to fair trial of the accused person but also affects their dignity, causes damage to their reputation thus, making it impossible for them to live the rest of their life in a dignified way and peaceful manner.

In the case of *Hamdard Davakhana v/s Union of India*⁵ the Court opined that the right also includes the right to gain information and knowledge about matters that are of common interest. But the Supreme Court has also stated that a trial by media is opposite to the rule of law. But as the media is one of the foremost pillars of the democracy, their freedom can't be curtailed, but can be restricted to a certain point. Balance should be maintained between the freedom of Press and the rule of law.

In *R. Rajagopal v. State of T.N*⁶ the Supreme Court of India has held that freedom of the press extends to engaging in debates about the involvement of public figures in public issues and events. But, as regards their private life, a proper balancing of freedom of the press as well as the right of privacy and the right to dignity has to be performed in terms of the democratic way of life laid down in the Constitution.

Thus it is clear from the above mentioned cases that media has freedom of speech and expression as it is a very important tool of media in a democratic society without it the media cannot function effectively but certain restrictions or limitations have been imposed upon this freedom in the name of public interest, security of state, decency and morality, integrity of state, contempt of court and defamation. Media is under the obligation not to work or function beyond the prescribed limits, therefore, the trial by media transgressing the limits of freedom of speech and expression is an attack on a person's reputation and his rights which

⁵ 1960(2) SCR 671

⁶ (1994)6 SCC 632

include right to privacy and right to fair trial.

III. IMPACT OF MEDIA TRIAL

Media is the only pillar of democratic society that is controlled by private businesses and thus clinging to a neutral, fair or unbiased view by media is an unattainable task that can be achieved by them in today's world. The primary objective of media is to subdue the gap between the government and the people in order to make the people aware about the conditions which are prevailing in the society and are more significant than the news which are sensationalized just for profit and selfish leanings, but these have taken priority over ideals of working and overall welfare of the society and thus have started creating serious impacts on the masses and functioning of judiciary in a democratic country.

Impact on the accused person

Media trial is a growing concern of the society and the judiciary in our country as it influences the justice to be imparted and leaves serious impacts on a person's life and his reputation. These impacts may be categorized into two - first, the impact on social life where a person's image is degraded and he is not accepted as a dignified person in the society even after he is acquitted from the court. Second, the serious consequences he faces in his professional life, where he comes across various challenges to prove his ability just because of his defamed reputation which is the consequence of influenced public opinion formed due to the illegitimate media trial. This media trial and the portrayal of an accused in any trial inexplicably affects his image, which, even if the accused is held to be innocent, results in defamation and leaves a permanent scar on his public image.

There have been some trials which were broadcasted like daily soaps before the public that they formed a TV series out of a person's personal life. Trial by media affects a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. This directly affects the right of the accused person to live with human dignity and the Right to Privacy guaranteed under Article 21 of Indian Constitution.

The Press Council of India has laid down certain guidelines for reporting cases and avoiding trial by media. It warns journalist not to manipulate the facts and give excessive coverage to the victims, witnesses, suspects and accused such that the media transgress the limits of its freedom and results in the violation of rights of these people which amounts to an invasion of privacy. Swati Deshpandey a Senior Assistant Editor (law), Times of India, Mumbai, observed that, "in cases media report the facts that are relevant for creating awareness among the people or which give an insight on why the court took a particular view in that case. The

media should avoid such situation where facts reveal are offensive as to degrade the image of the accused or reveals the identity of the victims specially in cases of rape where such disclosure degrades or harm the reputation and public life of the victim. This caution should be taken because media reporting often gives the impression that the accused has committed the crime and thus it creates prejudiced public opinion as the people believe the media reporting to be true.” Besides this due to the publicity and the news cooked by the media, people are of the opinion that the person accused is guilty of an offence even though the person has been proved innocent by the court. Consequently, it creates a negative impact on the mindset of people towards the functioning of judiciary that it does not perform its duty honestly and impartially. They believe that even the judiciary of our nation is corrupt because only then it is possible that the accused person gets clean chit in a particular case, more oftenly in high profile cases.

The Freedom of Expression (including freedom of media) constitutes the very foundation of every democratic society and thus it generates the basic and primary function of media to gather the information and convey the same to the general public. Besides this the media also has a right to comment on the administration of justice, including cases before, during and after trial. But the said right given to the media accompanies certain restrictions that the media will perform the same without violating the principle of ‘presumption of innocence’ as stated in the “Madrid Principles on the Relationship between the Media and Judicial Independence 1994”⁷ to which India is signatory.

Impact on Right to Fair Trial

The right to fair trial draws its power directly from Article 21 of the Indian Constitution. The freedom of press is subordinate to the rule of law and administration of justice. Therefore it is essential in every judicial system that the accused should receive a fair trial. It should be noted that the democracy demands fair trial and transparency, if these things are curtailed or influenced then the very concept of democracy will be at stake. Besides this, the “Right to Fair Trial” i.e., a trial uninfluenced by any extraneous pressure is recognized as a basic element of justice in a democratic society. Sometimes the media exceeds its power by publishing such facts which are prejudicial to a suspect or accused and even influence the judicial opinion which consequently prejudices the ‘fair trial’ or impairs the impartiality of the court to decide a particular case.

⁷ Madrid Principles on the Relationship between the Media and Judicial Independence- convened by the International Commission of Jurists in Madrid from 18- 20 Jan. 1994

Zahira Habibullah Sheikh v/s State of Gujarat,⁸ in this case, the Supreme Court explained that a “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.”

In **Saibal Kumar v/s B.K. Sen**⁹, the Supreme Court held that, it is improper for a newspaper to conduct parallel investigation into a crime and publish its results. Trial by newspapers must be prevented when trial is in progress in a tribunal of the country. The reason being, that this interferes with the cause of justice.

In **Anukul Chandra Pradhan v. Union of India**¹⁰, the Supreme Court remarked that, “No occasion should arise for an impression that the publicity attached to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial.” The trial by a press, electronic media or by way of public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice as the liberty of press is subordinate to administration of justice.

Though, the Constitution of India provides us with the freedom of press under Article 19(1) (a) which has been recognized as the Fundamental Rights and the right to fair trial which directly flows from Article 21 of the Indian Constitution which provides the suspect and the civil litigant the right to fair trial. Therefore, it is a need of time that judiciary should give appropriate directions with regard to reporting of matters in media in order to avoid the chaos between the two fundamental rights and to maintain the balance between them and thus providing them with the adequate space so that they can perform their functions within their parameters.

Impact on Judicial opinion

Though, it is presumed that the judicial officer is not affected from the sensationalized news and the influenced public opinion which is cooked by the media outside the court. The holder of judicial office is not tend to be influenced by the news seen, heard or read in order to provide a democratic society with unbiased and impartial decision. But it should be kept in mind that the as human being judges are also not free from the mistakes and thus a judicial officer is unable to free his mind entirely from whatever he has seen, heard or read and consequently, the judicial opinion is affected in one or the other way. *Hon'ble Justice D.M.*

⁸ (2005)2 SCC 75

⁹ AIR 1961 SC 633

¹⁰ (1996)6 SCC 354

Dharmadhikari, Chairman, M.P. Human Rights Commission also asserted that there is always a chance that judges get influenced by flowing air of remarks made upon a particular controversy. The media presents the case in such a manner to the public that if a judge passes an order against the “media verdict”. He or she is deemed either as corrupt or biased.

The excessive coverage by the media especially in high profile cases makes it difficult to provide justice as it sometimes tends to sentence more punitively than required. The accused is presumed to be guilty in the eyes of society before any judgment made by the court of law due to the publicity or the filtered news which is passed by the media among the masses. Now the question arises, is this the way the responsible media should work in a democratic society? Whether these virtual trials run by media are within the legal parameters of the media? The excessive interference of media in several cases has played a negative role in hampering the justice.

In *Saibal Kumar v/s B.K. Sen*¹¹, the Supreme Court was of the view that, “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 the investigation. This is because the 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 the newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.”

In *M.P. Lohia v/s State of West Bengal*¹², where a woman committed suicide in Calcutta in her parents’ house, the husband of the deceased woman and his family were charged with dowry death under the Indian Penal Code. The husband subsequently filed a number of documents to prove that the woman was a schizophrenic psychotic patient, while the parents of the woman filed documents to prove their allegations of demand of dowry by the husband and his family. The trial was yet to commence. The lower courts refused to grant bail. Later the Supreme Court granted interim bail to the accused and while passing the final orders referred very critically to certain news items in a magazine. The Supreme Court strongly deplore the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the courts. *Justice N. Santosh Hedge* remarked, “We deprecate this practice and caution the Publisher, Editor and the Journalist who are responsible for the said articles against indulging in such trial by media when the issue is sub-judice. Others concerned in journalism would take note of this displeasure

¹¹ (1961)3 SCR 460

¹² (2005)2 SCC 686

expressed by us for interfering with the administration of justice.”

In *State of Maharashtra v/s Rajendra Jawanmal Gandhi*¹³, the Supreme Court observed, ‘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 anti-thesis 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.’

In a federal country, like India there is a delegated authority and thus they are bound to perform their functions within their area without interfering in the field of others as media has no right to perform the role of an investigator so as to prejudice the Court against any person in order to create a situation of chaos. Judiciary can work impartially only when it is independent from the excessive interference from media and public pressure. There must be regulations in respect of the publication of news when the trial is in continuance.

IV. MEDIA TRIAL AS A CONTEMPT OF COURT

Contempt of Court has been categorized as civil contempt and criminal contempt in the Contempt of Courts Act, 1971. Media trial as contempt comes under the criminal contempt as defined in Section 2(c) of the Act-

“Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
- (ii) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner

The media trial as mentioned above interferes with the administration of justice and therefore amounts to contempt of court. If any obstruction or interference is caused in the administration of justice by any act of the media then it shall come within the ambit of Section 2(3) of the Contempt of Courts Act. Any pre-judicial publication which results in the denial of the fair trial and justice to any accused person shall be termed as contempt of court. However, Section 3 of the said Act exempts media reporting if the publisher had no

¹³ (1997)8 SCC 386

reasonable ground of believing that the proceeding was pending. Thus any publication by media which hinders the administration of justice only during the pendency of proceeding will amount to contempt of court with certain exemptions given under Section 3 of the Contempt of Courts Act, 1971.

In re P.C. Sen¹⁴, the law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court.

Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr.¹⁵, 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.....”

In **Kochu Moideen v/s Nambissan and Other¹⁶**, it has been propounded that in criminal cases in order that a matter becomes “sub judice”, it is sufficient if a crime case has been registered, investigation started and proceedings in Court are imminent and that editing, printing or publishing of news in such manner as to cause prejudice affecting a fair trial amounts to contempt of court.

V. CERTAIN FAMOUS CASES RELATING TO MEDIA TRIAL

With the passage of time media has reincarnated itself into a public court and has started interfering into court proceedings, carrying on investigation of crimes, interfering in police investigation and partial reporting and even announces people guilty before the court pass the judgments in the respective matter. Thus the damage caused by the media becomes irreparable.

Aarushi murder case is the perfect example of media trial where the media preempted the court and reported that her own parents were involved in her murder. The style of writing the headlines published were such that the readers and the viewers were made to believe that the Talwar’s were the actual culprits. They were shown guilty for killing their daughter. The

¹⁴ AIR 1970 SC 1821

¹⁵ AIR 1975 AP 30

¹⁶ AIR 1986 KER 48

media telecasted the investigation of this case more like a reality show than a news report. In this case the media indulged itself in random publication of news and highlighted the elements of illicit relationships, adultery, mystery and honor killing and based on these grounds the media made the Talwar's responsible for the murder of their daughter. Though it is true that without media's active participation this case would have been lying in a dusty shelf of some police station but at the same time it is also a fact that the media sensationalize this incidence to such an extent that the demarcation between news reporting and the reality show could not be done. However this is not the first time that media has been criticized for unprofessionalism, there are various incidences as well.

Jessica Lal Murder Case is another example of wide publicity given by media to the suspects, accused, victims and witnesses which sensationalized the case. Though the efforts of media are commendable which helped judiciary in imparting justice but the role played by the over enthusiastic media was not within the legal parameters. In this case, the accused, Manu Sharma was acquitted by the lower court based on benefit of doubt as no clear evidences were produced in the court. This decision was strongly criticized among the people and they lost faith in judiciary. Thereafter, the news magazine 'Tehelka' organized a sting operation on the witnesses of the case in which it was revealed that one of the suspects had bribed the witnesses in order to stay mum and this sting operation was aired by news channels. The growing pressure from the media and the appeal by Delhi Police compelled the Delhi High Court to reopen the case. Subsequently, even before the judgment by the High court, the media started naming Manu Sharma as an accused in this case and his photographs along with other suspects were published by various news channels. Ultimately the Delhi High Court pronounced Manu Sharma guilty in the case after linking all the evidences together but without taking into account the various lacunae in the case. The decision of the case proved that it was clearly influenced by the media publicity. Therefore, the media trial is criticized and discouraged as it stains the reputation of a person by creating a widespread perception of guilt regardless of any judgment by the court of law and at the same time it often influences the judicial opinion as happened in this case.

VI. CONCLUSION

In the words of Dr. A.P.J. Abdul Kalam, the importance of responsible media and its duties in a democratic society can be easily understood as he believed that, "it is very important for the media to be the partner in national mission. They should highlight the positive aspects and provide solutions to difficult aspects through nationwide consultations."

Thus it becomes very much clear that, why media is regarded as the fourth pillar of democracy. Media has wide ranging roles in the society and it must play its role positively because it has a direct impact in molding the opinion of the society. But these days the trial by media is emerging as a matter of great concern because it directly affects the judicial system of the country and violates to some extent the rights of individuals such as right to privacy, right to fair trial. Though media has right to freedom of speech and expression under Article 19(1) of Indian Constitution but this right is not absolute as it is bound by the limitations given in Article 19(2). There are number of cases where the effect of trial by media can be easily seen such as, Aarushi murder case, Jessica Lal murder case, Sheena Bora murder case etc.

Though media act as a watch dog and act as bridge to fill the gap between the people and the outer world but nowadays media has diversified its role and started usurping the functions of judiciary and various other administrative agencies as well. Media has the right to disseminate the information regarding the judicial proceeding but it should publish the original facts without manipulating them. Further the power to conduct trial resides with the judiciary therefore; media should not interfere in the functions and powers of judiciary. Therefore trial by media is not a legitimate act. Media should realize and acknowledge the fact that whatever they publish has a great impact on the spectator. Therefore it is the moral duty of media to show the truth without molding the original facts and thus, media should not perform any kind of trial on the accused person and declare him guilty regardless of any verdict in the court of law.

In today's scenario it is necessary for a democratic society that the power of media should be controlled in order to avoid chaos among the masses. There must be some regulating body to govern the working of media. Although the Press Council of India is one of such authority which regulates the working of print media but even today there is no such separate authority which would regulate the electronic media. Thus, the government should formulate certain law in order to govern the working of electronic media. Though for a democratic society freedom of press is very essential but at the same time absolute freedom could be dangerous, as it is rightly said by Lord Acton that, "power tends to corrupt and absolute power corrupts absolutely." Therefore, some restrictions, guidelines and governing rules must be introduced in the form of law in order to keep a check on the working of media, to control it and to ascertain its accountability.
