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Trial by Media: Its Implications on Fair Trial and Administration of Justice in India

MRS. LEENA CHANDRAN¹

ABSTRACT

A free and fair media is indispensable for the successful and smooth functioning of a democracy like India and is regarded as the fourth estate. The freedom of press stems from the freedom of speech and expression guaranteed under article 19(1)(a) of the Constitution of India. But this freedom is not absolute and is subject to reasonable restrictions under Article 19(2) which includes contempt of court. The problem erupts where media interferes with the administration of justice by conducting the trial of the accused in its so called “Jan Adalat” and delivers the verdict even before trial begins or the verdict is delivered by the court. This trend is known as media trial. The focus of this research is to study the consequences and problem where the media encroaches upon the functions of the judiciary and the necessity of stringent laws to prevent this unhealthy trend of media trial even by suggesting an amendment to the Contempt of Court Act, 1971 by giving an extended meaning to the word “pending” in Section 3 of the Act to prevent unwarranted media excess from the time the arrest of the accused is made and this protection should continue throughout the stage of investigation, trial to the time until the final verdict is delivered by the court.

Keywords: *Media, Trial, Constitution, Right, Judiciary, Jan-Adalat, Contempt of court, Subjudice.*

I. INTRODUCTION

“Trial by media” has become one of the most debated and burning issues of the modern world which is not limited to any particular nation and has its impact on all nations of the world. The concept of “Trial by media” became a very popular issue in the late 20th century to describe the influence of media in its various manifestations like television and newspapers coverage on a person’s reputation by creating an impression of guilt or innocence without having any regard and respect for any verdict in a court of law. The trend of media trial is often justified under the shadow of the freedom of speech and expression. In India also freedom of press evolved from the fundamental right- Freedom of speech and expression

¹ Author is a Research Scholar at S.O.S in Law, Pt. Ravishankar Shukla University, Raipur, India.

guaranteed under Article 19(1)(a) of the Indian Constitution. *Ramesh Thapper v. State of Madras*² was a very important case regarding the freedom of press in which the Hon'ble Supreme Court held that freedom of speech and expression include freedom of propagation of ideas which is ensured by the freedom of circulation.³

In a Democratic set up like India, the press or the media is regarded as the 'Fourth Estate.' It is one of the strong pillars of Democracy- a system of Government which survives upon the awareness, vigilance and responsible conduct of its citizens and in this system the media is endowed with wide ranging and responsible roles in the society to keep the public informed about various aspects of national life. Media keeps the public informed about the various new developments, and contemporary burning issues in the society and hence plays the most important role in educating and moulding public opinion. Today, the media has become such a powerful institution that it is capable of diverting the whole trend of public opinion by interpreting the issues and information in a particular way through which the public forms their viewpoint. Thus, media has such tremendous power which may be regarded as the "Brahmastra" for creating and destroying a person's reputation i.e. the power of moulding public opinion either in his favour or against him. Thus, the power of the media can be both constructive as well as destructive.

In India which is the largest democracy in the world, it is needless to admit that an unbiased and free press is key to its smooth and successful functioning. In a democratic set up which is characterised by the active participation of the public in all affairs of the state and community, it is the right of the people to be kept informed and updated of the current status of the social, economical, political and cultural life of the nation as well as the global affairs so as to enable them to form a correct view of the ways in which the nation is being administered by the Government and also to form healthy criticism for better administrative management. It is here that the media plays a very powerful role. The level of freedom and respect accorded to the media in India can be understood from the views expressed by our first Prime Minister, Pt. Jawaharlal Nehru, "*I would rather have a completely free press with all the dangers involved in the wrong use of the freedom than a suppressed or regulated press*"⁴ But at the same time it cannot be denied that freedom of the press is not unlimited or absolute and an unregulated press would possibly become an unruly horse and pose danger to the very existence of democracy.

² AIR 1950 SC 124

³ Krishnan Dr.S., (2018), TRIAL BY MEDIA: CONCEPT AND PHENOMENON, *International Journal of Advance Research (IJAR)*, 6(3), p.898

⁴ Pandit Jawaharlal Nehru's Speech at the Newspaper Editor's Conference. 3/12/1950

At the same time, the positive role played by the media cannot be undermined in any way. The media by providing wide coverage has done a commendable job in some of the famous criminal cases whereby the criminals would have gone unpunished due to the involvement of powerful political tycoons in such cases. Some such cases are *Piyadarshini Matoo case*⁵, *Jessica Lal case*⁶, *Nitish Katara case*⁷, etc. It also did a commendable job in highlighting the *Nirbhaya gang rape case* and thereby uniting the nation for prevention of crimes against women and ultimately the accused persons were hanged to death.

But inspite of all its positive role, it must be admitted that the trend of ‘media trial’ or ‘trial by media’ has severe consequences and drawbacks. Today the media has established itself into a sort of ‘parallel Judiciary’ or a ‘Jan Adalat’, bringing the court proceedings into the living room of the people while a case is still pending in a court of law, which undoubtedly jeopardizes the judiciary. It is a very unhealthy trend for our democratic set up. This trend of unhealthy media excess interfering with the court process known as media trial has invited severe criticism from all walks of national life. One of such instance was the reporting of the *murder case of Arushi Talwar*⁸ where the media gave wide coverage and publicity and also pre-empted both the court and the public by reporting that her parents were her murderers. At that time the case was still pending in the court. There are various instances in the past where allegation have been labelled against the media of conducting trial of the accused person in its so called “jan adalat or janta ka darbar” and passing the judgement even before the court delivers its verdict. It may be mentioned here that trial is essentially a function to be carried out by the court. So, trial by media is undoubtedly an intolerable interference in the process of administration of justice.

The media has now transformed itself into a so called “*Jan Adalat*” or a “*public court*”⁹ and conducts the trial of the accused completely ignoring vital difference between an accused and a convict. This type of trial by media completely overlooks the eternal principles of criminal law “*presumption of innocence until proved guilty*” and “*guilt beyond reasonable doubt*”.¹⁰ The media conducts a separate parallel investigation, builds up public opinion against the accused, characterizing him as the culprit who has actually committed the crime even before the police starts investigation or the court delivers the verdict after a fair trial. Such

⁵ Santosh Kumar Singh v. State through CBI, (2010) 9 SCC 747

⁶ Sidhant Vashisht @ Manu Sharma v. State (NCT of Delhi), AIR 2010 6 SCC1.

⁷ Vikas Yadav v. State of U.P AIR 2016 SCC 1088

⁸ Rajesh Talwar v. State of Uttar Pradesh and Ors CrI. Appeal No. 294/2014

⁹ Tripathi Devesh, Trial by Media: Prejudicing the Sub Justice, *RMLNLU Journal*, Lucknow, 2015, p.1.

¹⁰ Tripathi Devesh, Trial by Media: Prejudicing the Sub Justice, *RMLNLU Journal*, Lucknow, 2015, p.1.

irresponsible conduct on the part of the media prejudices the judicial system as well as the public and casts a subconscious effect on the judges. As a result the accused who should be presumed innocent until proved guilty is looked upon as a criminal and thereby violates his fundamental right to a fair trial. Such undue excesses and irresponsible conduct on the part of the media personnels calls for contempt proceedings against the media. But the rules designed to regulate journalistic conduct are inadequate to prevent the encroachment of judicial process and free trial. The Law Commission in its 200th report has expressed concern over this issue and made several recommendations.

The sensational case of Kerala allegedly involving the Popular Malayalam Cine star Dileep in the abduction and molestation of a film actress is yet another incidence of media access on a matter which unduly interfered with the fair trial of the actor. In this case, the media conducted a parallel investigation while the case was still being investigated by the State Police, conducted a trial in its so called 'Jan Adalat' and branded him as the criminal behind the abduction and molestation. The case is still pending in the court. It may be mentioned here that all this undoubtedly tarnished his public reputation and adversely effected his fair trial. It was being propagated by the media that if the film star is granted bail, he being an influential person would destroy the evidence and threaten the witnesses. There was a public uproar against the actor. Many women organization staged demonstration against the actor based on media reports. No doubt all this public uproar subconsciously effected the judiciary and the actor was denied bail until the 85th day.

II. IMPACT OF MEDIA TRIAL ON THE ACCUSED AND FAIR TRIAL

The tussle engulfing the judiciary and media is regarding two important aspects- firstly media has no right to conduct the trial of an accused person and secondly, neither the press nor anybody else has the right to prejudge the case and deliver the verdict. In our judicial set up the police is assigned the responsibility to conduct investigation and the judiciary has the responsibility to try the accused and deliver the justice while the media is cast with the responsibility to honestly keep the masses updated and informed about various matter. Thus, none of them can be permitted to interfere or take over the function of the other. The basic principle of justice demands that every person should be tried by the judiciary and not by the media. Every person has a right to a fair and impartial trial within the territory of India by virtue of Articles 14¹¹, 20¹², 21¹³ and 22¹⁴. The invaluable rights guaranteed by these articles

¹¹ Article 14, "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India."

¹² Article 20, "(1)No person shall be convicted of any offence except for violation of the law in force at the time

are absolute rights on which the very foundation of our criminal justice system rests. The protection given by these articles must be read with article 21 of the Indian Constitution. Fair trial is one of the facets of fundamental rights guaranteed under Article 21 of the Indian Constitution. The Supreme Court in the matter of *Zahira Habibullah Case*¹⁵ held that fair trial means trial before an impartial judge or prosecutor and such a trial is unbiased. In India parties have a fundamental right to fair trial, which means trial by and unbiased, impartial judiciary, uninfluenced by media publication. Democracy is based on fair play and transparency of which fair trial is an important part and if it is denied on flimsy and arbitrary grounds, the very existence of democracy would be at stake. Fair trial of an accused can be effected in various ways such as encroachment with the functions of the court in the administration of justice, pre-trial publication which moulds public opinion against the accused by giving verdict against the accused even before the trial of the accused begins in a court of law, or such pre-trial publication which poisons the mind of the judge subconsciously against the accused etc. It may be mentioned here that the right to freedom

of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself

¹³ Article 21, "Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

¹⁴ Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

3 Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose

(7) Parliament may by law prescribe

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4) Right against Exploitation

¹⁵ *Zahira Habibullah Sheikh v. State of Gujrat*, [(2004) 4SCC 158]

and expression under the shadow of which freedom of press takes its shelter is not an absolute right but is subject to the reasonable under Article 19(2) of the Indian Constitution as well as the Contempt of Court Act, 1971. This amply proves that right to a fair trial is far more superior than the right to freedom of speech and expression. Media should also acknowledge and respect this.

In *Sheena Bora Murder Case*, the sharp eye of media pierced through every aspect of the personal life of the prime accused Indrani Mukherjee which even had no relevance with regard to the case. It is in such matters that the ethics of journalism comes under the shadow of doubt and confusion.

There is no doubt regarding the positive impact of media in a democratic set up but focus also needs to be given on negative impact of such media excesses on the trial, on the witnesses, on the accused as well as the judiciary whereby the principle of fair trial is adversely affected. This leads to the violation of fundamental rights of an accused person who instead of being presumed innocent until proved guilty is branded as a criminal even before his trial is conducted and a verdict is delivered by the judiciary.

Media nowadays completely ignores the vital and basic gap between the accused and convict. The principle of “presumption of innocence until proved guilty” and “guilt beyond reasonable doubt” seems to have no place in modern media ethics. Media no doubt has a positive role to keep the public informed about various issues facing the nation to ensure public participation in all walks of national life. But it must not cross the limit and pass judgements or assume the role of Judiciary. Media through its unwanted and ultra vires excesses must not prejudice the administration of justice.

As soon as a person is arrested for any offence, he is branded as and criminal and not as an accused. The media by giving undue publicity and branding the accused as the criminal even before his trial begins undoubtedly influences his fair trial which is one of the facets of Right to Life¹⁶ guaranteed under article 21 of the Indian Constitution. It leads to such a situation that even if that accused person is acquitted by the court, he may not be able to rebuild his reputation in the society and the society may continue to ostracize him and his family.

Fair trial is not purely private benefit for an accused- Public’s confidence in the integrity of the judicial system is crucial.¹⁷ Media also tries to put pressure upon the lawyers and tries to prevent them from representing the case of the accused persons. One such example can be

¹⁶ *Supra* note 12

¹⁷ *Gisborne Herald Co. Ltd. v. Solicitor General*, 1995 (3) NZLR 563 (CA)

given in the case of Jessica Lal murder case. The accused Manu Sharma was victimized by the media. Even Mr. Ram Jethmalani who represented the accused was bullied and ostracized by the media and had to face objections from the society. Kamini Jaiswal, who was the lawyer for Geelani, the prime accused in the Parliament Attack case, 2001 was labelled as an “anti-nationalist” by the media. Not only this Mr. Prashant Bhushan who represented Yakub Memon, the prime accused in the 1993 Mumbai Bomb blast case, also faced severe objections.

Such kind of media excesses which be seen throughout the judicial process, starting from time of the arrest of an accused, making its unwarranted entry to the courtroom proceedings and extends to exerting pressure on the lawyers to prevent them from representing the accused persons. This undoubtedly breaks the sanctity of the courtroom proceedings as well as leads to the gross violation of the principles of natural justice on which the very foundation of our criminal justice system rests.

The media must remember that the right to be defended by a lawyer of one’s choice is a fundamental right of the citizens guaranteed under the Constitution of India.

III. IMPACT OF MEDIA TRIAL ON WITNESS AND VICTIMS

It is a well known fact that the general public prefers to stay away from the complex and lengthy judicial procedure. In such a scenario the position of the people who are witnesses to a case becomes very difficult. In case their name or identity is published there is every possibility that they or their family may get threatening from the accused as well as their associates. So, many of the witness retract or become hostile. In this way also the undue media excesses prejudices the administration of justice.

Sometimes, if in a rape case the name or identity of the victim gets published, the victim and her family instead of getting support and assistance, becomes ostracized by the society. Thus, many of the victims prefer to suffer silently accepting the gross injustice penetrated to them as their lot.

IV. IMPACT OF MEDIAL TRIAL ON JUDICIARY AND THE PUBLIC

Administration of justice is done by judges who are not machines but human beings and unfortunately they are not immune from public criticism both in their judicial as well as personal capacity. It must be accepted that baseless public criticism based on unwarranted media reports may lessen public faith in Judiciary which may prove to be fatal for the existence democratic set up because an independent and impartial judiciary is indispensable to

protect the rights of the citizens.

In many cases including the ones mentioned above where the media gave verdict through their so called “jan adalats” and where the honourable judiciary gave a different verdict from the one presented before the public by the jan adalat of the media, led the public misinformed by the media to doubt the integrity of the judiciary and call it biased.

Even the tussle between the then Chief Justice of India Deepak Kumar and the four senior judges of the Supreme Court in 2018 was also given wide publicity by the media and presented their own version. It led to lowering public faith in judiciary and the judges.

Sushant Rajput Case and Media Trial: The most sensational case involving the death of the young actor Sushant Singh Rajput in June 2020 was another case which was given wide publicity by the media. Different media presented different versions regarding the death of the actor. Some portrayed it as a clear cut case of murder alleging the involvement of politicians, Bollywood actors and underworld criminals while others propagated the depression theory of the actor. Continuous media trial was conducted casting doubt in the minds of the public on the actions of the Mumbai police. A section of the electronic media also created a more or less firm belief in the minds of the public that the actor was murdered due to nepotism in Bollywood which also tarnished the image of several big Bollywood stars and the consequence was that their films which were released during that period was rejected by the public resulting in huge losses. The Bombay High Court ultimately held that a media trial by the electronic media interferes with the administration of Justice as well as obstructs fair investigation and this amounts to criminal contempt. The matter is currently being investigated by the Central Bureau of Investigation (CBI)

Similarly the matters like the CAA agitation at Shaheenbagh, New Delhi and the Kisan Aandolan was also given wide publicity by the media. Different electronic media conducted media trial and propagated their own views. Some spoke in favour of the farmers or the CAA activists while others justified the Government actions. All efforts were made to increase their TRP but very little honest initiative was made to spread awareness among the masses.

V. REVIEW OF LEGAL AND CONSTITUTIONAL MANDATE ON MEDIA TRIAL

Freedom of press is implicit in the freedom of speech and expression under Article 19(1) (a) of the Indian Constitution. But freedom of speech and expression is not absolute and is subject to the reasonable restrictions mentioned under clause (2) of Article 19. In a democratic country like India, the media has a very responsible job to play in keeping the people vigilant about the various issues facing the nation. Nowadays, due to the expansion of

science and technology, the effect of media via television, newspaper, cable T.V., various journals, radio and internet etc. is unprecedented. It is therefore, very essential that media must maintain its professional ethics and perform its functions in a very transparent way. Media should never be allowed to interfere with the administration of justice by publishing matters which are “sub judice.” The Latin expression “sub judice” means under a judge. The case is said to be sub judice until the matter has been finally disposed off by the court. The Contempt of Court Act deals concept of contempt under two heads i.e. civil contempt under section 2(b) and criminal contempt under section 2(c).

But section 2(c) although very wide is subject to the provisions of section 3 which protects pre-trial publications which obstructs or tends to obstruct the course of justice relating to any civil or criminal matter which is actually pending in the court of law. The word “pending” in case of a Criminal Procedure Code, 1973 or any other law for the time being in force means where it relates to the commission of any offence, when the charge sheet or challan is filed by the police or summons/ warrant is issued against the accused by a court of law. There is no denying the fact that pre-trial publication can effect the right to fair trial of an accused person. Such publication may refer to the personal life, any previous conviction, or any alleged bad character of the accused which may have nothing to do with the present case. But such publication may poison the minds of the witness, judges and public which may cause irreparable damage to the accused by jeopardizing his trial.

In the matter of *Sahara India Real Estate Corpn. Ltd*¹⁸, the Supreme Court held that, “The media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. As stated above, sometimes, fair and accurate reporting of the trial (say a murder trial) would nevertheless give rise to substantial risk of prejudice not in the pending trial but in the latter or connected trials. The postponement order not only safeguards fairness of the later or connected trials, it prevents possible contempt by the media”

VI. LAW COMMISSION’S 200TH REPORT ON MEDIA TRIAL

The Law Commission of India broadly deals with several aspects of rights of the people like right to freedom of speech, freedom of press and right to a fair trial in its 200th Report¹⁹ published in August, 2006. This topic was taken up by the Commission suo moto to deal with

¹⁸ Sahara Indian Real Estate Corporation Ltd. v. Securities and Exchange Board of India AIR (2012) 10 SCC 603

¹⁹ Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendment to the Contempt of Court Act, 1971) Law Commission 200th Report.

fact of extensive prejudicial publication of crime and information about the suspects and accused both by the print and electronic media. The Law Commission has recommended to restrain media from reporting anything prejudicial to the right of the accused in criminal cases from the time the accused is arrested and this restriction should continue throughout the investigation and trial. It has suggested an amendment to the Contempt of Court Act and recommended that contempt should be invoked from the time of arrest of the accused by giving an extended meaning to the word “pending.” This has been elaborated by the Commission in its 200th Report. The Commission also recommended that the High Court be given powers to direct the media to postpone the reporting or telecast in criminal matters. Under the present law contempt proceeding could be initiated only if a charge sheet has been filed in a criminal case. The Commission suggested that a matter should be considered as within the purview of contempt proceeding under section 3(2) of the Contempt of Court Act, 1971 from the time the arrest of the accused is made.

VII. CONCLUSION

India is the largest democracy in the world. The success of democratic traditions depends on the vigilance and awareness of the citizens. Our nation has a remarkable history in according a high level of respect and freedom to the press and media. Major scams which tormented the nation were busted and brought to light by the media. The fearless and hardworking journalists conducted various sting operations and elicited various new information which our great investigation agencies failed to achieve. Thus, the role of media can never be underestimated. The accused in several criminal cases would have gone unpunished if media had not played a vigilant and responsible role.

At the same time it must be mentioned that independent and impartial judiciary is indispensable to protect the sanctity and integration of the constitution as well as to provide justice to the people. There is no denying the fact that a media crippled by government regulations and control is extremely unhealthy but at the same time any unregulated freedom or liberty is surely to become an unruly horse.

The concept of media trial undoubtedly interferes with the administration of justice and media has no right to encroach upon the functions of the court. The media nowadays in order to increase their Television Rating Point (TRP) tries to distort facts and create sensation among the public. They conduct Jan Adalats and give verdict on matters even before the court delivers the verdict and convinces the public in a particular way. In case the judicial verdict is a different one than that was proclaimed by the media, the public influenced by the

media starts doubting the integrity of the judges who delivered the judgement. It leads to the gross violation of the principle “justice must not only be done but it should also seem to be done.” Thus, the media must not be allowed freedom of speech and expression to such an extent to prejudice the administration of justice and fair trial.

Media no doubt plays a good role while highlighting corruption in Government and other fields but the conflicts arise when media crosses the limits of its domain and try to interfere with the power of judiciary by making judgemental comments on trials which are pending in a court of law.²⁰

It has become an absolute and unavoidable necessity to strike a strong balance between the rights of the people to know and the right of the accused to be presumed innocent till proved guilty by a competent court but the deadly competition regarding the news coverage as well as publication among various media tycoons having a tendency to interfere with administration of justice has become matter of grave concern for legislature as well as judiciary.²¹

The trend of media trial adversely affects the reputation of a person accused of an offence by its pre-trial publications. It leads to the gross violation of his right to a fair trial, adversely affects the witnesses and also subconsciously affects the judges and lawyers. Neither a vigilant press can take the place of independent and impartial judiciary nor judiciary can take the place of free and impartial press. Both are indispensable for the smooth functioning of our democratic tradition and the press should in no way be allowed to jeopardize the functions of the court.

It must without any doubt be accepted that the media while jealously guarding its space and freedom must not forget the social responsibility thrust upon it by respecting the powers of the judiciary as well as the rights and dignity of the people in the larger interest of democracy. It must not unduly interfere with the functions of the court, inviting contempt proceedings against the press and media. The media must perform the responsibility of restoring and maintaining the faith of the people in the honourable judiciary by restraining itself from unwarranted prejudicial publication which interferes with the fair trial of the accused and the administration of justice.

²⁰ Krishnan Dr.S., (2018), TRIAL BY MEDIA: CONCEPT AND PHENOMENON, *International Journal of Advance Research (IJAR)*, 6(3), p.895

²¹ The Blanket, *Journal of Protest and Dissent*, November 2000.