

## LEGALFOXES LAW TIMES

### MEDIA TRIAL: THE NEED OF CAUTION

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#### ABSTRACT:

Media is deemed as one of the four pillars of democracy. It plays a crucial role in shaping the outlook of the society and is proficient in changing the whole perspective through which people observe various events. The media can be acclaimed for starting a trend where it plays a vigorous role in bringing the accused to hook. In recent times there have been several instances in which it has carried out the trial of an accused and has passed the decision even before the court passes its judgment, referred to as the Media Trial. *Atrocious crimes must be denounced and the media would be justified in calling for the perpetrators to be punished under the law.*

However, there are always two faces of a coin. Media freedom also necessitates a certain degree of conscientiousness and accountability. *It cannot arrogate the functions of the judiciary and diverge from objective and unbiased reporting. While a media constrained by government regulations is harmful to democracy, the implications of prolonged unaccountability are even more damaging.*

Through this paper, the researcher wants to explain the regime of the Media Trial and its constitutionality. Its impact on society and the nation would also be highlighted. Further, the paper will replicate the measures and safeguards that need to be taken for channeling such trials by Law and Democracy.

**KEYWORDS-** Accountability, Democracy, Judgement, Judiciary, constitutionality.

## **INTRODUCTION**

*“The demi-world of journalism is like the funhouse of mirrors that one finds in carnivals. In one indication you are too fat; in one more you are meaninglessly thin; in another reflection, you emerge to have an extended neck; in another, a flat head,- in still another you have next to not a soul.*

*Nevertheless there you are, standing in front of these peculiar reflections, completely formed and hearing little similarity to any of the images before you. The difference is, however, that unlike the funhouse of mirrors, the distortions of the media are rarely a joke<sup>1</sup>”.*

Media plays a crucial role in molding the attitude of society and it is proficient in changing the entire perspective through which people perceive various events. The strength and significance of media in a democracy are well identified. Article 19(1) (a) of the Indian Constitution, which gives freedom of speech and expression contains within its scope, freedom of the press. The subsistence of a free, independent, and powerful media is the keystone of democracy, especially of a highly mixed society like India. Media is not only a medium to articulate one’s feelings, views, and outlooks, but it is also in charge and active in building attitudes and views on various topics of regional, national and international agenda. The fundamental role of the media is its capability to organize the thinking procedure of millions. The augmented role of the media in today’s globalized and tech-savvy world was suitably put in the words of Justice Learned Hand of the United States Supreme Court when he said, “The hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country”<sup>2</sup>.

Democracy is the ruling of the people, an arrangement that has three sturdy pillars. But as Indian society today has become somewhat unbalanced on its 3 legs- the executive, the legislature, and the judiciary, the certification of Article 19 (1)(a) has given development to a fourth pillar well-known as media or press. It plays the essential role of a conscious keeper, a watchdog of the

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<sup>1</sup>TRIAL BY MEDIA AND TRIAL OF MEDIA, <http://www.rtd.nic.in/MassMediaIndia2009.pdf>(last visited on 21/10/2014 at 00:07).

<sup>2</sup> Right to Privacy in Sting Operations of Media, <http://odisha.gov.in/e-magazine/Orissareview/2013/may/engpdf/57-61.pdf> (last visited on 21/10/2014 at 00:09).

functionaries of society, and endeavors to attend to the wrongs in our system, by fetching them to the knowledge of all, hoping for rectification. It is incontrovertible that in many aspects the unprecedented media revolution has ended in great gains for the general public. Even the judicial wing of the state has gained from the moral and valiant journalism and taken suo-moto cognizance of the matters in a variety of cases after relying on their reports and news emphasizing serious violations of human rights<sup>3</sup>.

In the latest times, there have been several instances in which media have carried out the trial of an accused and have passed the verdict even before the court passes its judgment. Several well-known criminal cases that would not have gone reprimanded but for the participation of media, are *Priyadarshini Mattoo case*, *Jessica Lal case*, *Nitish Katara murder case*, and *Bijal Joshi rape case*. The media, however, drew condemnation in the reporting of the murder of *Aarushi Talwar*, when it pre-empted the court and reported that her father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were engaged in her murder, the CBI later affirmed that Rajesh was not the killer.

This phenomenon is widely called a media trial. Trial by Media is the influence of television and newspaper exposure on a person's character by creating an extensive insight of guilt regardless of any verdict in a court of law. There is a heated debate between those who support a free press which is largely uncensored and those who place a higher precedence on an individual's right to privacy and right to a fair trial.

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## **IMPACT OF MEDIA TRIALS**

1. **MEDIA TRIALS vs. FREEDOM OF SPEECH AND EXPRESSION**-Freedom of speech plays a fundamental role in the development of public opinion on social, political, and economic matters. Correspondingly, the persons in power should be able to keep the

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<sup>3</sup>*Ibid.*

people updated about their policies and projects, hence, it can be said that liberty of speech is the mother of all other liberties.<sup>4</sup>

Maintaining this idea in mind, Venkataramiah, J. of the Apex Court of India in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>5</sup> has declared:

“Liberty of the press is the spirit of social and political association. The press has now supposed the role of protection of the public concern by publishing facts and outlooks devoid of which a democratic electorate [Government] cannot make accountable judgments. Newspapers being spreaders of news and visions having a bearing on public administration very frequently transmit material which would not be palatable to Governments and other authorities.”

In *Printers (Mysore) Ltd. v. CTO*<sup>6</sup> the Supreme Court has restated that though freedom of the press is not specifically guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of the press has always been an appreciated right in all democratic countries and the press has correctly been described as the fourth chamber of democracy.

In *R. Rajagopal v. the State of T.N.*,<sup>7</sup> the Supreme Court of India has held that freedom of the press widens to engaging in uninhibited debate about the participation 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 sustained defamation has to be executed in terms of the democratic manner of life arranged down in the Constitution.

Therefore, in the vision of the scrutiny made by the Supreme Court in various judgments and the views articulated by various jurists, it is crystal clear that the freedom of the press streams from the freedom of expression which is assured to all citizens by Article 19(1) (a). Press stands on no upper footing than any other citizen and cannot assert any privilege (unless bestowed specifically

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<sup>4</sup>Freedom of press in India : Constitutional Perspectives (last visited on 21/10/2014 at 00:05)  
[http://www.supremecourtcases.com/index2.php?option=com\\_content&itemid=1&do\\_pdf=1&id=6752](http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=6752).

<sup>5</sup>1 SCC 641 at p. 664, Para 32 (1985).

<sup>6</sup>2 SCC 434 (1994).

<sup>7</sup>6 SCC 632 (1994).

by law), as such, as diverse from those of any other citizen. The press cannot be subjected to any special constraints which could not be inflicted on any citizen of the country.

2. **MEDIA TRIAL vs. RIGHT TO BE REPRESENTED**-Through media trial, the pressure is building on the lawyers even — to not take up cases of accused, thus trying to compel these accused to go to trial without any defense. Is this not in opposition to the principles of natural justice? Every person has a right to get himself represented by a lawyer of his preference and put his point before the adjudicating court and no one has the right to prohibit him from doing so. For instance, when renowned lawyer Ram Jethmalani chose to defend Manu Sharma, a key accused in a murder case, he was focused on public disdain. A senior editor of a television news channel CNN-IBN called the choice to represent Sharma to “defend the indefensible”. The media postulation of culpability impinges upon the right to legal representation, a significant constituent of the right to a fair trial, and may also daunt lawyers into refusing to represent accused persons. Suspects and accused apart, even victims and witnesses go through unnecessary publicity and incursion of their privacy rights. Police are presented in poor light by the media and their confidence too undergoes. The stress on the police from media day by day builds up and gets to a stage where police feel coerced to say something or the other in public to protect their reputation. Witness protection is also a severe casualty. This directs to the question about the acceptability of unreceptive witness evidence and whether the law should be amended to avoid witnesses changing their statements. Again, if the suspect’s pictures are demonstrated in the media, problems can occur during ‘identification parades’ carried out under the Code of Criminal Procedure for recognizing the accused. The subconscious consequence on the Judge as one of the major contentions upon ‘media trial’ is prejudicing the judges presiding over a specific case. As there is always a chance judges may get persuaded by the flowing air of statements made upon a particular hullabaloo. The media presents the case in such a way to the public that if a judge passes an order against the “media verdict”, he or she may appear too many either as fraudulent or biased.

3. **CONSTITUTIONALITY OF MEDIA TRIALS**-Article 19 of the International Covenant on Civil and Political Rights, 1966<sup>8</sup>, exemplifies the right to liberty of speech, that is, “*everybody shall have the right to have outlooks without intrusion*” and the “*liberty to look for, obtain and convey information and thoughts of all types, in spite of frontiers, either verbally, in writing or in print, in the outline of art, or through some other media of his selection.*”<sup>9</sup>

Nonetheless, this freedom comes with a stipulation that the implementation of this right comes with “*special obligations and responsibilities*” and is subject to “*the rights or characters of others*”. The right to freedom of speech and expression has been assured under Article 19(1) (a) of the Constitution of India. Even though freedom of the press is not an independently pledged right in India unlike the United States of America, the Supreme Court of India has identified the freedom of the press under the umbrella right of freedom of speech and expression as visualized under Article 19(1)(a) of the Constitution of India.

In *In Re: Harijai Singh and Anr. And In Re: Vijay Kumar*<sup>10</sup>, the Supreme Court had the instance to decide on the extent of the liberty of the press, identified it as “*an indispensable prerequisite of a democratic form of government*” and observed it as “*the mother of every other liberty in a democratic society*”.<sup>11</sup> The right under Art 19(1) (a) includes the right to information and the right to propagate through all sorts of media, whether print, electronic, or

<sup>8</sup> International Covenant on Civil and Political Rights, 1966, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

<sup>9</sup> Article 19 of the International Covenant on Civil and Political Rights, 1966:

1. Everyone shall have the right to hold opinions without interference.
2. 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, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

<sup>10</sup> 6 SCC 466, paras 8, 9 and 10 (1996).

<sup>11</sup> 6 SCC 466, para 8 (1996).

audiovisual way.<sup>12</sup> It was stated in *Hamdard Dawakhana v. Union of India*<sup>13</sup>, that the right contains the right to obtain and convey ideas and information about affairs of common interest.

The Supreme Court has declared that trial by press, electronic media, or trial by way of a public stir are examples that can at best be illustrated as the anti-thesis of rule of law as they can direct to the miscarriage of justice. In the belief of the honorable court, a Judge has to secure himself against such pressure.<sup>14</sup> In the case of *Anukul Chandra Pradhan v. Union of India*<sup>15</sup>, the Apex Court scrutinized that “No instance should occur for a notion that the publicity appended to these matters (the hawala transactions) has leaned to weaken the prominence on the fundamentals of a fair trial and the vital principles of jurisprudence together with the presupposition of the innocence of the accused except found guilty at the conclusion of the trial”.<sup>16</sup>

### REGULATORY MEASURES

As we worry about the constraints inflicted upon the media, it is apparent from the above that a court assessing the rationality of a restriction enforced on a fundamental right pledged by Article 19 benefits from a lot of prudence in the matter. It is the constitutional responsibility of all courts to guarantee that the constraints imposed by law on the media are rational and relate to the principles specified in Article 19(2).

In *Panamas Labour Union v. Madura Coats Ltd.*<sup>17</sup> the Supreme Court has placed down some beliefs and guidelines to be kept in scrutiny while considering the constitutionality of a statutory proviso restricting fundamental rights pledged by Articles 19(1) (a) to (g) when disputed on the grounds of the unfairness of the restriction inflicted by it.

In *Rajendra Sail v. M.P. High Court Bar Assn.*<sup>18</sup> the editor, printer and publisher and a reporter of a newspaper, besides the petitioner who was a labour union activist, were instantaneously

<sup>12</sup>Secretary, Ministry of Information & Broadcasting v. Cricket Association of West Bengal, (2) SCC 161 (1995); Romesh Thapar v. State of Madras SCR 594 (1950); See also Life Insurance Corporation of India v. Manubhai D Shah, (3) SCC 637 (1992).

<sup>13</sup>(2) SCR 671 (1960).

<sup>14</sup>State of Maharashtra v. Rajendra Jawanmal Gandhi, (8) SCC 386 (1997).

<sup>15</sup>(6) SCC 354 1996.

<sup>16</sup>Ibid., para 7.

<sup>17</sup>1 SCC 501 (1995).

<sup>18</sup>6 SCC 109 (2005) per Y.K. Sabharwal, J. (for himself and Tarun Chatterjee, J.).

punished and sent to undergo a six months imprisonment by the High Court. Their mistake was that on the base of a report filed by a trainee correspondent, they circulated unfavorable remarks against the judges of a High Court made by a union campaigner at a rally of workers. The remarks were to the product that the decision given by the High Court was nonsense and fit to be thrown into a dustbin. In the appeal, the Supreme Court sustained the disdain against them but modified and lessened the sentence.

In *D.C. Saxena (Dr.) v. Chief Justice of India*,<sup>19</sup> the Supreme Court has held that no one else has the power to blame a judge of his misconduct, partiality, or incapacity. The point of such protection is to guarantee the independence of the judiciary so that the judges could decide cases without fear or favour as the courts are constructed constitutionally for the indulgence of justice.

By these above observations and the judgment we can say that limitations enforced by Article 19(2) upon the liberty of speech and expression assured by Article 19(1) (a) together with the liberty of press serve a two-fold principle viz. on the one hand, they state that this liberty is not supreme but are subject to the parameter and on the other hand, they put a constraint on the authority of a legislature to confine this liberty of press/media. But the legislature cannot limit this freedom beyond the necessities of Article 19(2) and each of the constraints must be rational and can be enforced only by or under the influence of law, not by executive act only.<sup>20</sup>

The Press Council of India (PCI) was instituted to preserve the liberty of the press and to develop the measures of news reporting in India. Under the Press Council Act 1978, if someone considers that a news agency has entrusted any professional delinquency, the PCI can, if they consent with the complainant, “warn, rebuke or reprimand the newspaper”, or instruct the newspaper too, “issue the disagreement of the complainant in its impending issue.” Given that these methods can only be imposed after the publication of news materials, and do not engagemostlycallous punishments, their efficiency in avoiding the publication of prejudicial reports emerges to be restricted.<sup>21</sup>

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<sup>19</sup>5 SCC 216 (1996).

<sup>20</sup>*Supra note* 16.

<sup>21</sup><http://presscouncil.nic.in/OldWebsite/NORMS-2010.pdf> (last visited on 21/10/2014 at 00:14).

Along with these powers, the PCI has instituted a set of proposed norms for journalistic behavior. These norms highlight the importance of correctness and fairness and promote the press to “shun publication of inexact, baseless, inelegant, misleading or deformed material.” The standards insist that any disapproval of the judiciary should be circulated with great caution. These norms further advocate that reporters should shun one-sided inferences, and attempt to uphold an impartial and somber tone at all times. But considerably, these norms cannot be legally enforced, and are largely scrutinized in breach.

### CONCLUSION

From the above account, it becomes obvious that the media had a more negative sway rather than a positive effect (except for a few exceptions here and there). The media has to be appropriately controlled by the courts. The media cannot be awarded a free hand in the court proceedings as they are not some sporting occasion.

The most appropriate way to control the media will be to implement the contempt jurisdiction of the court to punish those who infringe on the basic code of conduct. The use of contempt powers against the media channels and newspapers by courts has been granted by the Supreme Court in several cases as has been pointed out earlier. The media cannot be permitted freedom of speech and expression to a level as to prejudice the trial itself. The above study reveals to us the severity of the situation as it endures in India. A perfect proposal will be that the Indian press and the Indian people are not at present democratic enough to permit the press to encroach in the judicial process. It's an ideal proposition to permit controlled media reporting of the cases once the media is presumed to come out of the profit and sensational considerations. The media has to play the role of a catalyst rather than tilting the scales in favour of one or the other party.