

# TRIAL BY MEDIA: AN INDIAN PERCEPTION

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## ABSTRACT

We are living in a democratic state where freedom of speech and expression has been given to all. Freedom to Media has been regarded as a symbol of political liberty in this modern era. The framers of the constitution well realize this fact thereby Art 19(1) e give freedom to press. Media is the forth pillar of democracy and serve a purpose of 'watchdog' over the arbitrary actions of the government. Trial by media is an attempt of media to bring out the truth before the society however while doing so media several times has crossed it limits by declaring the person guilty before the actual verdict has been given. The pretrial decision has been creating an imbalance in the actual proceeding thereby several controversies has been created on role of media in past few years. Media has been condemned several times by judiciary for their pre trial judgments.

Projecting on aforesaid scenario, the paper has been framed on a doctrinal model of research by collecting data from primary and secondary sources. The research aims to highlight the freedom given to press with reference to Right to Privacy. The research critically explains the Media Trails and checks its constitutional status. The research has critically highlighted the pros and cons of media trails with reference to recent controversies and judicial responses on them. At the end the researcher has provide a conclusion with certain recommendation to main a "harmonious Balance" between the media trail and actual trail along with freedom of press.

*The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power. Because they control the minds of the masses. – Malcom X*

Media is a very essential for democracy. It serves the purpose of 'gatekeeper' and a 'watchdog' of the society. The media acts as multifaceted institution with multiple activities. It takes the

message simultaneously from all the parties involved and builds the opinion on an issue, with definitely threatens the establishment from violating rights with the growth of the number of news channels and in increasing popularity of "breaking news" Electronic Media has come to play a major role in stirring public opinion and consciousness public advocacy outside the court through well- established mechanism like lobbying, negotiations and mobilization of public opinion has been effectively undertaken by the media.

The current trend of media on reporting cases commonly known as "Trial by media" has witnessed the sensation of self- manifested stories, half- baked truth resulting in the violation of right of individuals, resulting media reporting transforming into media circus.

Trial by media is a phrase popular in the last few decades to describe the impact of television and print media coverage on a case by creating a wide spread perception of guilt on part of accuse regardless of any verdict in a court of law and hence the accuse is held guilty even prior to his trial. The blatantly violate the code is sell their story and boost their TRP, leaving far reaching injury to the reputation of the accused. The media involves itself so intensely and during such high publicity court cases the media sensationalises the case and provokes atmosphere of public hysteria which not only makes a free and fair trial impossible but also maligns in the reputations of the accused to such degraded level that their rest of life comes under public- hatred and had scrutiny.

The media has effectively undertaken the cause of justice for the cases of Jessica Lall, Priyadarshini Mattoo, Nitish Katera, BMW case, Arushi murder case and many more simultaneously, it has on one hand without considering about the inherent or intended effect interfered with the rights of people involved in the case and on the other hand tried to usurp the prerogative of the courts to try the cases.

## **CONCEPT AND HISTORICAL BACKGROUND**

Trial by media is a phrase popular in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law. In

the United Kingdom there is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and right to a fair trial. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that regardless of the result of the trial the accused will not be able to live the rest of their life without intense public scrutiny.

Although a recently coined phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much further. This is not including the use of a state-controlled press to criminalize political opponents, but in its commonly understood meaning covers all occasions where the reputation of a person has been drastically affected by ostensibly non-political publications.

In India the media has come in focus in its role in the trial of Jessica Lal murder case. The concept of media trial is not a new concept. The role of media was debated in the Priyadarshini Mattoo case and likewise many other high profile cases. There have been numerous instances in which media has been accused of conducting the trial of the accused and passing the 'verdict' even before the court passes its judgment. Trial is essentially a process to be carried out by the courts. The trial by media is definitely an undue interference in the process of justice delivery. Before delving into the issue of justifiability of media trial it would be pertinent to first try to define what actually the 'trial by media' means. Trial is a word which is associated with the process of justice. It is the essential component on any judicial system that the accused should receive a fair trial.

## **MEDIA TRIAL AND INDIAN CONSTITUTION**

There is no specific mention of media trial in the Constitution of India. Freedom of media implies the freedom of speech and expression of the general public. So, while interpreting Article 19 which talks about right to freedom of speech and expression we can find the tenets of media trial. However the freedom is not absolute as it is bound by the sub clause (2) of the same article.

***Freedom of Press Vs. Right to Privacy: A paradox***

Right of privacy has been a relative latecomer to the system of individual rights. Right to privacy has been form of a constitutional right against governmental interference with the inner zones of space necessary to individual dignity and autonomy. Freedom of the press or freedom of the media is the freedom of communication and expression through mediums including various electronic media and published materials. It is the fundamental right of freedom which is implicit in Art 19 of freedom of Speech and expression which is essential for democracy. The American Press Commission Has said that “*freedom of press is essential for political liberty of a nation. Free expression of press is unique among liberties.* While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections.

A well defined definition of freedom of Press came in case of Indian Express Newspaper v Union of India “*The expression of freedom of press has been used in Art 19 but it is comprehended within Article 19(1)(a) of the constitution of India. The Expression means freedom from Interference with the content and circulation of newspaper. There cannot be interference on name of public interest*”. Freedom of press has been regarded has heart of social and political intercourse. *It shall be primary duty of courts to uphold freedom of press and invalidate all laws or administrative actions which interfere with it contrary to constitutional mandate.* The freedom of press is a necessary concomitant of the freedom of expression that involves a right to receive and impart information without which democracy becomes an empty slogan.

The next question that clicks the mind of constitutional experts is whether this freedom of expression could be extended beyond ambit of state to private individual or not? The liberal interpretation of courts extended its ambit to private individuals in certain case also. The next hurdle which came thereby was the new inborn right of privacy which was getting overlapped by this freedom. The ambiguity this problem was solved by judiciary in India which declared this freedom as not absolute .This right is not absolute and is subjected to the reasonable restrictions of defamation and contempt of court among other mentioned in clause (2). In the famous case of *Prabhu Dutt vs Union of India* the supreme court held that *freedom of media is present in constitution but this is not absolute. Restriction can be imposed on it in*

*interest of society and information* This ruling again gave ground to Right of privacy to exist in Freedom to Media. Since freedom to media and right of privacy both derive their origination from constitution therefore neither of them can overpower each other. A well balanced approach depending on circumstance has taken while judging any case on this. In an instance deprivation of journalist to take interview to a condemned prisoner was deprivation of Freedom of Speech and expression and on second instance a denial of interview of under trail prisoner was not deemed as violation of Art 19(1)(a). The court said that there shall be an application of mind while judging such instances where it shall be taken into account that all the possible factors.

Right to Privacy is one of such factor which shall be considered while judging this case. In the famous case of Bobby Art International v Om Pal Singh Hoon which is also known as the 'Bandit Queen' Case. The respondent filled a writ petition for quashing of the certificate of Censor board which permitted the exhibition of the movie. It was challenge that the story showed certain instance and scene which shall be against the "womenhood". It was also contested that there are certain names that shall effect the status of certain community at large. The Supreme Court allowed showing of the movie declaring its ruling as "the movie was based on true grounds and it shall be considered for its overall impact. "A" certificate is a reasonable restriction imposed on the exhibition of the movie therefore the movie *shall not be stopped exhibition*. In the famous case of R. Rajagopal vs State of T.N popularly known as AutoShanker case. The court held on the issue of privacy and freedom to media that "This is included in Art 21 of the constitution and a citizen has a right to safeguard his own, his marriage, procreation motherhood, child bearing and education among matter No one can publish anything without their consent and if some one does so it would violate the right of privacy of the person. However the court said that privacy object will become unobjectionable if such publication was based on public record or even court records. Similarly in case of Mr.X v Hospital Z Court held that right of privacy is not absolute, When Right of privacy overlaps the interest of public health and morality its shall be overpowered for the good of greater number of people. In the case of People's Union of civil Liberties v Union of India the court allowed the phone tapping if it comes before any public emergency.

Whenever there is a conflict between Right of privacy and Freedom of Media , the basic test of Utilitarianism shall be applied. Law is based on the principal of justice which considers keep interest of masses at higher footings than interest of individuals. Right of privacy is a right for the individual and freedom of Media is benefiting major section of people. Therefore laws upheld those things which benefits the masses but does not mean that individual rights get neglected. Whenever a conflict between both right are clashed the court try to maintain an “Harmonious relation” between both and judgement is purely on the merit of the matter irrespective of the footings. However since laws always seeks to establish justice to all it strongly verify the merits of the act. Unless and until the act benefits the masses at large or a matter of public emergency is not cropped effectively individual liberty is always tried to be maintained.

### ***Free Speech Vs. Fair Trial***

In the criminal justice system, which we have been following, the guilt is to be proved beyond reasonable doubt and the law is governed by senses and not by emotions. While displaying our emotions, the media and the masses forget that it puts tremendous pressure on the judge presiding over the case. How can we expect a fair judgment from a judge who is under such tremendous pressure from all sections of the society? A person is presumed to be innocent unless he is held guilty by the competent court, but here the trend is to declare a person guilty right at the time of arrest. The media is there to report facts or news and raise public issues; it is not there to pass judgments.

The print and electronic media have gone into fierce and ruthless competition, as we call them ‘aggressive journalism’ that a multitude of cameras are flashed at the suspects or the accused and the police are not even allowed to take the suspects or accused from their transport vehicles into the courts or vice versa. The Press Council of India issues guidelines from time to time and in some cases, it does take action. But, even if ‘apologies’ are directed to be published; they are published in such a way that either they are not apologies or the apologies are published in the papers at places which are not very prominent. The most objectionable part, and unfortunate too, of the recently incarnated role of media is that the coverage of a sensational crime and its adducing of ‘evidence’ begins very early, mostly even before the person who will eventually preside over the trial even takes cognizance of the offence, and secondly that the media is not bound by the traditional rules of evidence which regulate what material can, and

cannot be used to convict an accused. In fact, the Right to Justice of a victim can often be compromised in other ways as well, especially in Rape and Sexual Assault cases, in which often, the past sexual history of a prosecutrix may find its way into newspapers. Secondly, the media treats seasoned criminal and the ordinary one, sometimes even the innocents, alike without any reasonable discrimination. They are treated as a 'television item' keeping at stake the reputation and image. Even if they are acquitted by the court on the grounds of proof beyond reasonable doubt, they cannot resurrect their previous image. Such kind of exposure provided to them is likely to jeopardize all these cherished rights accompanying liberty.

### ***Right to Fair Trial***

The right to fair trial is an essential right in all countries respecting the rule of law. A trial in these countries that is deemed unfair will typically be restarted, or its verdict voided. Various rights associated with a fair trial are explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights, the Sixth Amendment to the United States Constitution, and Article 6 of the European Convention of Human Rights, as well as numerous other constitutions and declarations throughout the world. There is no binding international law that defines what is or is not a fair trial, for example the right to a jury trial and other important procedures vary from nation to nation.

Right to a fair trial is absolute right of every individual within the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution. Needless to say right to a fair trial is more important as it is an absolute right which flows from Article 21 of the constitution to be read with Article 14. Freedom of speech and expression incorporated under Article 19 (1)(a) has been put under 'reasonable restriction' subject to Article 19 (2) and Section 2 (c) of the Contempt of Court Act. One's life with dignity is always given a priority in comparison to one's right to freedom of speech and expression. Media should also ponder upon these facts. Fair trial is not purely private benefit for an accused – the public's confidence in the integrity of the justice system is crucial. The right to a fair trial is at the heart of the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, the right not to be compelled to be a witness against oneself, the right to a public trial, the right to legal representation, the right to speedy trial, the right to be present during trial and examine witnesses, etc. In the case of *Zahira Habibullah Sheikh v. State of*

Gujarat, 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 Gupta and Ors. v. B.K. Sen. and Anr*, it was also held by the Supreme Court 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 that investigation. This is because 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 a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case.”

### **LAW COMMISSION’S 200<sup>TH</sup> REPORT**

The 17th Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial. The subject “Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)” was taken up suo motu by the Commission having regard to the extensive prejudicial coverage of crime and information about suspects and the accused, both in the print and electronic media.

In its 200th report submitted to the Government, the Commission said, “Today there is a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice.”

The report said, “according to our law, a suspect/accused is entitled to a fair procedure and is presumed to be innocent till proved guilty in a court of law. None can be allowed to prejudge or prejudice his case by the time it goes to trial.”



It said that publications, which interfered or tend to interfere with the administration of justice would amount to criminal contempt under the Contempt of Courts Act, 1971 and “if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.”

The report noted that at present, under Section 3 (2) of the Contempt of Courts Act, such publications would be contempt only if a charge sheet had been filed in a criminal case. The Commission has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case.

Another controversial recommendation suggested was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast. The Commission said that such a practice was prevalent in many countries including the U.K. The report also said that publications with reference to character of the accused, previous convictions, confessions, judging the guilt or innocence of the accused or discrediting witnesses could be a criminal contempt. The report has also discussed the recent phenomenon of media interviewing potential witnesses, about publicity that was given by the police and about investigative journalism.

Enclosing a draft Bill, the Commission said that this report was important and crucial for the country as far as criminal justice was concerned. Since there was interference with the due administration of criminal justice, this would have to be remedied by Parliament.

## **THREATS OF MEDIA TRIAL AND ITS JUSTIFICATION**

Media is the fourth pillar of modern democracy in 21<sup>st</sup> century. It is the custodian of interest of the people. Freedom given to media is often regarded as a symbol of political liberty if a nation where all acts of governments can be openly brought before the eye of the citizen of the nation. Indian press commission says that “*Democracy can not only thrive under the vigilant eye of the legislature but also under the care of press which is at par, the vehicle through which public can be articulated*”. Media serves the role of checks and balance for the administrating

policies of the government this has been a reason why framers of the constitution has always given strong emphasis on the freedom to press and several times it has proved to be benefit for the public at large.

With effect of technological boom this fourth pillar has been the most powerful tool in modern times. Visual and print media has a direct access to people at large thereby role of media in our society has been evolving at a rapid pace. Trail by Media is one of such increased role that has incarnated with effect to new role of media in our society. Trail by media is an investigation and a detail description that of an offence or a crime in the society has been presented before the people which is subjudice in nature. The media analysis the role of accused and presents a well details aspects of the case while dealing the facts and immediate evidence presented before the court. In other word, parallel trials are run on channels rather than in courts where the immediate evidence and the documents has been analyzed in front of citizens. By this tool the media actively try to aware people about the proceeding of trail and highlight the accused. Trail by media has proved to be a boon for several case where justice was either delayed to such and extend that it was almost denied or justice has been completely denied due to the political power to the culprits. It has brought justice by highlighting the various problems and under trail cases. In the famous case of Jessica Lal murder where due to extensive pressure of politic background the accused and loop hole of our legal system the justice was misled in the aforesaid case. The tool of sec 311 of Cr.PC was used by the judge which empowered the judge to give the decision gave it in favor of the accused due to sudden turnings of witness. However the actual justice was not delivered. Then role of media came which highlighted the facts of the case and carved the way to justice to the victims. Media in several instance proved to be the ray of hope in the darkness of corruption in this society. The exposing of the 2g Spectrum case or whether the exposure of minister who were watching porn in the parliament has exposed.

However the absolute power corrupts doctrine was well established in case of media also. the right its freedom and speech and expression does not embrace the freedom to commit contempt of court. It is becoming a pernicious media practice to blame the accused in a crime even before the judiciary ruling. Trail by Media is becoming a threat to the active judicial proceedings .

Media presents the facts in front of the people in such a manner targeting the emotions of the viewers. In case of Priyadarshani Muttho case None of us know whether Santosh had actually committed the rape and murder, but we all believe that — and believed so right from the beginning — that he indeed committed the crime. Similarly under the famous Arushi Murder case there was a depiction of series of people who were declared as the accused with imaginary interpretation of the facts. It was even found that one of the suspect who was declared as the Murderer was found dead next day. Later several accusations were made on various relatives of the deceased degrading their image in society.

Right after the incident, the media trial begins and all media entities — print or electronic — more or less have similar focus in their stories. With the depiction of the incident in most heart-sensory ways, the story is presented to the viewers as if the accused is really the culprit hitting their emotions. In instances where the charge is not proved in the court, there are SMS campaigns, blogging outrages, candle-lit processions, and rallies to mobilize the citizens against the “injustice” done by the courts and to put the pressure on the appellate court. In a criminal justice system the justice should be given when guilt has been proved beyond reasonable doubt however before the guilt has been established by the court.

It has been seen and observed in the recent Zee news controversy that the chiefs of the channels were found asking bribes. This shows that trial by media is strongly influenced by the rich and justice can be manipulated by them at the cost of pockets of rich who can afford to bury justice. The question that rises in the mind is that what is the difference in the situation when officials by taking bribes delay justice and in case of trial by media.

The problem has been faced by courts on several instances where huge pressure was mounted by courts before giving the judgment. The pre-trial judgmental opinion has been a matter of trouble and great concern for the judiciary. A Bench of Justice N. Santosh Hegde and Justice S.B. Sinha described the trial by the media in pending cases as a disturbing factor in the administration of justice. In another instance Justice J.D. Kapoor observed while pronouncing the verdict in the Bofors pay-off case: *“Stressing that the streams of justice have to be kept clear and pure, the court said “there is nothing more incumbent upon courts of justice than to preserve their proceedings from being misrepresented than to prejudice the minds of the public against persons concerned before the case is finally heard.”* Finally solving the problem Chief

Justice of India S.H. Kapadia, said that *if publishing news related to a trial would “create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial”, the court could grant a postponement order, temporarily gagging electronic or print media from reporting on the case.*

Thus a reasonable restriction should be applied by courts so that this issue can be solved.

## **CONCLUSION AND SUGGESTIONS**

From the above account it becomes clear that the media had a negative influence as well as a positive effect. The media has to be properly regulated by the courts. The media cannot be granted a free hand in the court proceedings as they are not some sporting event. The law commission also has come up with a report on ‘Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)’ [Report number 200 prepared in 2006]. The report is still pending in the Parliament as such the researcher could not get a copy of the report. It will be available to the public once it is presented in the Parliament.

Any institution, be it legislature, executive, judiciary or bureaucracy, is liable to be abused if it exceeds its legitimate jurisdiction and functions. But sometimes these ultravires activities are blessing in disguise as is the case of judicial activism. Media trial is also an appreciable effort along with the revolutionary sting operations as it keeps a close watch over the investigations and activities of police administration and executive. But there must be a reasonable self-restriction over its arena and due emphasis should be given to the fair trial and court procedures must be respected with adequate sense of responsibility. Media should acknowledge the fact that whatever they publish has a great impact over the spectator. Therefore, it is the moral duty of media to show the truth and that too at the right time.

Media forms the backbone of the society, as many authors say “eyes and ears of the general public”. A responsible media needs to take into the consideration the reliance entrusted on it by the general public and confidence and faith as to blindly accept that truth of the news published by media. In doing so the media should follow certain norms in reporting a crime which is globally accepted:

- Accuracy and fairness shall be maintained in reporting.
- Factual accuracy of the report shall be verified before publication.
- Every caution shall be undertaken against defamatory writings.
- Right to privacy shall not be intruded or invaded unless over weighted by genuine overriding public interest.
- Due care shall be exercised in making fair criticism of judgement and reporting court proceedings.
- Reports shall not be published based on conjecture or surmises or in suspicion.
- Glorification of an act of violence shall be forbidden.
- The heading shall not be sensational or provocative and it must justify the matter printed under them.
- Correction shall be made or published without any delay in cases of error.

