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IMPACT OF MEDIA TRIAL ON JUDICIARY

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ABSTRACT

The 21st century has revolutionized the media world, and this era witnessed a fundamental shift in the way we communicate from traditional print media like newspaper, and television and the modern media like social media. British Member of Parliament, Lord Macaulay, had, years ago, called the media “the fourth pillar of democracy”. It has since been quoted often, and a free media is considered indispensable in a democracy. But the media today is not what it was then. Multiple factors have led to media organizations compromising their journalistic ethics and principles which harms the nation in a big way.

Media intervention in under trial cases has become very normal affairs in the society. Judges are compelled somehow to take decision according to the follow up of Media criticism. For which, declaration of verdict by media becomes the final verdict in trial courts, especially in many high-profile cases. Reincarnated as public court, media separately starts investigation and forms public opinion. It is obvious that to run the democracy very smoothly, a free and healthy media functionary is needed. But most of the time the freedom of expression is engrossed the controversy by the sub clause (2), article 19 of the Constitution of India. It does not embrace the freedom to contempt of court. But according to the demand of current situation, media significantly involves when justice is totally denied or delayed. Though media helps in social, political changes but sometimes it is also seen frequently that media involves into the money-making business.

This paper is an attempt to analyse the impacts caused by the media trial and how it takes the cover of freedom of speech and expression to continue with the undue interference with the administration of justice. The dissertation also analyses the effect of media trial on right to privacy, right to reputation, right to be legally represented and right to a fair trial.

Keyword: Media Trail, Freedom of speech, Fair Trial, Contempt of Court, Right to Privacy.

INTRODUCTION

Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law. “Freedom of Speech and Expression” is provided through various processes; however, this right is not completely unrestricted and as already mentioned certain “reasonable restrictions” can be imposed. Like the need for maintaining and preserving “freedom of speech and expression” in a democracy. It is also important to put some restrictions on that freedom for the purpose of maintaining the social order.

Media limited to the imparting of information in a neutral manner to the society is preferable than conducting trials by media which may contradict with the fair trial. The difficult reaches its peak when there is extensive coverage by the media of matters that are *sub judiced*, and publishes opinion and information that patently prejudice the interests of the parties in a case which is pending before a Court. The institution of the judiciary can conduct a fair trial and the trials by media should be avoided or else it would lead to interference with the work of the judiciary. This issue of “media trial” is of serious concern and it needs to be addressed. Freedom of the press should not be such that it causes harm to the individual or the society at large. Media should be responsible in their conduct and thus its freedom, like any other freedom, cannot be absolute.

OBJECTIVES OF THE STUDY

- To study the evolution of media trial in India
- To look into the role played by media in a democracy.
- To study the evolution of freedom of speech and expression in India
- To examine the consequence of trial by media and its conflict with the various impact in Indian Judiciary

CONCEPT OF MEDIA TRIAL

Trial by media is recently coined term and still a debatable term where it is used to denote a facet of media activism. These are generally defined as national or regional news events in which criminal justice system is co-opted as source of high drama and entertainment. Independent Judiciary and free press both are concomitant of Constitutional democracy.

In recent years, with the growth of cable television, local radio, newspapers the range and reach of media has increased a lot. This continuously expanding readership and viewership as given our news media organisers, an unprecedented role in shaping popular opinions and preferences. The expression ‘trial by media’ itself is misnomer. The word trial is nowhere defined in Civil Procedure Code and Criminal procedure Code. Trial is essentially a

process to be carried out by the courts. The trial by media is 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 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.

The Honourable Justice Kurian Joseph of Supreme Court of India while addressing Bar Council of India Meet at Chennai on 26-07-2015 citing pressure on the judiciary during the Nirbhaya rape case had remarked that Media Trials in pending cases should be avoided and thereby judges saved of the enormous strain created by it. "Please stop trying (cases) in the media till a case is over. Never try a case in the media, it creates a lot of pressure on judges, they are also human beings," Referring to "the amount of pressure that is built," he recalled how a judge who dealt with the case had once told him that "had he not given that punishment, they would have hung him." The Judge said, "If I had not given that punishment, they Would have hung me, the media had already given their verdict, (like) it is going to be this only". He, however, added, "He (the Judge who went into Nirbhaya case) had reasons to give the punishment, not because the media said it, but because he had reasons."¹

In *R.K. Anand v. Delhi High Court*², the Hon'ble Supreme Court interpreted trial by media as the impact of television and newspaper reporting on a person's reputation by producing a widespread perception of guilt, independent of any court verdict. In high-profile cases, media are often accused of causing an environment of mass outrage comparable to a lynch mob, which not only makes a fair trial unlikely but also ensures that, irrespective of the outcome of the trial, accused is already guilty in the eyes of the public perception and therefore is condemned to live the rest of his life under intense public scrutiny.

In cases where leading celebrities are involved, the influence of the media could drastically change the opinion of the "fans" of such influential celebrities. One such case has been *Rhea Chakraborty v. the State of Bihar, 2020 (Sushant Singh Rajput Death Case)* where media had played a crucial role and the accused raised the issue of media trials.

ROLE OF MEDIA IN DEMOCRATIC SOCIETY

The Supreme Court of India explained that the right of the people to know is the fundamental principle behind the "freedom of the press". The Supreme Court stated, "The primary function, therefore, of the press is to provide comprehensive and objective information on all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion".³

¹ SC row: Four dissenting judges attend court, Bar Council says 'issue resolved', India TV (15/01/2018), available at: <https://www.indiatvnews.com/news/india-sc-row-issue-settled-says-ag-kk-venugopal-all-four-judges-attend-court-422248>

² AIR (2009) 9 SCC 106

³ In Re: Harijai Singh and Anr.; In Re: Vijay Kumar, (1996) 6 SCC 466

The “freedom of the press” promotes the “right to know” by giving the access to the public to all sources of information. It keeps the public aware about all the issues, so that when the time comes to make a reasonable decision on matters relating to the society at large, the people are ready. When it comes to investigative journalism two elements are most significant, firstly, “the subject should be of public importance for the reader to know” and secondly, an endeavour is being made to conceal the truth from the public.⁴ The role of media in a democracy is to promote transparency. The media allows the public to express their views on issues of public importance.

MEDIA TRIALS VS JUDICIARY

In India, media trials have assumed significance. There have been several cases where the media had taken the case into their own hands and declared judgment against an accused contrary to fair trials in court. There have been quite infamous cases as well that outraged the public and impacted the Judiciary such as *The Jessica Lal case, 2010*⁵, where the media rejoiced over their efforts in bringing justice to Jessica Lal and the trial court had acquitted the accused of all the charges. *The Priyadarshini Mattoo case, 2006*⁶ where a law student was raped and murdered, and the judgment of this case was suspected to have been influenced by Media Trial. The *Bijal Joshi rape case* and *Nitish Katara murder case* gave credits to media where the accused would have gone unpunished if media would not had intervened. But on the other side media also pinpointed innocent people in the case of *Malegaon blast* and *Maria Susairaj case* ignoring the importance of accuracy.

The Delhi High Court in a *suo motu case*⁷ observed that the justice delivery system in India moves forward in a very slow manner and in that course of time if a person who is “innocent” is subjected to media trial then there is no real remedy for that person. Consequently, in a case of “trial by media” it is rare to see any person approaching a Court of law to claim relief either by way of an “injunction” or for “damages”. The Court further said that there is a great responsibility of all the Courts to protect the individual’s rights and reputation from an unwarranted “trial by media” by being more vigilant and pro-active. In a sense, the Courts must energize the “rule of law”. It is important to protect a citizen from being victimized by the media, even though it adds burden to the criminal courts. Suppose based on a suspicion that a crime has been committed, a person is arrested then the person should not be declared as innocent or guilty by the media because it is not the function of media. This function comes under the domain of the judiciary. So, the “trial by media” affects the judgment of the Court and at the same time also harms the accused because the accused should be generally presumed as innocent until he is proven guilty.

⁴ Zehra Khan, “Trial-By-Media: Derailing Judicial Process in India”, 1 MLR (2010), p. 94.

⁵ Manu Sharma v State (NCT of Delhi, AIR 2010 6 SCC 1.

⁶ Santosh Kumar v State, AIR 2010(9) SCC 747.

⁷ 2009(1) KLD 133.

Even Judiciary is not free from faults. Judges and other judicial officers being humans cannot be said to be free from faults either. They can also be “subconsciously influenced” by media trials or media publicity. Therefore, it becomes important to pass regulations with respect to media publicity while a trial is going on or pending.

MEDIA TRIALS VS FREEDOM OF SPEECH AND EXPRESSION

In Constituent Assembly Debates, Dr. B. R. Ambedkar said that:

*“Press has no special rights which are not to be given or which are not to be exercised by the citizens in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press.”*⁸

The freedom relating to media does not find its mention anywhere in the Part III of the Indian Constitution. There is no such explicit guarantee under the Constitution of India about this freedom of media. This freedom is implied in Article 19 (1) (a) of the Constitution of India guaranteeing “freedom of speech and expression”. Even if there is no such specific mention about this freedom, it created no such difficulty for the Courts in India to protect the freedom of media.

Freedom of media is not absolute and even committed liberals are of the view that free speech rights are not unconditional or unlimited, but they are not sure about what are the limits that should be set. Free press does not provide a license to publish and broadcast anything without any restriction. It is the duty of the media to make sure that the information received by the public is accurate and does not in any way affects the rights of other. Thus, the Article 19 (2) sets out the grounds on which limits can be imposed upon the “freedom of expression”. Those “limits” flow from the “right to privacy”, “right to reputation”, the law of “contempt of court” etc.⁹

Freedom of speech i.e. Article 19(1)(a) plays an important role in the formation of public opinion on social, political, and economic matters. Thus, it can be said that freedom of speech is the mother of all other liberties. Complying to the statement Justice Venkataramiah of the Supreme Court in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India (1984)*¹⁰ has iterated:

“Freedom of press is the heart of social and political intercourse. The press has now presumed the role of the public educator making formal and non-formal education feasible in a large scale particularly in the developing world, where television or modern communication devices are not still available for all sections of society.”

⁸ Dr. Ambedkar’s Speech in Constituent Assembly Debates, VII, 980.

⁹ Onora O Neill, “A right to offend”, available at: <https://www.theguardian.com/media/2006/feb/13/mondaymediasection7> (Visited on December 28, 2022).

¹⁰ AIR 1986 SC 515.

So, while criticizing a person if the press indulges in libel or slander then the press has to be answerable in law for such an offence. Similarly, by using “freedom of speech and expression” as a veil by the “press”, it cannot infringe the privacy of an individual. Also, the press cannot take up parallel trials when a trial is going on before a court of law. This will amount into “contempt of court”.

In *Printers (Mysore) Ltd. v. CTO*,¹¹ 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.

It therefore received a generous support from all those who believe in the free flow of the information and participation of the people in the administration; it is the primary duty of all national courts to uphold this freedom and invalidate all laws or administrative actions which interfere with this freedom, are contrary to the constitutional mandate

In *R. Rajagopal v. State of T.N.*,¹² the Supreme Court of India has held that freedom of the press extends to engaging in uninhabited debate 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 maintained defamation has to be performed in terms of the democratic way of life laid down in the Constitution.

After the introduction of Target Rating point (TRP) the competition has increased among the media houses which has created great amount of pressure on journalism. Before the introduction of this TRP, journalists used to work with braveness, integrity and impartially. But with the need of increasing TRP scales, the media war has become ruthless. To regulating the media certain guidelines and norms are set by the Press Council of India.

MEDIA TRIAL VS. FAIR TRIAL

Article 10 of the UDHR runs as follows “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Article 11 of UDHR provides that “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” Article 14 and 16 of “International Covenant on Civil and Political Rights” also protects the “right to fair trial” and it is binding on the member states.

¹¹ AIR 1994 2 SCC 434.

¹² AIR 1994 6 SCC 632.

When taking into consideration the Indian legal system, this international promise relating to the fair trial has its reflection in the constitutional scheme and procedural law. “Right to fair trial” in a “criminal prosecution” is impliedly mentioned under the “right to life” guaranteed by Article 21 of the Constitution of India.¹³

Trial by media has created a “problem” because it involves a tug of war between two conflicting principles – free press and free trial, in both of which the public are vitally interested. The freedom of the press stems from the right of the public in a democracy to be involved on the issues of the day, which affect them. This is the justification for investigative and campaign journalism

At the same time, the “Right to Fair Trial”, i.e., a trial uninfluenced by extraneous pressures is acknowledged as a basic tenet of justice in India. Legal provisions aimed at securing the said right is contained under the Contempt of Courts Act, 1971 and under Articles 129 and 215 of Indian Constitution (Contempt Jurisdiction that is; Power of Supreme Court and High Court to punish for Contempt of itself respectively). Of particular concern to the media are restrictions which are imposed on the discussion or publication of matters relating to the merits of a case pending before a Court. A journalist may thus be liable for contempt of Court if he publishes anything which might prejudice a ‘fair trial’ or anything which impairs the impartiality of the Court to decide a cause on its merits, whether the proceedings before the Court be a criminal or civil proceeding.¹⁴

The media exceeds its right by publications that are recognized as prejudicial to a suspect or accused like concerning the character of accused, publication of confessions, publications which comment or reflect upon the merits of the case, photographs, police activities, imputation of innocence, creating an atmosphere of prejudice, criticism of witnesses, the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, the guilt is to be proved beyond reasonable doubt and the law is governed by senses and not by emotions 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 *Zahira Habibullah Sheikh v. State of Gujarat*,¹⁵ 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.”

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. The right to freedom of speech and expression

¹³ Press Law Guide, “Fair Trial”, available at: <http://www.thehoot.org/press-laws-guide/fair-trial-6286> (Visited on December 28, 2022).

¹⁴ Nimisha Jha, NLIU, Bhopal, Constitutionality of media trials in India: a detailed analysis, lawctopus, available at: <https://www.lawctopus.com/academike/media-trials-india/> (visited on December 28, 2022).

¹⁵ AIR 2002(2 SCC (Jour) 75.

in contained in article 19 of the constitution. Article 19(1) (a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression. In accordance with Article 19(2), this right can be restricted by law only in the “interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”.

Fair trial involves independent judges, public hearing, the presumption of innocence, right to counsel and many other factors. The proceedings of a case are expected to be conducted by impartial, independent, and competent Judges to ensure the fair trial. So, right to fair trial in a democracy is of utmost importance from proper administration justice. When a fair trial is denied to an accused, it is as much injustice to the “accused” as much as it is to the “victim” and the “society”.

The media has again come in focus in its role in the trial of *Jessica Lal murder case*,¹⁶ the court held that despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper the fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

In India, the courts have the power to pass pre-publication or pre-broadcasting injunction or prior restraint order in sub-judice matters. The two-pronged test of necessity and proportionality must be satisfied before ordering postponement of publication. Moreover, the injunction order should only be passed if reasonable alternative methods or measures would not prevent the said risk. Before airing any story pertaining to the plaintiff, the defendants shall give the plaintiff a written notice, by electronic mode, asking for his version. If the plaintiff refuses or does not reply within a reasonable time, he will not be compelled to speak, and the story will be aired with the disclosure that the plaintiff has refused to defend.

MEDIA TRIAL VS. RIGHT TO BE REPRESENTED

Through media trial, it have started to create pressure on the lawyers even to not take up cases of accused, thus trying to force these accused to go to trial without any defense. Is this not against the principles of natural justice? Every person has a right to get himself represented by a lawyer of his choice and put his point before the adjudicating court and no one has the right to debar him from doing so. For an instance, when eminent lawyer Ram Jethmalani decided to defend Manu Sharma, a prime accused in a murder case, he was subject to public derision. A senior editor of a television news channel CNN-IBN called the decision to represent Sharma an attempt to “defend the indefensible”. This was only one example of the media instigated campaign against the accused. As it

¹⁶ Manu Sharma v. State (NCT of Delhi), AIR 2010(9) SCC 747.

is well known that for that case they had one of the best lawyers of the country, Gopal Subramaniam, appearing for the state and the case of Manu was handed to some mediocre lawyer.

MEDIAL TRIAL V SUBCONSCIOUS EFFECT OF THE JUDGE

Another worrying factor and one of the major allegations upon ‘media trial’ is prejudicing the judges presiding over a particular case. It is a serious matter to be worried about and there are allegations on the “media trials” having influence over the judges. The American view differs from that of the Anglo-Saxon view with respect to this matter. The former view is that “Jurors” and “Judges” are not subject to be affected by the publication of media, whereas the latter view is that there is a scope of judges getting influenced subconsciously though not consciously which makes the people think that such media publications have an influence upon the judges.¹⁷

Any publication that intends to poison the minds of the judge should amount to contempt of court. Although, the reliance is made on the impartial and competent judges in a judicial system but still restraint must be put on media trial which may have a potential influence on the judges’ subconscious. The capacity of the media to influence conduct and formulations of biases and opinions cannot be precluded. In *In Re: P. C. Sen*¹⁸, it was expressed that the genuine risk of prejudicial remarks made in newspapers or by any mass media which must be guarded against is the —*impression that such comments might have on the Judge’s mind or even on the minds of witnesses for a litigant.*

The fragility of the judicial system originates from the very fact that judges are human beings, and the rational process of adjudication may be tainted by an undue influence of irresponsible expression. In *Rao Harnarain v. Gumani Ram*¹⁹, the Court deprecated the practice of “*trial by media*”, wherein the Court observed that journalist cannot take up the role of an investigator during the pendency of a case and then try to influence the Court. Influence on the Judges by the media has been denied tacitly by the Judiciary of India. The Supreme Court observed that, “*the grievance relating to trial by press would stand on a different footing. Judges do not get influenced by propaganda or adverse publicity.*”²⁰ The judiciary has not directly accepted any influence of media trial on the judges but showed concern about the impact that the media might have on the trial which is pending before a court.

¹⁷ 200th Law Commission of India Report, Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure (amendments to the Contempt of Court Act, 1971), 46 (2006), available at: <https://lawcommissionofindia.nic.in/reports/rep200.pdf> (Visited on December 28, 2022).

¹⁸ AIR 1970 SC 1821.

¹⁹ AIR 1958 P H 273.

²⁰ Balakrishna Pillai v. State of Kerala, AIR 2000 SC 2778.

MEDIA TRIAL VS ITS EFFECT ON RIGHT TO PRIVACY

The law of privacy is recognition of the individual's right to be let alone and to have his personal space inviolate. The need for privacy and its recognition as a right is a modern phenomenon. It is a product of an increasingly individualistic society in which the focus has been shifted from society to the individual.

Article 12 of the UDHR runs as follows "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." The "right to privacy" is declared as a "fundamental right" in India by the Apex Court.²¹

In India, the right to privacy is not a specific fundamental right but has nevertheless gained constitutional recognition. "Privacy" is not enumerated amongst the various reasonable restrictions to the right to freedom of Speech and Expression enlisted under Article 19(2). However, this lacuna has not prevented the court carving out a constitutional right to privacy by a creative interpretation of the right to life under Article 21 and the right to freedom of movement under Article 19(1)(d)

The first case related to right to privacy was *Kharak Singh vs. State of U.P.*²² In this case the majority were unreceptive to the idea of recognising a right to privacy and dismissed the claim on the ground that there could be no fundamental right to protect mere personal sensitiveness'. But subsequently, the Court acknowledged a limited right to privacy in the case of *Govind vs. State of M.P.*²³ The Supreme Court touched the rights of the individual to privacy vis-à-vis invasions by journalists in *Sheela Barse vs. Union of India*²⁴, *Prabha Dutt vs. Union of India*²⁵ and also in *State vs. Charulata Joshi*.²⁶ In all these cases, journalists sought permission from the Supreme Court to interview and photograph the prisoners. Although, the issue of privacy was not directly dealt with, the court implicitly acknowledged the right to privacy by holding that the press has no absolute right to interview or photograph a prisoner but could do so only with his consent.

MEDIA VS CONTEMPT OF COURT

It is well known by now that the "right to freedom of speech and expression" guaranteed by the Constitution of India is "not absolute" and "reasonable restrictions" may be imposed on this right based on various grounds including "contempt of court".

²¹ Justice K. S. Puttaswamy (Retd.) and Anr. V. Union of India and Ors., writ petition (civil) no 494 of 2012.

²² AIR 1963 SC 1295.

²³ AIR 1975 2 SCC 148; 1975 SCC (Cri) 468.

²⁴ AIR 1987 4 SCC 373.

²⁵ AIR 1982 1 SCC 1.

²⁶ AIR 1999 4 SCC 65.

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 nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trial. In such cases, there is no other practical means short of postponement orders that can avoid such risk of prejudice to the later or connected trial.

Under the Contempt of Courts Act, 1971, publications under free trials are sheltered against contempt proceedings. However, any publication which interferes with or obstructs or tends to obstruct any proceeding, be it civil or criminal, and the course of justice, which is a pending proceeding, constitutes the contempt of court. It has been termed as contempt because some of the acts which are published before the verdict given by the court, can mislead the public and affect the rights of the accused of a fair trial. Such kind of publications may be related to his previous convictions or the confession he made in front of the police or merely character assassination of the accused.

Hence the inaccuracy of reporting of court proceedings will be contempt only if it can be said on the facts of a particular case, to amount to substantial interference with the administration of justice. The reason behind Section 4 of the Contempt of court Act of 1981 is to grant a privilege in favor of the person who makes the publication provided it is fair and accurate. This is based on the presumption of “open justice” in courts.

In the very famous case of *Aarushi Talwar's Murder*,²⁷ 2013, the media had declared who was guilty and who was not even before the actual trial had begun. There were mass protests and the public had gone into hysterics over the fact that her own parents were the cause of her death. But, this is also an immunity given to the press, even though the media had gone berserk in this case. Such publications have been known to have gone unchecked without the interference of the legislature.

200TH LAW COMMISSION REPORT

The “Seventeenth Law Commission” through its 200th report on “*Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)*” has made several recommendations with the view to address issues which are crucial in India so far as “criminal justice” is concerned. The Law Commission took this subject relating to media trial *suo motu*, after considering the large-scale coverage by the “print” and “electronic media” of crime and information relating to accused and suspects. With the increasing use of the television, there has been a change in the entire pattern of news publication and many of these publications have a prejudicial effect on the “accused”, “suspects”, “witnesses” and also on “judges” and mainly on the “administration of justice”. According to the Indian legal system, a fair procedure is to be followed and accused or suspect must be presumed as “innocent” until the Court of law proves him guilty.

²⁷ 2013 (82) ACC 303.

In the Law Commission Report, it has been pointed out that the Supreme Court and the House of Lords have accepted that the judges are affected subconsciously by the prejudicial publications relating to an accused or suspect. It may happen at a stage when bail is granted or refused or during the trial. Unlike the Contempt of Courts Act of 1971, the Acts of 1926 and 1952 did not define “civil” or “criminal” contempt. Until 1971, principles of “common law” were applied for treating the “prejudicial publications” which were made even before a person was arrested as contempt. Some of the Courts even treated prejudicial publications, made after a First Information Report (FIR) was filed, as “criminal contempt”.

In *Surendra Mohanty v. State of Orissa*, (Crl. App. 107/56 dt. 23.1.1961), the Apex Court held that in a criminal case the filing of an FIR could not be treated as the beginning of “pendency” of the case.²⁸ Based on this judgment, prejudicial publications got immunity from the law of contempt if such publications were made after the FIR is filed. In *A. K. Gopalan v. Noordeen*,²⁹ the Supreme Court observed that a “prejudicial publication” about the accused or suspect which is made after a person is arrested then it could be treated as arrested.

According to the Law Commission, the Joint Committee’s reasons for dropping the reference to “imminent” proceeding were flawed because the Committee’s attention was not drawn to the decision in the *A. K. Gopalan*’s case. After the judgment made by the Supreme Court, fixing the date of “arrest” to be the “starting point” of a “pending criminal proceeding”, there was no ambiguity in the law. Through this case, the Apex Court balanced the rights of the accused and suspect and the rights of the media for publication. In this case, *A. K. Gopalan* was acquitted by the Court, who made a statement after the filing of an FIR but before an arrest was made, while the editor of the Newspaper and others were convicted for contempt because prejudicial publications were made after the arrest.

CONCLUSION

Media being the means of communication helps in disseminating information and plays an important role in a democracy by keeping the public informed about the social, political and economic activities surrounding them. They are expected to deliver unbiased news and to put out facts rather than making any judgment. But at times media try to distort facts and give its judgment even before the court.

Though Media is the fourth pillar of Indian Democracy and under Article 19(1)(a) of the Constitution it has a fundamental right, but at the same time it cannot be allowed to transgress its domain under the garb of freedom of speech and expression to the extent as to prejudice the trial itself and the time has come to legislate to control the unfettered power of media. The Indian Press Council can play a significant role by making more stringent rules

²⁸ 200th Law Commission of India Report, Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure (amendments to the Contempt of Court Act, 1971), 46 (2006), available at: <http://lawcommissionofindia.nic.in/reports/rep200.pdf> (Visited on December 28, 2022)

²⁹ AIR 1969 (2) SCC 734

and regulations for the media to obey. The Courts can impose exemplary damages to media outlets abusing this sacred right.

Media trials often provoke the atmosphere of mob lynching or influence the perception of the general public but it also plays a very crucial role in moulding the mindset of the present generation and does an outstanding job in bringing the criminal on the hook. Although the mob mentality exists independently of the media which merely voices the opinions which the public already has. Media also assists with the problems arising due to the celebrities or corrupt people bribing authorities to escape court trials and thereby fearlessly bringing the truth into display in compliance with justice.

Any institution, be it a legislature, executive, judiciary or bureaucracy, is liable to be abused if it exceeds its legitimate jurisdiction and functions. But sometimes these ultra-vires 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 an 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.

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