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# **Fair Trial As A Fundamental Right:** **Impact Of Pre-Judicial Reporting** **And Trial By Media**

*Authored By - Hanah Mariam Philip*

## **ABSTRACT**

It is cardinal for media to be mindful while reporting anything to avoid deviating from unbiased reporting due to the enormous power it holds to influence the society. One of these powers emerges from Article 19(1)(a) of the Indian Constitution which confers the right to free speech and expression to all its citizens. The harsh reality of today, however, is that the lack of unbiased reporting has led to myriad instances of adversely affecting the rights and reputation of the victim as well as the accused. Even before a court of law has established its view/judgment on an issue, media's pre-judicial reporting on the issue hampers an individual's right to fair trial and disregards the legal principle of presumption of innocence. Often, the line of distinction between a culprit and an accused or a suspect is ignored and disregarded, particularly by the media houses. Well before the commencement of the trial, the author of the article is already trying to establish that the accused has committed a crime, thereby fueling public outrage and leading the audience to sympathize and come in support of the complainant. The impact of such an appalling misuse of power by media on the individuals involved can cost them their time, dignity and reputation in the society. Past events and consequences of trial by media that portray the intrusive nature of the institution make us question its existence and status as the fourth pillar of democracy.

**Keywords:** free speech, pre-judicial reporting, fair trial, presumption of innocence, trial by media

## INTRODUCTION

The phrase "Trial by Media" earned its popularity more towards the early 21st century whereby the media steps into the shoes of conducting the trial of an accused and declares a verdict even before the court of law has laid out its judgment. Trial by media takes its course when media presents the facts of the case to the public in a manner that influences public opinion and creates an atmosphere of guilt or innocence around the accused, even before the court has had a chance to decide the case. Although it can be understood that the role of media also includes ensuring active participation of individuals for the purpose of public scrutiny, a destructive impact on the same may arise in cases where it deviates from its real purpose and object due to the procurement of false information, lack of evidence, political influence or the practice of reporting and publishing paid news among other things.

## RESEARCH PROBLEM

Media, instead of acting in the capacity of a helping hand by connecting the general public and their interests to the government as well as to serve the people with news, views, and information on matters of public interest in a fair, accurate and unbiased manner, has many at times undertaken the duty or the authority of declaring an individual as innocent or guilty. Judiciary is entrusted with the duty of delivering justice and pre-judicial reporting by the media disrupts the procedure of the Judiciary by conditioning the minds of the people by publishing their pre-judicial judgments and opinions, thereby adopting a dogmatic approach. The conflict is between the Freedom of the Press and the Independence of the Judiciary and therefore, there is a need to understand the line of demarcation and fix liability on its violation.

## RESEARCH OBJECTIVE

This paper intends to understand the impact of media trial on Judiciary and to ascertain whether media exercises unrestricted power by publishing pre-judicial reports. The paper would further analyze whether any restriction can be imposed on media trial. ‘

## RESEARCH QUESTIONS

- Whether pre-judicial reporting by media hampers the right to fair trial of an individual?
- Whether trial by media amounts to interference with the criminal justice system?
- Whether there is a conflict between freedom of press and independence of Judiciary?

## **THE INTERNATIONAL LAWS ON FAIR TRIAL AND PRESUMPTION OF INNOCENCE**

According to Article 11 of Universal Declaration of Human Rights 1948, Section 2 under Article 14 of the International Covenant on Civil and Political Rights 1966, Article 7 of the African Charter on Human and Peoples' Rights 1981 and Article 8 of the American Convention on Human Rights 1978, the presumption of innocent until proven guilty is upheld for every individual in a public trial who has been accused of and charged with penal offence. Section 1 under Article 14 of the International Covenant on Civil and Political Rights 1966 also emphasizes on the facets of fair trial and states that everyone who is charged with a criminal offence must be equally treated before a court or tribunal and as a result must also be subjected to a fair and public hearing by a competent, independent and impartial court. Article 8 of the American Convention on Human Rights, 1978 expresses that no one must be unheard, i.e., any person, even if charged with a criminal offence, has the right to a fair and impartial hearing within a reasonable time. Article 6(1) and (2) of the European Convention on Human Rights, 1953 also deals with right to fair trial.

### **NATIONAL LAWS ON FAIR TRIAL**

Article 14 of the Indian Constitution guarantees equality before the law or the equal protection of the laws to everyone and therefore any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Article 19 confers upon its citizens the right to free speech and expression which can be exercised subject to reasonable restrictions under clause 2 which also covers the aspect of defamation. Therefore, right to free speech is not absolute and does not protect any speech which harms the reputation of another. As conferred under Article 21 of the Indian Constitution, an accused has the right to defend himself/herself as a part of the fundamental right to fair trial, right to reputation, right to live with dignity and the right to privacy. Additionally, the Press Council of India has established norms of journalistic conduct warning journalists not to give excessive publicity to victims, witnesses, suspects and accused such that it amounts to an invasion of privacy. The right of the suspect or the accused to privacy is recognized by the PCI to guard against trial by media. While warning against publishing defamatory posts/articles, it reminds journalists and the Press to perform their duty with due care and diligence to serve the public interest. Reasons such as bad character of the accused should not be the basis upon establishing the guilt of a person but instead, proof of facts must be relied upon. As per these established norms, it is also

expected of the Press to understand the distinction between “public interest” and “those in public interest” to avoid a deviation from utilizing their position for the betterment of the society instead of running after mere sensationalism. Rule 41-A under the norms deals with trial by media and states that privacy of the Victim, Witnesses, Suspects and accused must be protected against publicity. Ideally, the intention is to not allow a compromise on the fair trial of an individual and the media is expected to refrain from anticipating and publishing a decision prior to the verdict given by the court, unreasonably pressuring the judge, the jury, or the witnesses, or unfairly influencing a party to the proceedings.

## RIGHT TO FAIR TRIAL

The fairness and rationality of a trial serve as the very foundation upon which a judicial procedure may be used. The right to a fair trial is a basic human right protected by our Constitution as well as international treaties and conventions. Any method that prevents a party from receiving a fair trial would be a violation of Article 14 of the Indian Constitution.<sup>1</sup> Media is habitually seen to be overlooking the legal presumption of innocent until proven guilty, thereby negatively impacting the accused in a case. In *Anukul Chandra Pradhan v. Union of India*<sup>2</sup>, it was stated that no situations shall arise or serve to reduce the emphasis on the fundamentals of a fair trial and that the fundamental rules of law, such as the accused's presumption of innocence, must not be compromised due to the publicity attached to such matters until proven guilty at trial. Without a doubt, this condition must be kept in mind during the entire trial. It is important to ensure that the judiciary's credibility is not damaged in any way.

In the past, journalism was not influenced by the need to increase TRP ratings or sales, which allowed journalists to work with sincerity and conviction, demonstrating courage and integrity. They were meticulous in their investigation of charges before drawing their own conclusions, independent of fear or favor, and did not rush to declare people guilty. They did not blindly print information provided by law enforcement officials, bureaucrats, or politicians, and as a result, they were trusted by the public. However, the media's role has evolved, and we are now seeing the emergence of "media trials," where everyone tries to manipulate the media to serve their own interests or harm their rivals. The issue is not the media's exposure of gaps in investigations by the police or malpractice among civil servants, but when the media exceeds

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<sup>1</sup> *Dwarka Prasad Agarwal (D) By LRs. v. B.D. Agarwal and Others*, (2003) 6 SCC 230 at 245

<sup>2</sup> *Anukul Chandra Pradhan v. Union of India*, (1996) 6 SCC 354 (para 7)

its legitimate jurisdiction and does what it should not do.<sup>3</sup>

Everyone involved and in charge of the affairs in the field of media should ensure that a trial by the media does not interfere with the investigating agency and in the process of reporting, should not prejudice the right of defense of the accused in any manner since the failure to comply with or adhere to the same may pose hindrance to fair judicial proceedings.<sup>4</sup> With the sole purpose of attracting larger audience, the element of neutrality is conspicuously missing in the portrayal of facts and issues of a particular case by the writers. Even in the past, there have been instances where the accused have been targeted and tormented by the media which will be discussed further in this paper. Although this act is exercised within the fundamental right to free speech conferred under Article 19, the court in the case of *M.P Lohia v state of WB*<sup>5</sup> held the view that one cannot ignore the possibility of instances where the usage of freedom of speech and expression may interfere with the administration of justice in cases where media published articles are being prejudicial in nature, which indeed should not be permitted.

## RIGHT TO REPUTATION AND DIGNITY

A question that naturally crops up with respect to the freedom of speech and expression is whether this right exercised by media can be allowed to such an extent where the reputation of an individual, being a facet of Article 21, has little or no regard at all. Reputation is connected to the dignity of an individual, making it an inalienable part of life. Pre-judicial media reports prior to the commencement of trial have possibility of having an adverse impact on the reputation of a party, be it in his/her social or professional lives. Right to free speech does not confer the right to defame others. The Delhi High Court declared that the book "Godman to Tycoon: The Untold Story of Baba Ramdev" violated the petitioner, Ramdev's right to reputation under Article 21 of the Constitution and hence the book was not allowed to be published or sold. The Court additionally stated that one person's right to reputation cannot be sacrificed in order to uphold the freedom of speech of another. As the petitioner about whom the book is written is entitled to be treated with dignity and has a right of social reputation as an ordinary citizen even if he is a public figure, and since reputation is a cherished value and an element of personal security, portions of the book which make readers think that he is an

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<sup>3</sup> Hashmat Ali Khan and Ghalif Nashter, Role of Media: Education, Culture and Ethics in Modern India, SCC Online

<sup>4</sup> *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1

<sup>5</sup> *M.P Lohia v state of WB*, (2005) 2 SCC 686

ambitious villain, until so proved in the Court of Law are necessarily to be restrained from being published and distributed for sale. This is so that the right to reputation of a living individual under Article 21 of the Constitution of India cannot be sacrificed and crucified at the altar of the right to freedom of speech and expression of another.<sup>6</sup> Freedom of speech does confer the right and liberty to anyone to defame others. A correlative duty of not interfering with the liberty of other individuals lies with the citizens since everybody has a right to reputation and right to live with dignity.<sup>7</sup> The Sarvjeet Singh v. Jasleen Kaur case is a prime illustration of how a careless media trial can rapidly ruin a person's reputation and lead to assassination of character and even mental torture. The court while acquitting Singh, observed, "In the present case, the complainant has made material improvements in her statements. The testimony of the complainant is not trustworthy and casts serious doubt on the case of the prosecution. Moreover, the place of incident was a public road and expected to be crowded at the time of the incident and no public witness was examined in the present case. This non-examination of the eyewitnesses who could have supported the case of the prosecution casts serious doubt on the case of the prosecution in the present circumstances, when the version of the complainant is doubtful."<sup>8</sup> It was only four years after the case was filed, Sarvjeet Singh was declared not guilty by the Delhi High Court. However, in the meanwhile, news channels, newspapers and news sites called the accused in the case all sorts of names such as Delhi ka darinda, etc. Due to its wide range of reporting, many notable celebrities also came in support of the complainant which attracted even more attention from the public. The News Broadcasting Standards Authority (NBSA) had directed the news channel Times Now to issue an apology and pay a fine for their reporting on Jasleen Kaur case. According to NBSA, the reporting on the channel was done in an "aggressive, frightening, and browbeating style." The order further mentioned that the accused was treated as guilty by the channel.<sup>9</sup> As once stated by the Supreme Court, the power exercised by media can become dangerous if checks and balances are not inherent in it<sup>10</sup>. Therefore, a person's reputation holds a massive possibility of being damaged by an incorrect or wrong piece of information if reported by media due to its unbridled power.

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<sup>6</sup> *Swami Ramdev vs Juggernaut Books Pvt Ltd & Ors*, Indian Kanoon, Para 180

<sup>7</sup> *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221

<sup>8</sup> <https://www.siasat.com/delhi-court-acquits-sarvjeet-singh-jasleen-kaur-case-1705476/>

<sup>9</sup> <https://thelogicalindian.com/news/saravjeet-singh-jasleen-kaur/>

<sup>10</sup> *Hindustan Times v. High Court of Allahabad*, (2011) 13 SCC 155

# FREEDOM OF PRESS AND INDEPENDENCE OF JUDICIARY

The Judiciary and the press are both essential for a progressive society. Free press and media are imperative in a democracy but the concern arises when it results in causing prejudice to a trial. The rampant growth of media influence has aided the public at large in being acquainted with the arising issues and thereby has aided them in formulating opinions. However, these public opinions are media built and when they portray only one-sided perspective, it can result in the presumption of it to be true without paying any heed to check its authenticity. No doubt that the usage of Article 19(1)(a) of the constitution should not stand as an interference to the matters existing before the court or in the process of administration of justice.<sup>11</sup> The parallel investigation and trial conducted by the media have many at times have casted doubts upon the investigating agencies on their findings and placed them under undue pressure during the course of the investigation. In order to ensure that media reporting does not undermine the integrity of ongoing legal proceedings, the judiciary has developed various mechanisms, such as contempt of court laws and gag orders. The use of gag orders has been a subject of debate and criticism, with some arguing that it curtails the freedom of the press and undermines the principle of open justice. However, it is important to note that gag orders are not a regular practice in Indian courts and are usually issued in cases where the court believes that the media coverage could prejudice the trial or impact the fairness of the proceedings. In *Sahara v SEBI*, a private television channel leaked privileged communication without authorization, which included a settlement proposal that had been exchanged between the two lawyers representing both sides. the Supreme Court of India stated that “We are distressed to note that even without prejudice proposals sent by the learned counsel for the appellants to the learned counsel for SEBI has come on one of the television channels, such reporting by television channels not only affects the business sentiments but also it interferes with the administration of justice.”<sup>12</sup> The Court passed several directions and key guidelines regarding media reporting. The Court extensively dealt with how media must refrain from influencing the outcome of a case and abide by fair and accurate reporting of the court proceedings without any distortion or sensationalization. Media reporting should be respectful of the judiciary and not undermine its authority. They should not publish any information that is not verified or sourced from credible

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<sup>11</sup> *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1

<sup>12</sup> *Sahara India Real Estate Corporation Ltd. & Ors. v. (SEBI) & Anr.* (2012) 10 SCC 603.

and reliable sources. The court also affirmed, what is already established by law, that revealing any personal information or details that could lead to the identification of the victims is also prohibited. The disclosure of the identity is prohibited under Section 228A of the Indian Penal Code, 1860 in cases of victims of sexual offenses, including printing or publishing the name, address, photograph, or any other identifying details that could lead to the victim's identification. This is to protect the privacy and dignity of the victim. However, there have been several instances where media was seen to be infringing some of these guidelines.

The Arushi Talwar murder case<sup>13</sup> serves as one such illustration of how the media can influence public opinion and create a prejudicial atmosphere even before the court proceedings begin. The media's reporting of the case created a negative public opinion against the Talwar family, which made it difficult for them to get a fair trial. The media invaded the personal lives of Aarushi and her parents, publishing private correspondence and portraying Aarushi's father as a murderer. The victim's parents were accused of their daughter's murder by the media before any verdict had been reached by the court. Due to the media's interference, the judges' minds were prejudiced, and the parents were sentenced to life imprisonment. However, the victim's parents appealed the conviction, and after hearing the appeal, the Allahabad High Court acquitted them, stating that the Central Bureau of Investigation had failed to prove their guilt beyond reasonable doubt. The media's framing of the victim's parents before the court's verdict had negative consequences in the case of Arushi Talwar.

One of the recent cases pertaining to the case of a late actor is a prominent instance where media had vigorously reported for months on the matter of the late actor's death to be a murder. There were prime time discussions on the actor's death and relentless accusations were thrown at many individuals who were hounded for months and were termed as drug dealers, members of drug syndicate, etc. Some of the reporters claimed having access to "exclusive chats" and in the name of Justice, refused to accept their act of invading one's privacy. The most pressing issues at the time such as falling GDP, agricultural riots, covid 19 all seemed irrelevant. This was a case where not one but three national agencies set out to probe into the death of the actor and not once did the media or any other person query about why no incriminating findings were found against the accused. In the present case, the court said that "Substantial damage has been caused to the reputations of the persons so called involved. It takes year of hard work to

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<sup>13</sup> *Nupur Talwar vs. Central Bureau of Investigation* (2010) 1 SCC (Cri) 711

build a reputation and with just one stroke it is brought from top to bottom. Without being punished, there is stigma on their forehead till the trial is completed, no matter if they are cleared of the charges.”<sup>14</sup>. In the meantime, following the reporting and trial by media, there was an uproar all over social media and the influence of it on the minds of the masses was so deep rooted that the involved individuals who are public figures received death threats, slurs and other forms of online harassment.

## SUGGESTIONS AND CONCLUSION

The quest for truth must never end and media is surely an institution that plays an active role. Essentially what we must look at is to find the balance between right to freedom of speech and expression and the right of the accused to a fair trial since at this point in time, these 2 rights are conspicuously pitted against each other. The existing system of self-regulation of media is questionable from the analyses of various incidents discussed above. The media should respect the principle of the presumption of innocence and avoid portraying an accused person as guilty before they have been convicted in a court of law. The media should make a clear distinction between news reporting and opinion pieces. This will help prevent the media from influencing public opinion and the judiciary by presenting their personal views as facts. Encouraging media literacy is also cardinal since it is an important skill in today's information age, where the proliferation of media sources can make it difficult to discern between credible information and fake news. By developing media literacy skills, individuals can become more discerning and informed consumers of media, better equipped to evaluate the credibility and accuracy of media content, including news articles and social media posts that amount to media trial. If the media is tempted to go outside the bounds of the constitution and infringe on individual liberties, the judiciary must be proactive and take the necessary action to curb the same.

As the former American minister Malcom X rightly stated, “the media is the most powerful entity. 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.” In most cases, media is seen to be overlooking the legal jurisprudence and principle governing trials in India, which is innocent until proven guilty, creating a negative impact not only on the accused but his/her family members as well. Pre-trial publicity can derail a fair and a speedy trial. Somewhere along the lines, media clearly missed the demarcation between news making and news reporting. There

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<sup>14</sup> <https://indianexpress.com/article/cities/mumbai/sushant-rajpoot-case-media-trial-6757987/>

is a high likelihood that an individual of ordinary prudence who sees a news story repeatedly broadcasted on multiple news channels with a significant amount of emphasis may be swayed by it, even if they previously were not convinced by the media's arguments. While the freedom of speech and expression of the media needs to be protected and promoted, the right to fair trial of the accused needs to be secured and guaranteed. Denial of a fair trial is as much injustice to the accused as it is to the victim and society. <sup>15</sup>

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<sup>15</sup> Zahira Habibullah Sheikh and ors v. State of Gujarat and ors.,(2006) 3 SCC 374