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“TRIAL BY MEDIA AND ADMINISTRATION OF JUSTICE”

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I. INTRODUCTION

Technically speaking, democracy is the rule of the people; it is a structure supported by the judiciary, the executive branch, and the legislative. However, given the media's expansion and ability to reach every part of the nation, it can also be said that it is the fourth pillar of a democracy. To address the injustices in our system, it performs a crucial role as a mindful keeper and watchdog of the social functionaries. By making these injustices known to everyone, it hopes that they will be corrected. This constantly growing readership and viewership, when combined with the usage of contemporary technology, has given media outlets an unmatched role in influencing public opinion. It is impossible to sufficiently emphasize the need to recognize the media's professionalism and responsibility in reporting given its expanded position and relevance.

The media is crucial in forming societal opinion and has the power to alter the whole lens through which individuals view different events. The current situation is aggravated by the growing rivalry between news organizations and channels for viewers and TRPs, which has resulted in a decline in newsworthiness, factual distortions, and inappropriate intrusions into people's private lives. The current situation demonstrates that the media has started meddling in judicial procedures and has changed into a "public court".

II. MEDIA TRIAL

In simple terms, "trial by media" refers to the influence of considerable media coverage on a person's reputation or the impact of the media on a trial procedure, typically in criminal cases. The development of technology and the severe rivalry among cable networks for breaking news results in the accusation of a person even before an inquiry is conducted, which compromises the administration of justice and jeopardises their right to a fair trial. ¹

¹Mohd. Aqib, "Judiciary and Media Trial: A Need for Balance" 5 *IJLHB* 155 (2019).

A trial is a procedure that checks how justice is being administered. It is nothing more than judicial transparency, and the media is crucial in making court proceedings public to the general public. In a community, judicial independence is essential, yet there have been many occasions when it has been upheld and the media has interfered with the judiciary.²

When guilt is proven according to the law's due process rather than by introducing extraneous elements or interfering with the process, the effectiveness of the legal system is increased. The Rule of Law, which the Constitution has established for everyone, is what makes a society strong. When free speech is not suppressed, despotism is resisted. The legal system has safeguarded press freedom in its rulings and allowed for fair criticism of the court system, scrutiny of judge administration, fair reporting of things, and consideration of the case's merits. Abuse of freedom is the only limitation provided since complete freedom corrupts.³

The delivery of justice and a fair trial in such a case are further hampered by the trial by media of a sub-judice subject in a court of law. Arushi's murder, Jessica Lal's murder, the Hansal Mehta case, the Sushant Singh Rajput case, the Nirbhaya rape case, etc are some of the very famous examples of media trial. Even though each of these incidents relates to a different industry, they are all driven by the media. This brings us full circle to the first query: to what extent may interference be passed off as the activity of a healthy regulator and to what extent does it begin to interfere with the court's process? However, it must be recognised that the media also contributes positively to exposing government exchequer wrongdoing and bringing attention to the government's repeated inactivity until action is finally done. Conflicts do, however, develop when the media oversteps its bounds, attempts to usurp the authority of the judiciary, and passes judgement on ongoing legal proceedings.⁴

III. FAIR TRIAL

Though the idea of a fair trial is difficult to describe, its characteristics are laid out clearly. The cornerstone of criminal law is a fair trial, which is founded on adversarial procedures. The notion of a fair trial may be seen in many laws and procedures, and it is acknowledged in Article 21 of the Indian Constitution since it states that fairness must be observed in order to follow the

² *Supra* note 1.

³ Manasvika S., *A Critical Study on Trial by Media with Special Reference to Right to Fair Trial* (2017) (Unpublished LL.M dissertation, Christ University).

⁴ *Ibid.*

administration of justice. It serves as the main guideline for the criminal justice system.⁵

In *Maneka Gandhi v. Union of India*⁶, the Supreme Court ruled that the right to equality rests on the right to a fair trial, which ensures that there is no prejudice against the accused or witnesses over the course of the legal proceedings. If everyone has equal access to the legal system and the courts, discrimination is not permitted at any point throughout the legal process. Article 21 is based on Article 14, and any action that is arbitrary or irrational violates Article 21. Therefore, the right to equality before the law is a basic right; it forbids states from acting in a discriminatory manner and requires that the legal process be just, fair, and reasonable.

According to articles 14, 20, 21, and 22 of the Constitution, every person living within the boundaries of India has a fundamental right to a fair trial. It goes without saying that the right to a fair trial, which derives from Article 21 of the constitution when read in conjunction with Article 14, is more crucial. A "reasonable restriction" has been placed on the freedom of speech and expression guaranteed by Article 19(1)(a), pursuant to Article 19(2) and Section 2(c) of the Contempt of Court Act. In compared to one's right to free speech and expression, one's right to live in dignity is always given precedence. The media should think on these things as well. The public's trust in the judicial system is essential, therefore a fair trial is not simply for the benefit of the accused. The core of the Indian criminal justice system is the right to a fair trial. Other rights covered by it include the right to a speedy trial, the right to legal representation, the right to a public trial, the right to be present during the trial and question witnesses, the right to be presumed innocent until proven guilty, the right to not be forced to testify against oneself, and more.⁷

IV. FREEDOM OF SPEECH AND EXPRESSION AND FAIR TRIAL

According to Article 19(1)(a), "all citizens shall have the right to freedom of speech and expression." The "public opinion" that is formed about "economic, political, and social matters" is crucially influenced by this freedom. This freedom includes discussions on issues of public importance as well as the "distribution of information," "freedom of propagation and exchange of ideas," which aid in the creation of one's perspective and point of view. This freedom also extends

⁵ *Ibid.*

⁶ AIR 1978 SC 597.

⁷ *Supra* note 3.

to the right to communicate one's ideas and thoughts on any subject using any kind of media, including "word of mouth," "writing," "pictures," "printing," and "movies," among others.⁸

Justice Bhagwati emphasized the significance of "freedom of speech and expression" in *Maneka Gandhi v. Union of India*⁹.

The importance of preserving "freedom of the press" in a democratic society has been emphasised by the Apex Court in a number of instances. Press releases often serve the "public interest" by informing readers of any information and viewpoints that are necessary for them to form sound judgements. Numerous news stories and articles are routinely published in the press that expose the government's flaws. Consequently, the government occasionally seeks to curtail "freedom of the press." —Therefore, it is the courts' principal responsibility to defend the aforementioned freedom and to nullify any legislation or administrative decisions that conflict with the right to freedom of the press in violation of the constitution.¹⁰

In *Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer*¹¹, The Supreme Court reiterated that although "freedom of the press" is implied from "freedom of speech and expression," there is no clear clause safeguarding it as a "fundamental right." The "freedom of the press" is prized in every democratic nation, and the press is correctly referred to as the "fourth estate" in society.

Any law prohibiting the entry or circulation of a magazine inside a State is invalid. The petitioner in *Romesh Thappar v. State of Madras*¹² was the "editor," "printer," and "publisher" of a publication called "Cross Road." However, the Madras government forbade this newspaper from entering or circulating in Madras by using some of its powers under the "Maintenance of Public Order Act, 1949". The Court ruled that the "freedom of propagation of ideas" is guaranteed by the "freedom of circulation" and is contained in Article 19 (1) (a) of the Indian Constitution. The Court ruled that it is unconstitutional for a State to have a statute prohibiting a publication from entering or circulating there.

⁸ Arunav Talukdar, *MEDIA TRIAL AND RIGHT TO FREEDOM OF SPEECH AND EXPRESSION: AN ANALYSIS* (2018) (Unpublished LL.M dissertation, National Law University, Assam).

⁹ *Supra* Note 6.

¹⁰ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, AIR 1986 SC 515.

¹¹ (1994) 2 SCC 434.

¹² AIR 1950 SC 124.

Only when "freedom of speech and expression" is covered by authorised restrictions as defined by Article 19 (2) of the Indian Constitution may "restrictions" be put in place.

Press freedom in India is generally seen as untouchable until there is a justifiable and moderate limit placed on it. In a democratic nation, the freedom of the press must be protected and maintained, but there must also be some reasonable constraints placed on that freedom. These limitations cannot be arbitrary, and they may only be enacted for the reasons listed in Article 19(2) of the Constitution, which are the justifications for restricting "freedom of speech and expression."¹³

V. THE REPERCUSSIONS OF A TRIAL BY THE MEDIA

The judiciary will be affected by the media trial if erroneous news stories published by the media influence judges' decisions, interfere with the administration of justice, and threaten the independence of the judiciary. The following famous cases, which had an impact on the judiciary both positively and negatively, show how media trials affected India.¹⁴

The Supreme Court looked into the crucial issues surrounding trial by media in *R.K. Anand v. Delhi High Court*¹⁵. The case resulted from an undercover investigation by the private television network NDTV into the unholy alliance between the prosecution, its witness, and the defence in the infamous BMW hit-and-run case that claimed the lives of six people when a speeding BMW was driven by the scion of a powerful and wealthy family. The Delhi High Court then started the Suo-Moto contempt proceedings and found the special public prosecutor and the defence attorney guilty of contempt of court and barred them from testifying in the case. The trial was still ongoing even eight years after the incident when NDTV aired a sting operation to reveal how a senior attorney representing the accused was negotiating to sell out in favour of defence. The Supreme Court was then given the appeal, in which it was argued that NDTV had engaged in trial by media and could only have broadcast the stings with the authorization of the High Court. The Supreme Court of India disagreed, stating that while such a course would not be a journalistic exercise, it would instead include the media serving as a special vigilance agency for the court.

¹³ *Supra* Note 6.

¹⁴ Sanatan Deshpande and Priyank Jagawanshi, "A critical analysis of media trial and its effect on Indian judiciary" 6 IJRAR173 (2019)

¹⁵ (2009) 8 SCC 106.

In the Jessica Lal Case, popularly known as the Jessica Lal Murder Case, *Manu Sharma v. State of Delhi*¹⁶. The case started with the 1999 cold-blooded murder of a young woman. The woman worked as a barmaid at a prestigious Delhi restaurant. Manu Sharma, the key suspect, was the son of a prominent politician. In 2006, the Delhi trial court cleared all nine defendants in the case. There was a great deal of public outrage at the acquittal, and the media went on the attack about how the accused's political ties were used to manipulate the trial, how the witness became hostile, and how poorly the prosecution handled the case. The public's responses to the ludicrous injustice were afterwards covered by the media. As a consequence, the Delhi High Court ordered a suo moto reinvestigation of the case before waiting for the state's appeal against the accused's acquittal. The retrial, which was held mostly as a result of pressure from the media, resulted in the conviction of those who had previously been found not guilty.

The murder of a 14-year-old schoolgirl in her house was the subject of *Nupur Talwar v. Central Bureau of Investigation*¹⁷ (Arushi Talwar Case), which brought tabloid journalism to a new low. In their scurrilous coverage of the inquiry, the media showed a reckless disregard for the law. The case brought up significant legal issues that call for resolution aside from media trial, privacy invasion, confidentiality breach, and defamation of both living and deceased individuals. The media pryed into Aarushi and her parents' private life, publishing her private letters and painting her father as a murderer in the process. Before the crime had been proven in court, the victim's parents were falsely accused of killing their daughter. The victim's parents received a life sentence due to the media's interference, which influenced the judges' verdicts. The victim's parents appealed the conviction, and after the Allahabad High Court heard their appeal, the court cleared the parents of Arushi Talwar of all charges, concluding that the CBI had failed to establish their guilt beyond a reasonable doubt. By accusing the victim's parents of murder before the court's decision, the media influenced the outcome of the Arushi Talwar case.

The Supreme Court of India convened a constitution bench of five judges in *Sahara India Real Estate Corporation Ltd. v. SEBI*¹⁸, also known as the media guidelines case, in 2012 to discuss whether guidelines should be framed by the court in regard to the media reporting of ongoing cases or reporting of cases that are pending before the court. In this case, there was an unauthorised leak of privileged communication by a private television channel. While recognising the media's

¹⁶ AIR 2010 SC 2352.

¹⁷ AIR 2012 SC 1921.

¹⁸ AIR 2012 SC 3829.

right to cover court proceedings and the presumption of open justice, the Supreme Court of India held that there may be some exceptional situations where media coverage could negatively affect the administration of justice. In these situations, media coverage may be delayed for a short period of time by the Supreme Court or the High Courts. Such an order of postponement must pass the tests of necessity and proportionality.

In a number of high-profile cases involving wealthy and powerful individuals, such as the Jessica Lal murder, in which a young woman who was serving drinks in a restaurant was shot to death because she refused to serve drinks to the son of a wealthy and powerful politician, The case of Nitish Katara, in which a young man who was in love and dated the daughter of a powerful politician was kidnapped and killed; the priyadarshini matto case, in which a young law student was raped and killed because she turned down the advances of the son of a powerful police officer. In these cases, the media played a significant part in ensuring that justice was done and ensuring that the families of the victims received justice through relentless campaigning for justice, publicising faulty investigations, and exposing the connection between defence and prosecution. What might have been a hopeless battle for the relatives of the victims was turned into a national demand for a fair trial thanks to the media's mobilisation of public opinion.

VI. MAJOR INFLUENCE

a. Influence of Media on Accused: There may be substantial prejudice against the accused if the media portrays a suspect or an accused as if he has already been found guilty before the trial in court. Even if the accused individual is ultimately found not guilty following a fair trial, this may not enable him to restore his damaged reputation in society. Excessive media coverage portraying him as someone who actually committed the crime amounts to an improper interference with the administration of justice and should be grounds for legal action against the media for contempt of court.¹⁹

b. Influence of Media on Witness: If the names of the witnesses are made public, there is the possibility that the police and the accused or his associates would put pressure on the witnesses. The witnesses initially wanted to back down and leave the situation. Then, witness protection suffers a severe loss. This raises the issue of whether hostile witness testimony is admissible as

¹⁹ Devika Singh and Shashank Singh, "Media Trial: Freedom of Speech VS. Fair Trail" 20 *IOSR-JHSS* 88 (2015).

evidence and whether the law should be changed to forbid witnesses from revising their testimony.²⁰

c. Influence of Media on Judges and Court: Judges are not exempt from criticism on either their professional conduct as judges or their personal conduct. However, it is cause for concern when critiques of them are unfounded or completely unfounded and may tend to erode public trust in judicial institutions. A judge must protect himself from these pressures. Judges or juries may be indirectly influenced by a media article, regardless of whether judges are cognizant of this impact or not. According to the Supreme Court, a media- or public-driven trial is the exact opposite of the rule of law and can result in a miscarriage of justice.²¹

VII. REGULATIONS AND GUIDELINES

In the case of *Sahara India Real Estate Corporation Ltd. and Ors. v. SEBI*²², the Hon'ble Supreme Court of India appointed a five-judge Constitution Bench while the appeal was pending. Despite the Court's temporary injunction, some outlets reported the judgment's proceedings. The Court established proper guidelines for media reporting on matters that are under consideration in Court, including the public disclosure of documents related to Court proceedings and the manner and scope of publicity to be given by media to pleadings filed in proceedings in Court that are ongoing and have not yet been decided upon. The Court also recommended the measures listed below:-²³

- 1. Prior restraint:** Our judicial system's cornerstone is Open Justice. It fosters confidence in the legal and judicial systems. The ability to access open justice is not unrestricted, though. Under the inherent powers of the court, such decrees banning publication for a brief period during a trial are admissible whenever the court is convinced that the interest of justice thus requires.²⁴
- 2. Contempt of Court Act, 1971:** Even yet there is occasionally a significant risk of prejudice from fair and accurate trial coverage, not in the current trial but in a subsequent or related trial. Only if it can be proven on the facts of a specific case that the inaccurate reporting of court proceedings amounts to a significant interference with the

²⁰ *Ibid.*

²¹ *Ibid.*

²² (2012)10 SCC 603.

²³ *Supra* note 15.

²⁴ *Ibid.*

administration of justice will it be considered contempt. Section 4 was created to offer a privilege to the author of the publication as long as it is truthful and accurate.²⁵

3. Order of Postponement of publication: The First Amendment in the US guarantees an unrestricted right to free speech, however the Indian Constitution does not due to the Heads of Restrictions under Article 19(2) and the fact that such a right is subject to reasonableness testing. These include strategies like ordering retrials, switching the court's location, ordering acquittals even at the appellate level, etc. The courts have developed orders of postponement of publications/publicity in appropriate cases, as indicated above, keeping in mind the timing (the stage at which it should be ordered), its duration, and the right of appeal to challenge such orders. These orders were developed as a preventive measure by the courts to protect the press from being prosecuted for contempt and also to prevent administration of justice from being prejudiced.²⁶

4. Right to approach the High Court/ Supreme Court

In light of the law enunciated above, anyone, whether an accused or an aggrieved person, who genuinely believes that the content of the publication and its effect constitutes an infringement of his/her rights under Article 21 to a fair trial and all that it entails, would be entitled to approach an appropriate Writ Court and seek an order postponing the offending publication/broadcast or postponement of reporting of certain phases of the trial (including of the victim or the witness or the complainant). The Court may grant such preventive relief after weighing the right to a fair trial against other rights protected by Article 19(1)(a), keeping in mind the aforementioned principles of necessity and proportionality, and keeping in mind that such orders of postponement should be for a brief period of time and should only be used in situations where there is a real and substantial risk of impairing the proper administration of justice or the fairness of the trial.

The principle of a fair trial now informs and animates many areas of the law, according to the Hon. Supreme Court's ruling in the case of *Zahira Habibullah Sheikh & Anr vs. State of Gujarat*²⁷. It is reflected in many laws and customs. A fair trial would undoubtedly entail a trial before an impartial judge, a fair prosecutor, and a calm courtroom environment. A fair trial is one in which there is no bias or prejudice for or against the defendant, the witnesses, or the issue under trial.

²⁵ *Supra* note 15.

²⁶ *Ibid.*

²⁷ 1981 AC 303 (CA)

VIII. IS MEDIA TRIAL A CONTEMPT OF COURT?

Trial by Media is an act of contempt of court that requires punishment. The Contempt of Court Act distinguishes between civil and criminal forms of contempt. The three categories of criminal contempt are scandalising, prejudicing trials, and impeding the administration of justice.

Prejudice or interference with the judicial process: This clause was inspired by the natural justice principle that "every accused person has a right to a fair trial" and "Justice may not only be done but must also seem to be done." There are many different ways that attempts are made to sway a trial. If these cases are allowed to proceed, the people involved will be found guilty of crimes they did not commit. To stop such biased and unfair trials, contempt of court was established. No publication intended to taint the minds of the jury, intimidate witnesses or parties, or foster an environment where the administration of justice would be challenging or impossible does not constitute contempt. Only when a case is capable of being tried by a judge can comments on open cases or party abuse be considered contempt. No editor has the authority to act in the capacity of an investigator in an effort to sway the jury against anyone.

In the case of *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr*²⁸, Chief Justice Gopal Rao Ekkbote of the Andhra Pradesh High Court stated the law regarding interference with the due course of justice well, stating that: "If someone prejudices the truth before it is established in the proceedings, it is a contempt of court, even if they genuinely believe what they are saying to be true. A further rule that can be added to the general rule of a fair trial is that no one shall unfairly pressure one of the parties to a cause to withdraw his complaint or defence through misrepresentation or any other means. The preservation of the law we just stated in its entirety is always regarded as being of utmost importance. However, when stating the law in this manner, it is important to remember that there must be "a real and substantial danger of prejudice.""

However, neither the commencement of the litigation nor its conclusion is prohibited by our law of contempt. The court's spokesperson, Justice Shah, stated succinctly that the law relating to contempt of court is "well settled" in the case of *In re P.C. Sen*²⁹. According to *R. v. Grey*³⁰, any action taken or writing made public that has the intention of holding a court or judge in contempt, undermining their authority, or interfering with the administration of justice or the lawful

²⁸ AIR 1975 AP 30.

²⁹ AIR 1970 SC 1821.

³⁰ (1900) 2 Q.B.D. 36 AT p. 40.

procedures of the court, constitutes contempt of court.

Speaking or writing scandalously about the court, insulting the parties to an action, or prejudicing the public in favour of or against a party before the case is heard are all examples of contempt by speech or writing. The public should not be prejudiced against those involved as parties in cases before the case is finally heard, so courts of justice have a duty to protect their proceedings from being misrepresented. Speeches or writings that inaccurately portray the Court's proceedings, prejudice the public in favour of or against a party, or include reflections on the parties to a proceeding are considered to be in contempt. It is grave contempt to speak in a way that might affect the outcome of a trial that is currently underway, whether it be civil or criminal. Comments on ongoing proceedings made by the parties or their solicitors usually constitute a more serious contempt than remarks made by outside sources. In all cases involving commentary on ongoing legal proceedings, the key question is not whether the publication actually impedes the administration of justice, but rather whether it has a tendency to do so. It is more important to determine whether it is planned to obstruct the administration of justice than it is to determine the contemner's intention.”

In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr*³¹ case , The Supreme Court held that ruled that it is not acceptable that a different investigation is going on along with the nations regular courts are working. These media investigations are then published in newspapers and starts a new trial. This opinion is supported by the fact that such newspaper behaviour tends to obstruct the administration of justice, regardless of whether the investigation tends to favour the accused or the prosecution. A newspaper trial is in no way comparable to what transpired in this case.”

IX. SUGGESTIONS

In order to remove the long list of prohibitions and restrictions, media must first turn to the law, including statutes, legal doctrine, court rulings, and guidelines.

Second, reporters can acquire a knowledgeable mindset and comprehension regarding the protocol for covering court proceedings, particularly when it comes to sensitive subjects or investigative journalism. To improve the difficulties of investigative journalism, enhance informative journalism, and safely transmit stories into the public domain, media must operate within the legal

³¹ AIR 1961 SC 633.

framework and must apply implications of law with legal insights.

The "Press Council of India" (PCI), a statutory organisation, is responsible for raising and preserving the standards of print media. The Press Council of India Act of 1978 grants the PCI a very narrow range of authority. The Act must be changed in order to give the PCI more authority to take action.

A law prohibiting the media from reporting anything detrimental to the rights of the accused in criminal cases, from the time of arrest through the investigation and trial, has been recommended by the 200th Law Commission Report "Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure." The report makes it abundantly clear that a number of pre-trial publications have a negative effect on the institution of the judiciary by impairing the administration of justice. There ought to be a set minimum requirement to work in the media. It is important to inform the media professionals about media laws and restrictions. This will enable them to establish boundaries early on in their professional careers.

The extent to which these guidelines can be used to protect competing interests is unquestionably enormous. The Court must establish guidelines on media reporting of judicial proceedings that are sub judice. The Court can make the necessary changes by establishing guidelines in this area rather than drafting additional legislation or proposing amendments to the current comprehensive legislation of the Contempt of Courts Act, 1971. The accused's right must be effectively protected from threats posed by negative publicity.

X. CONCLUSION

Our 50th Chief Justice of India, CJI DY Chandrachud said "A major issue that has percolated our system is trial by media. The presumption of innocence postulates that a person is presumed innocent until found guilty by a court of law. However, there have been instances when the media has carried narratives that make a person guilty in the eyes of the public, even before the court finds them guilty. This can have long-lasting repercussions on the life of the affected individuals, as well as on due process"³². Media is the cornerstone of our Indian democracy which operates

³² "Media Trials Make Person Guilty Before Courts Decide": Chief Justice, *available at*: <https://www.ndtv.com/india-news/media-trials-make-person-guilty-before-courts-decide-chief-justice-dy-chandrachud-3884730>
(last visited on MAY 29, 2023)

for the greater interest of society but legal process should not be hindered by the media coverage of a matter. The rule of law must prevail and the mandate of freedom of press must be construed to be limited to placing a matter in the consciousness of the society without any presumption being given. The Court is a competent forum for such decisions and these forums must be allowed to function without spreading prejudice in the public opinion. Right to free and fair trial under Article 21 of the Indian Constitution must be upheld.

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