

# Media Trial And Freedom Of Speech And Expression

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## I. INTRODUCTION

Media is described as a channel of communication through information can be transferred from one to another. There are various types of media like print media, social media, etc. where social media is fairly a new concept and does not fit under the traditional definition of the media. The news organizations are included under this statement. There was time described in the mythology books where information was transferred through oral statements by 'Narada'. Now news organizations are the ones which covers a wide variety of news and reporter has taken up that ancient role of providing news will it be international or regarding a celebrity to politics and judicial field. In current scenario, the most important role of media is to spread awareness and information regarding the happenings in the world as well as has the foothold to change the perspectives of the people in relation to any incidence and plays an active role in bringing the accused to the hook. Media is considered to be the fourth pillar of democracy apart from executive, legislature and judiciary. In a democracy, the strength and relevance of the media is widely acknowledged.<sup>1</sup> (Dash, 2021) The Indian Constitution's Article 19(1)(a), which guarantees freedom of speech and expression, also include press freedom. Although it has not been expressly defined under the article but citizens right to know reflects its freedom. It is very important in a democracy that media should be free from any kind of external pressure and force from anyone of authority and with such power to influence media. Media eases the work of government by broadcasting or publishing any new law or policy through gazettes, broadcasting the recording of the house meetings, to the masses so it could be in the common knowledge of people. It also provides transparency to the working of the government.<sup>2</sup> (Sharma, 2022)

In a country like India, it is very important that media should not be bias and takes the role of opposition of the government who watches every step and move of the government like a watchdog of society. In previous decade, whereas the media have been appreciated for increased public knowledge, the majority of the time they have been condemned for its intrusive coverage of various problems, particularly those involving prominent figures where we have seen that due to nominal laws and mere implementation of those rules regarding the functioning of media in the public domain, the role of media has shifted from raising awareness among people to entering in the domain of other authorities such as judiciary by supervising trials regarding a case parallel to the courts.<sup>3</sup> (Thanka, 2020) Press's freedom enshrined under the constitution; overall freedoms given under article 19 has been misused various times and entering into the judicial role amounts to infringement in the process of fair trial of the courts as media has the power to affect a judge mentality regarding the accused. The effect of media is so influential that even if accused has been declared free from all charges and fairly acquitted of the offense, the extensive perception of the guilt does not fade away. Media trial also compromise the accused right to a fair trial.<sup>4</sup> (sahi) This paper tries to explain the nexus of trial by media and further relate it with the freedom of speech and expression provided to all. Further emphasis will be given to effect of media trials on the actual court trials.

## II. STATEMENT OF PROBLEM

Media is the channel between the public and the information. It is an institution that creates awareness among the masses regarding any details. The freedom of press is implied in the Article 19 (1) a of the constitution where they are entitled to give their opinions regarding the issue, they are covering but they also come under the restrictions provided to the right of freedom further in Article 19. In recent times, it has been observed that the media rather than just providing the masses with the knowledge has jumped out of its jurisdiction of functioning and have interfered with other authority's function which is beyond its ethics and limit. One of such examples is the prevalence of Media Trials. In this, the conviction of an accused is discussed by the media at a public platform parallel to that of the courts. The power of media to influence the people, corrupts peoples minds and with the limited knowledge that media holds, form's opinion regarding the guilt of an accused, which is the role of Judiciary.<sup>5</sup> (Ramchandani, 2020)

Based on the researcher's observation, Media trial holds the power to destroy the life of the accused by framing an opinion of him being guilty and further broadcasting on the public platform, which frames the bad image of the accused among the masses of him and he considered to be guilty even before the verdict of the Court. There has been many instances that the public became so agitated towards the accused regarding the crime that is not even sure that he has committed or not. They demand for bigger punishment, hold *hartals* or Strikes which disturbs the public order and hinders the fair proceeding of the court on that particular case. It can also endanger the life of the accused. It makes it difficult for the courts to deliver justice under such influence and pressure from the general public. <sup>6</sup> (Raja, 2019) The effect of the media is so convincing that even after the accused is acquitted of the crime the society still perceives him to be guilty, which makes it difficult for the accused to cohabitate within the society. All these instances are the resultant of the lack of codified laws for the media.

The research aims to explore and analyse to find a solution such as establishing defined rules regarding the working of media so they stay within their jurisdiction and not become an obstacle in the functioning of other authorities. The right of freedom of speech and expression under which they have been able to infringe and abuse led to influence a judge's mind consciously or subconsciously, after all the judge is also a human and it is difficult for him to give a fair judgement under such circumstances which are created by media. <sup>7</sup> (University, 2021) Further details regarding the problem and its solution will be discussed in the paper.

### **III. RESEARCH OBJECTIVE**

The objectives of this research are: -

1. To look into the role of media in a democracy.
2. To critically analyse the practice of Media trials.
3. To study the consequences of Media trials.
4. To seek a balance in a way that does not curb the right to freedom of speech and expression and still maintains the process of fair trial of judiciary.
5. To suggest some solutions regarding the role and functioning of media in a neutral and unbiased way.

### **HYPOTHESIS**

1. Media trials had led to hindrance in the fair trial of the accused, denying him of his right to fair trial as well as a problem for judiciary in delivering justice.
2. The clear difference between media's right to speech and expression and interfering with the role of the other authorities has not been established.
3. The restrictions of media regarding its freedom of press have not been implemented as well as they have not been clearly defined anywhere.
4. There is a desperate need of reform in the approach of media where a set of rules are required in the system.
5. Media is able to influence peoples mind in the way they want that often leads to mistreatment of the accused by the masses, even before the verdict is announced by the courts of him being guilty or not.

### **IV. RESEARCH METHODOLOGY**

The research methodology used in this study is the doctrinal method. The study would use various secondary sources such as books, journals, newspaper articles, online sources, research articles, statutes, conventions, etc., which are available in relation to the concerned topic. The researcher will also refer to various statutory laws and the Law Commission Report of India about the topic to conclude this study.

### **V. ANALYSIS**

The freedom of press is implied within the freedom of speech and expression in Article 19 of the constitution. Under this, Media is supposed to provide masses with the knowledge of working of the government, new laws and policies. Media is responsible for portraying the government operations and making people aware about the information in their surroundings. By sharing data and adopting a status, the media maintains this outlook and so acts as an engine for public discussion. <sup>8</sup> (Saidalavi, 2015) The role of media is to give an unbiased view of the issue by stating all the facts and raise awareness among the people regarding the incidents in the world. In the case of *Ramesh Thappar vs State of madras* <sup>9</sup> (Bhatia, 2021), where the court held that the, freedom of speech and press lay at the foundation of all democratic institutes. There has been no mention of media being empowered to hold trial in the constitution further the right to speech and expression is not absolute. There are some restrictions to which it is bound defined in the article 19 itself. Dr. B. R. Ambedkar acknowledged press freedom during Constituent Assembly Debates: "*Media has no distinct rights something which citizens do not have or are not enabled to wield in their specific abilities. The editor or administrator of a press is only performing their right to free expression; consequently, no expressive mention of press freedom is essential*". <sup>10</sup> (TRIPATH) The action of the media to hold trials is just to gain more viewers and get the attention of the public but it's now damaging the democracy on which it has built its gimmick.

Media should remain neutral and just act as channel of information from authorities to the masses. Media has the power to create a platform for public debates regarding any issue. The law commission in its 200<sup>th</sup> report has mentioned about the effects of media trial. Various amendments have been proposed such as they have voted to ban the publication of anything detrimental to the accused— a restriction that will go into effect upon arrest. It also apparently advises empowering the High Court with the authority to delay publication or broadcast in criminal cases. It was advocated that beginning of a criminal case should occur with the custody of the offender, instead of filing of the allegation. According to the Commission, this alteration would restrict the media from stereotyping or favouring the case. In its study, the Committee therefore proposed that the High Court be extended the authority to direct a print or digital media outlet to halt disclosure or transmission of a federal crime and to forbid the media from partaking in such disclosure or simulcast. From the time of Independence, Jawaharlal Nehru has been the staunch supporter of freedom of press. In the independent India, he stated that- “*I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press.*”<sup>11</sup> (Aqib1, 2019) This is the reason that media is immune from many things and has been given many freedoms for its functioning but little did he knew, the dangers that free media behold. The problem arises when media takes the issue in their hands, twists facts or statements and act as judge, in addition to this give their judgment with regard to the concerned issue. The formation of an opinion by media affects the mindset of the masses as the media has the power to influence or even change people’s mind on any issue. Simultaneously, the same issue is under the court discretion and such an action of media creates hindrance in the fair trial of the issue which affects the accused.<sup>12</sup> (Mandhani, 2021) The dangers that free media has posed towards the administration of justice by holding media trials had to led to disturbance in the functioning of the judiciary. This interfered with the with fair trial of the judiciary and broke the essence of natural justice and the rule of law. Even before the Judgement given by the court, the accused is viewed as an offender in front of the people which prejudices the judges in their judgement leads to living whole life under public scrutiny. This can cause mental distress and psychological disorders in addition to the loss of respect in the society. The principal of justice “*innocent until proven-guilty*’ and ‘*Guilty beyond reasonable doubt*’ has been highly compromised.<sup>13</sup> (Varsha, 2022)

It is important in a democracy that media should work within its scope of power for proper functioning of all the institutions in the society. But medias overstepping the boundaries of its power and entering judiciary hinders the democratic principles. In a democratic society, the assurance of a free and impartial trial is of the immense value, analogous to the freedom of the press. If media trials spread disinformation in the public's minds over the failings of the judiciary to adjudicate, the fundamental premise of democracies would topple. Though there have been incidents wherein media manipulation has resulted in victims and accused securing justice such as in the Delhi rape case<sup>14</sup> (Arya, 2022) ‘Nirbhaya’, where a girl was brutally raped on a private bus by 5 men. This incident gained a lot of media coverage at both national and international level. There were protests all over the world with demand of justice being provided to her by executing the offenders. It highlighted the failure of government in providing women’s safety and brought amendment to juvenile justice act, where the age of punishment of heinous crimes changed from 18 to 16. The law commission report ‘*Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)*’ Stated numerous ways through media has interfered in justice system. These include: (1) Publications relating the identity of the suspect or past decisions; (2) Publishing of Testimonies; (3) Publishers which communicate or indicate on the merits of the case; (4) Pictures associated with the incident which might tamper with the recognition of the alleged perpetrator; and (5) clear insinuations of the defendant's innocence. (6) Cultivating a surrounding of hostility; (7) Critiquing informants; (8) Mistimed disclosure of data; (9) Publicizing of witness conversations. Media should avoid interfering in these areas.

Therefore, the question arises whether the principle of free speech can be advanced so as to undermine the right to a fair trial. The notion of Audi alteram partem is jeopardised since media rarely differs between an accused and convicted entity. The media frequently proclaim the accused to be condemned prior to the court's ruling, ensuing in public panic that threatens the accused's life even when he is subsequently released.<sup>15</sup> (Hassan) The media has taken on the form of a public court that not only manipulates the facts and renders biases, but also exerts pressure on the courts to function to their statements and perspectives. Whereas if court decides or utters a conviction contrary to that of main stream media perspective or conclusion, the judge is characterized as unfair, immoral, and unable to execute his or her duties. The judge’s subconsciousness comes out play as he also human. They get influenced because of being routinely compelled by the reporters and the advertising public to provide a sentence in advantage of the magazines. Furthermore, media often delves into the history of the victim and publishes it at times which is a violation to right of privacy under article 21 of the of the constitution. This act of media creates a stigma regarding the victim, which often becomes a driving force in commitment of their suicide.

There have been various cases with regard to media trial in India such as in Sanjay Dutt case<sup>16</sup> (I planted a tight slap on Sanjay Dutt’s face... he revealed everything while crying like a child’: Rakesh Maria’s autobiography, 2022) where he kept a gun with him in order to protect his family after the threats he had received in riots of Mumbai after the demolition of Babri masjid. He was further charged of crime under Terrorist and

Disruptive Activities (Prevention) Act (TADA), 1987 for receiving ammunition from Abu Salem and his involvement in the Bombay blasts. Although he was acquitted of all the charges later but being a famous movie star media highlighted this issue widely and displayed him as the terrorist to the whole nation before the court could make a judgement in this regard. This step by media affected his career. The outrage he suffered led to the depletion of his reputation. But in cases such as Jessica Lal case<sup>17</sup> (Corpus, 2021) where she was working in a restaurant was shot dead in 1999 by Manu Sharma, son of former Congress Minister Vinod Sharma, once she refused to provide booze to him and his accomplices. This case gained much media coverage that even after being acquitted due to public outcry, justice system was compelled to take another look at the case and further he was imprisoned for life due to public pressure and media coverage. Similarly, Priyadarshini Mattoo case<sup>18</sup> (Priyadarshini Mattoo case: HC gives 3-week parole to convict, 2019), was a graduate student, settled in New Delhi with her uncle. Her corpse was found. At first, it was presumed that her elder, Santosh Kumar Singh, who tormented and abused her for years, was the culprit. Finally, it was found out that the primary suspect, Santosh, was indeed the son of an IPS officer. By hooking an insulated wire over her head, he murdered took her life. Santosh had violently slammed her face with a helmet, deeming it to be unrecognizable. A continued public backlash and campaign of lies against acquitted concluded in an argument to the Federal Court, eventually led to the punishment of death sentence. The capital punishment imposed by the Delhi high court on was ultimately reduced to life sentence by the Supreme. These are the cases where media played a positive role. But more than positive it has led to negative.

In the famous ayodhya case<sup>19</sup> (Das) another such example where in the judgement the land was divided into three too curb the religious riots that were widespread since the case gained media attention and public awareness. Consequently, in Yaqub Menon case<sup>20</sup> (YAKUB MEMON CASE: JUSTICE OR INJUSTICE, 2015), where he was charged with involvement in the Bombay blasts. Later he was executed by hanging but the lawyer who was fighting his case faced a lot of public humiliation due to media coverage of the case. This led to an obstacle for lawyers to fulfil their duty of providing legal aid to the parties.

## VI. CONCLUSION

In conclusion, for the smooth functioning of the society it is necessary that there should be presence of some restrictions to the freedoms. The freedoms are misused if they are not restricted. Media 's efforts of sting operations, close watch on police investigation and unfolding the truth to the world is appreciable. But media should take into consideration that there working should not be converted into investigative journalism which not only hinders the work judiciary but also hampers the evidence collection. The dissemination of newspaper articles with its goal of tainting the thinking of said attending justice should indeed be penalized with treasonable misconduct in court. Although the judges remain qualified and even-handed, nevertheless might get subtly swayed with their exterior. There should be rules set up for the functioning of the media so that they do not overstep their boundary.

Media holds a huge influence on public. They should be responsible in broadcasting any information. It is the function of the media to circulate accurate data to the general public, allowing them to derive decisions or form opinions. Since paper has been monitored and rarely departs from such standards, the entire conflict is due to digital media. As the digital age is unsupervised, it employs a testing strategy to identify what operates and what doesn't. To control an audience, the medium should avoid producing and publicizing vulgar, exaggerated news displaying only a side of a story. The liberalisation of the sector has ended it being controlled by politicians as well as entrepreneurs who might furnish them with the necessary tools to mount the ladder. This is more harmful than good. Media should provide only the information to the masses the adjudication part solely remains with judiciary as it should.

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