

THE IMPACT OF MEDIA TRIAL ON RIGHTS OF ACCUSED

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ABSTRACT

Freedom of press is considered as one of the most important yardsticks to evaluate the health of democracy in a State. Simultaneously the importance of fair trial of accused persons cannot be overemphasized and accordingly, fair trial is rightly considered among the most valuable human rights. Consequently, finding an acceptable balance among free press, fair trials, and the personality interests of trial participants is a difficult task in every legal system and India is no different. Media enjoys unbridled freedom in India and there are times when freedom of press and rights of accused meet each other at crossroads. In their routine quest of being the fastest and the first, a number of times media houses, crossing the line, assume the role of a court and trample right of fair trial of accused. As a result various precious rights such as right to fair trial, right to presumption of innocence and right to privacy and dignity of accused are hampered. However, it should not be forgotten that life of an accused person is too valuable to be compromised by the media's commercial desires to raise readerships and in turn profits.

Keywords: Media trial, fair trial, right to privacy, presumption of innocence

INTRODUCTION

Media is popularly known as 4th pillar of democracy and rightly so as it acts as the watchdog of the other three pillars, in order to ensure that they are performing their constitutional duties, thus calling for accountability. The freedom of the press serves the larger purpose of the right of the people to be informed of a broad spectrum of facts, views and opinions. It is the medium through which people gain access to new information and ideas, an essential component of a functioning democracy. Thus, “[t]he survival and flowering of Indian democracy owes a great deal to the freedom and vigor of our press.”¹

What Lord Atkin relates with power is also well placed with the notion of liberty. Liberty does corrupt into license and is prone to be abused. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy.² As Lord Justice Leveson wrote in his path-breaking report on ‘Culture, Practice and Ethics of the Press’ in Great Britain, “With these rights (of press freedoms) come responsibilities to the public interest: to respect the truth, to obey the law and to uphold the rights and liberties of individuals.”³ To restate the issue in the words of Mark R. Stabile, an academic:

“Just as one does not have the freedom to falsely shout ‘fire’ in a crowded theater, one should not have the right to proclaim ‘guilty’ in the arena of public opinion, trampling the fair trial rights of the accused in the ensuing stampede.”⁴

Like most of the other freedoms, freedom of press i.e., freedom of speech and expression is subject to certain conditions and it is expected that media will respect those conditions. But these conditions are seemingly put in jeopardy by the modern day media. In the temptation to sell stories, what is presented is what ‘public is interested in’ rather than ‘what is in public interest’ leading to the emergence of the concept of media trial.

¹Amartya Sen, “The glory and the blemishes of the Indian news media”, The Hindu, April 25, 2012

² *Express Newspapers Vs. U.O.I.*, (1997) 1 SCC 133. See also *re: Harijai Singh and re: Vijayakumar*, AIR 1997 SC 73 wherein the Supreme Court of India has observed that the freedom of press is regarded as “the mother of all liberties in a democratic society”.

³Lord Justice Leveson, ‘An Inquiry into the Culture, Practices and Ethics of the Press’ (Leveson Inquiry Report, London: November 2012). The committee was set up to inquire the ‘culture, practice and ethics’ of the press, including the media’s relations with politicians and the police. The report recommended a strong and independent regulator be set up to replace the existing Press Complaints Commission.

⁴Mark R. Stabile, ‘Free Press-Fair Trial: Can They Be Reconciled in a Highly Publicized Criminal Case?’, 79 *Georgia Law Journal* 337 (1990)

RIGHTS OF ACCUSED

Every human being has got some basic rights which are inherent in him due to just being a human. Thus, even an accused person is worthy of these basic rights or as commonly called Human Rights such as:-

1. Right to fair trial
2. Right to presumption of innocence
3. Right to privacy and dignity

The Universal Declaration of Human Rights, 1948, also recognizes the need and importance of the above mentioned rights.

Right to fair trial⁵: - Article 10 deals with the right of an accused *“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”*.

Right to presumption of Innocence⁶: - Article 11 of the Universal Declaration deals with the right to be presumed innocent and reads thus: *“(1) 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 all the guarantees necessary for his defence.*

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that is applicable at the time the penal offence is committed.”

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⁵The right to fair trial is also contained in the International Covenant on Civil and Political Rights (Article 14[2]), the American Declaration of the Rights and Duties of Man (Article XVIII), the American Convention on Human Rights (Article 8[1]), the African Charter on Human and Peoples' Rights (Article 7), and the Arab Charter on Human Rights (Article 13).

⁶The presumption of innocence is contained in international and regional instruments such as the Universal Declaration of Human Rights (Article 11), the International Covenant on Civil and Political Rights (Article 14[2]), the American Declaration of the Rights and Duties of Man (Article XXVI), the American Convention on Human Rights (Article 8[2]), the African Charter on Human and Peoples' Rights (Article 7[b]), and the Arab Charter on Human Rights (Article 16). It is also found in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Rule 84[2]).

Right to privacy and reputation⁷: - Article 12 deals with the person's privacy rights and reads thus:

"No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference and attacks."

MENACE OF MEDIA TRIAL - RIGHTS OF ACCUSED COMPROMISED

During high profile cases, the media are frequently blamed for inciting a climate of public madness similar to a lynch mob which makes a fair trial almost unimaginable as well as implies that no matter what the decision of the trial is, accused cannot carry on with the remainder of his life without serious consequences. It is widely felt that:

"Pre-trial publicity is injurious to the health of a fair trial. Even before the accused is arrested and tried, the cacophony of media proclaims the accused to be guilty. It may project irrelevant and inadmissible evidence as the gospel truth, thereby convincing the people about the guilt of the accused. It, thus, undermines the fundamental principle of common law that every man is presumed to be innocent till proven guilty. Once the accused is portrayed as a despicably depraved character, at times, the Bar may refuse to defend him. It, therefore, robs the accused of his fundamental right to defend himself.⁸"

The media surpasses its right by publications that are perceived as biased against a suspect or accused, like defaming the character of accused, publishing admissions, confessions, making statements commenting upon police activities, criticizing witnesses, analyzing merits of the case, crime scene photographs. etc. It is pertinent to refer to the observation of Law Commission of India which observed that:

"If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the "administration of justice", calling for proceedings for contempt of court against the media. Other issues about the privacy rights of individuals or defendants may also arise.⁹"

In May 2014 a Consultation Paper On Media Law by Law Commission of India was issued and as per it:

⁷ The right to privacy and reputation is also contained in the International Covenant on Civil and Political Rights (Article 17), the American Declaration of the Rights and Duties of Man (Article V), the American Convention on Human Rights (Article 11), and the Arab Charter on Human Rights (Article 16[8] and 21[1]).

⁸ Justice R.S. Chauhan, "Trial by Media: An International Perspective", (2011) PL October S-38.

⁹ Law Commission of India, 200th Report on Trial by Media, Free Speech and Fair Trial under Cr.P.C,1973(August 2006) at 12.

"There is a widespread view that the difference between an accused and a convict and the basic underlying principle of 'innocent until proven guilty' are regularly overlooked by sections of the media in its coverage of ongoing trials. By conducting parallel trials, the media, it is felt, not only puts undue pressure on the judge but also creates pressure on lawyers to not take up cases of accused. Further once a matter comes under intense media glare, there is an added pressure on the prosecution to secure evidence which must incriminate an accused, lest the media build negative public opinion against the prosecution. A fair trial and investigation, which are foremost constitutional guarantees, are as much a right of the accused as they are of the victim." ¹⁰

1. Right to fair trial breached

As already seen in the previous part that Right to fair trial is an indispensable provision and its sanctity cannot be undermined in any situation. It is an umbrella protection and consists of a number of facets like right to unbiased judges, right to hearing, right to presumption of innocence, etc. In *Zahira Habibullah Sheikh v. State of Gujarat*¹¹, the Supreme Court observed:

"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."¹²

In the present times, media has been found guilty of violating these rights on more than one occasion. The two most common ways in which media threatens a fair trial is *firstly*, by publishing a confession or admission of guilt by the accused before the police and *secondly*, by publishing the past record of the accused showing either his previous convictions or something destroying his character.

It is highly prejudicial to report that an accused confessed or to reveal details of a confession before such a confession is presented at trial. Once the confession is published by both the police and the media, the suspect's future is finished. When he retracts from the confession before the Magistrate, the public imagine that the person is a liar. The whole procedure of due process is thus getting distorted and confused.

¹⁰ Law Commission Consultation Paper On Media Law, Government of India, May 2014 at 15.

¹¹ (2004) 4 SCC 158.

¹² *Id.*, at para 36.

As per Section-25¹³ of the Indian Evidence Act, 1908, confession before a police officer is inadmissible. General public does not understand the nuances of law and might not be able to appreciate such provisions. Thus, for them there was clear evidence against the accused, i.e., his confession before police and if despite that he is acquitted; there is something inherently wrong with our judicial system. The case of Afzal Guru¹⁴ is a very apt example of this where police invited media to record confession¹⁵ of Afzal Guru and for the next few weeks this was the breaking news flashing over on every single news channel of the country. Moreover, Section 54¹⁶ of the Evidence Act makes the evidence showing bad character of the accused not only inadmissible but rather irrelevant. Thus, by publishing such materials media creates an aura of hatred against the accused making his fair trial impossible.

There is another way by which media hampers the administration of justice, that is by exerting a pressure on lawyers to not to take cases of accused in various high profile cases and consequently driving these accused to stand on trial in absence of proper defence and thus rendering them with practically no safeguard. This is obviously contrary to the principles of natural justice. The presumption of culpability on account of media infringes upon the right to legal representation, a basic part of the right to fair trial. Be it 16th December rape case, Ajmal Kasab's case, attack on parliament case or Jessica Lal murder case, in every single of these instances the accused found it hard to get a lawyer and when a lawyer took such a case he was projected as some sort of public enemy by media. Media should not forget that right to be represented by a lawyer is one of the most basic principles of natural justice. It is worth mentioning how Mr. Jethmalani was publicly criticized by news channels for taking Manu Sharma's case.

¹³ Section 25:- Confession to police officer not to be proved - No confession made to police officer shall be proved as against a person accused of any offence.

¹⁴ *State(NCT of Delhi) vs. Navjot Sandhu @ Afzal Guru* AIR 2005 SC 3820.

¹⁵ In *R v. Clarke* (Ex p Crippen: (1910) 103 LT 636.), Crippen was arrested in Canada but not formally charged, but a publication appeared in England in Daily Chronicle, as cabled by its foreign correspondent, that "*Crippen admitted in the presence of witnesses that he had killed his wife but denied the act of murder*". The publication was treated as contempt. Darling J observed, "*Anything more calculated to prejudice the defence could not be imagined*".

In New South Wales, a police officer was found guilty of contempt in *AG (NSW) v. Dean* ((1990) 20 NSWLR 650), when, in the course of police media conference following the arrest of a suspect in a murder inquiry, he answered a journalist's question with a statement which suggested that the person confessed to the police. He was held to be in contempt but was let off without fine.

From the preceding cases, it is evident that publications of confessions are prejudicial to suspect. However, unlike other courts, Indian courts have not even chastised the press for such publications save conducting contempt proceedings.

¹⁶ Section 54- Previous bad character not relevant except in reply - Previous bad character not relevant, except in reply.- In criminal proceedings the fact that the accused person had a bad character is irrelevant, unless evidence has been given that he has a character in which case it becomes relevant.

What is being conveyed here is that media, being such a powerful entity, having such a large consumer base, shall take people's sensitivity and ignorance of technicalities into account and should restrict itself to showing people's opinions rather than molding them. It has got a right to inform and not misinform and misguide the public.

2. Right to Privacy infringed

"Privacy is vital to the mental, spiritual and physical well being of all individuals and also to the morality and personality of the individual." - Charl's Fried¹⁷

In *Kharak Singh v. State of Punjab*¹⁸, the Supreme Court conferred judicial recognition upon the right to privacy as an aspect of the fundamental right to life and personal liberty enunciated under Article 21 of the Constitution. The rights to privacy vis-à-vis invasions by journalists were observed in *Sheela Barse v Union of India*¹⁹, *Prabha Dutt v Union of India*²⁰ and also *State vs. Charulata Joshi*²¹. The Supreme Court in *R. Rajagopal v. State of Tamil Nadu*²² made some delightful remarks with respect to the right to privacy:

"A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. No one can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy."²³

It has become a trend in the recent times that as soon as a high profile person is accused of a certain crime, media in its attempt of being a savior of justice immediately focuses its attention upon the private life of the accused. In their zeal to telecast the truth and more importantly, being the first one to do so, media channels completely disrespect the right to privacy of the accused.

3. Right to Reputation destroyed

¹⁷ Charl's Fried, *Privacy* 77 Yale LJ 475.

¹⁸ AIR 1963 SC 1295.

¹⁹ (1987) 4 SCC 373.

²⁰ (1982) 1 SCC 1.

²¹ (1999) 4 SCC 65.

²² AIR 1995 SC 264.

²³ *Id.*, para 28

The Supreme Court in its various pronouncements has held that right to reputation is an integral part of one's life²⁴. It is a facet of right to life of a citizen under Article 21 of the Constitution of India.²⁵ During the hearing of the public interest litigation filed by advocate Surat Singh in the Aarushi Talwar murder case before the Supreme Court, Justices Altamas Kabir and Markandey Katju remarked:

"Nobody is trying to gag the media. They must play a responsible role. By investigation, the media must not do anything which will prejudice either the prosecution or the accused. Sometimes the entire focus is lost. A person is found guilty even before the trial takes place. See what happened in this [Aarushi] case. Till today what is the evidence against anyone? We will lay down guidelines on media coverage. We are not concerned about media criticizing us. Let media say anything about us, we are not perturbed. Our shoulders are broad enough and we will ignore it [the criticism]. We are for media freedom. What we are saying is there is no absolute freedom"²⁶

By continuous media coverage, an accused is projected as a convict to the general public which might not be able to appreciate the difference between the two terms. As a result even if the accused is acquitted in court of law he has already been proved guilty in court of public. Therefore, it becomes virtually impossible for him to resume his initial life with normalcy. Public figures, with slender rights against defamation are more in danger and more vulnerable in the hands of the media. Reputation is considered sacred in almost every society and thus a lost reputation is impossible to be compensated. The role played by the media reminds one of the words written by Samuel Warren and Louis D. Brandeis in their famous *Right to Privacy* article (1890):

"The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle."²⁷

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²⁴ *State of Bihar vs. Lal Krishna Advani*, AIR 2003 SC 3357; *State of Jammu and Kashmir vs. Bakshi Gulam Mohammad*, MANU/SC/0050/1966; *Smt. Kiran Bedi and Jinder Singh v. Committee of Inquiry*, MANU/SC/0512/1989.

²⁵ *Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni*, MANU/SC/0184/1982.

²⁶ J. Venkatesan, *Apex Court to lay down coverage norms*, <http://www.thehindu.com/todays-paper/apex-court-to-lay-down-coverage-norms/article1319394.ece> (Last visited on September 28, 2018).

²⁷ Samuel Warren and Louis D. Brandeis, *The Right to Privacy*, 4 *HARV. L. REV.* 193,196 (1890). As cited in Dr. Furqan Ahmad, "Human Rights Perspective of Media Trial", 1(1) *Asia Law Quarterly* 59 (2009)

CONCLUSION

Undeniably, finding an acceptable balance among free press, fair trials, and the personality interests of trial participants is a difficult task in every legal system. It involves not merely technical issues, but value choices of the greatest relevance to any society. The precedence given by the New Zealand court²⁸ to the right to fair trial over freedom of expression is an excellent example of judicial craftsmanship since the loss of freedom of press is not absolute but merely temporary. The loss of immediacy is the lesser evil of the two.²⁹

For justice to be administered correctly, guilt or innocence must be determined in the courtroom, where the full facts can be considered, not through media outlets where selective elements are reported for the purpose of sensation. A defendant's life is too valuable to be compromised by the media's commercial desires to raise readerships and in turn profits. As suggested by former Chief Justice of India, K.G. Balakrishnan "besides the proposed changes to the law of contempt, the long-term solution lies in respect of self-regulation by both the media and the judiciary. The editorial teams at media organisations must promote the best practices for newsgathering and emphasise the importance of maintaining ethical standards for the coverage of judicial proceedings."³⁰ No doubt freedom of speech and expression is sacrosanct but when confronted with right to fair trial it has to get aside. As Dr. Furqan Ahmed has observed that "today, when we are going through one of the crucial period of history which is taking a new turn thanks to the transition that is sweeping the society world over, it requires to be cautious and adopt a cogent approach that does not deny a person what is due to him, that is, a fair trial."³¹

The contempt jurisdiction of courts gives them the authority to impose the "soft" sanction of finding a person guilty of criminal contempt and then pardoning him or her, and the "hard" sanction of imposing a criminal penalty on a contemnor. Instead of merely issuing token proclamations against

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²⁸ *Solicitor General v. Wellington Newspapers Ltd.*, 1995 (1) NZLR 45 where the court observed that "in pretrial publicity situations, the loss of freedom involved is not absolute. It is merely a delay. The loss is an immediacy; that is precious to any journalist, but is as nothing compared to the need for fair trial."

²⁹ Zehra Khan, "Trial-By-Media: Derailing Judicial Process In India", 1 *Medial Law Review* 91-113 (2010)

³⁰ Justice K.G. Balakrishnan in Regional Workshop on 'Reporting of Court proceedings by media and administration of justice' at the High Court of Maharashtra and Goa, Mumbai (October 19, 2008).

³¹ Dr. Furqan Ahmad, "Human Rights Perspective of Media Trial", 1(1) *Asia Law Quarterly* 59 (2009).

journalists — the standard judicial practice in recent times — courts could contemplate the use of “soft” sanctions as an alternative.³²



³² Banerjee, Arpan, “Judicial Safeguards Against ‘Trial by Media’: Should Blasi’s ‘Checking Value’ Theory Apply in India?” 2 *Journal of Media Law & Ethics* 28 (2010)