



## TRIAL BY MEDIA UNDER CONTEMPT OF COURT ACT, 1971

By Ishaan Behal  
From Amity Law School, Noida

### Introduction

The Indian media has been provided with a lot of liberty in terms of Legal limitations. Article 19(1) incorporated in the Constitution of India provides Freedom of Speech and Expression, however it is liable to certain restrictions as given in Article 19(2). Many a times the media is successful in avoiding these restrictions by entering into the loop holes present in the legal framework. This freedom, if left unbridled tends to turn into an uncontrolled permit which results in anarchy and disorder.

Media has now resurrected itself into an 'open court' and has begun indulging into court procedures. It totally disregards the essential gap between a blamed and a convict. With the instance of Sheena Bohra murder, the media penetrated the personal dealings of the primary charged Indrani Mukherjee which has kicked in a new discussion on the issue of media trial of the denounced. Each part of her own life and character which have nothing to do legitimately with the examination of the killing are under open focal point of investigation by means of the media. Due to such acts of media, the public and sometimes even judges are forced to believe the accused as guilty even though according to law he should be assumed innocent until proven guilty. If this unwanted publicity in media about an accused leads to labelling of a person as guilty amounts to unfair interference of "administration of justice",

which further leads to proceedings for contempt of court against media.

### Free Speech vs\_ Fair Trial

In the criminal justice system, the guilt is to be proved outside the legitimate doubt and wherein the law is subjugated by senses and not by emotions. While portraying emotions, the media and the masses overlook the deafening pressure it puts on the judge presiding handling the case.

A person is supposed to be lawful and innocent unless he is held guilty and convicted by the competent court, but here the aim is to validate a person guilty at the time of arrest. The media helps in reporting facts or news and raise public issues; it is not there to pass judgments. The print and electronic media have gone into fierce competition, as we aim to call them 'aggressive journalism' that a number of cameras are flashed at the accused and the police are not even allowed to take the accused from their transport vehicles to the courts or the other way round. The Press Council of India issues guidelines timely also in some cases, it takes action. But, even though 'apologies' are aimed to be published; they are published in a certain way that either they are not apologies or the apologies are published in the papers at places which are not very prominent. The most deplorable part, and afflicted too, of the recently actual role of media is that the Broadcasting of a conspicuous crime and its carrying off 'evidence' begins very early even Before the person who will gradually head over the trial even takes knowledge of the Offence, and secondly that the media is not restricted by the accustomed rules of evidence which classify what material can, and cannot be used to condemn an accused.



In reality, the Right to Justice of a victim can often be conciliated in other ways also, supremely in Rape and Sexual Assault cases, in which, the past sexual history of a prosecutor may find its way into the newspapers. The media treats even skillful criminal and the ordinary one, at times even the innocents, alike without any rational discrimination. They are moreover treated like a 'television item' risking the reputation and image. Even though they are let off by the court on the basis of proof beyond reasonable doubt, they cannot exhilarate their previous image. Exposure such as that provided to them is more likely to compromise all these supported rights accompanying liberty.

Earlier, journalism was not impelled to push up TRP ratings or sales. So the journalists did their work with a deliberate intent and confidence, with courage and integrity. They did not declare people guilty without making a serious trial to study the charges, consider them, and come to their own independent conclusion. They did not indiscriminately print what law enforcers postulated, what the bureaucracy said or what politicians planted on to them. But now we are facing a very different self-acquired role of media in the form of 'media trial'. Everyone scammed the media to serve their own interests or to hurt their own rivals. The problem is not in the media's exposing the layoff of a bad investigation by the police, or mal-performance of the duties commanded to the civil servants but the eye-brows start to raise when the media *ultra vires* its appropriate prerogative and does what it must not do. Be

it bringing into the limelight the *sub-judice* issues into public risking the sanctity of judicial customs and 'right to life with dignity' of accused and suspects. The media trial has now moved on to media verdict and media punishment that is no doubt an invalid use of freedom and violating the prudent delimitation of legal boundaries. It is necessary to analyze prejudicial publicity of the subject matter awaiting before a court. It should be legally permitted to pass restraint order on the media.

### Right to a Fair Trial

It is an absolute right of an individual not outside the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution. Right to a fair trial is more considerable as it is a supreme right that flows from Article 21 of the constitution to be construed with Article 14. Freedom of speech and expression integrated under Article 19 (1)(a) is pinned under 'reasonable restriction' subject to Article 19 (2) and Section 2 (c) of the Contempt of Court Act. One's life with dignity is always given the first concern as compared with one's right to freedom of speech and expression. Media should also speculate these facts. Fair trial is not elusively private profit for an accused – the publics' confidence in the rectitude of the justice system is decisively.<sup>1</sup> The right to a fair trial is at the core of the Indian criminal justice system. It encircles distinct other rights including the right to be assumed innocent unless and until proven guilty, the right not to be constrained to be a witness across oneself, the right to a public trial, the right to legal delegation, the right to speedy

<sup>1</sup> Gisborne Herald Co. Ltd. V. Solicitor General, 1995 (3) NZLR 563 (CA)



trial, the right to be present throughout the trial and reconnoiter witnesses.

In the case of *Zahira Habibullah Sheikh v. State of Gujarat*, the Supreme Court explained that a “fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.

### **Right to be legally represented**

Through media trail, we have started pressurizing the lawyers even not to take up cases of those subjected to accusation, thereby forcing them to go to trial without any aid or propagation. Everyone has a right to get themselves represented by a lawyer of their cull and put their point before the court that decides and no one has the right to preclude themselves from doing so. The media has to apprehend their limit before it gets too late. Suspects and accused apart, also the victims and witnesses go through the intemperate publicity and intrusion of their privacy rights. Police are shown in the poor light by the media and their disposition too suffers. When the report of crime is published; media shows ‘Police have no clue’. Then, whatever rumors the media collects about the line of Analysis of the case by the official agencies, it gives such advertising with respect to the information that the person who has committed the particular crime, can easily locate to safer places.

For example, when the prominent lawyer Ram Jethmalani chose to defend Manu Sharma, the prime accused in “Jessica Lal murder case”, he was subject to public derision. A senior editor of the television news channel CNN-IBN called the decision to represent Sharma an attempt to “defend the indefensible”. This was only one example of the media controlled campaign against the accused<sup>2</sup>

The pressure on the police from media builds up and reaches up to point a where police feel.

Constrained to say something to protect their reputation. Under such pressure, police, not many times, come up with a story which says they have captured the suspect and that he has confessed, wherein a few in the media appear to know that under the law, confession to police is not allowed in a criminal trial. Once the confession is announced by both the police and the media, the suspect’s future is finished. When he pulls back from the confession in front of the Magistrate, the public presumes that the person is a liar. The media also creates other complications for the witnesses. If the identity of witnesses is announced, the witnesses might come under pressure from the accused or his associates and as well as the police. Witness protection then becomes a serious casualty. This leads to the question about the expediency of belligerent witness evidence and if the law should be revised to stop the witnesses from changing their statements. Also, if the suspect’s photographs are shown in the media, problems could arise anytime throughout ‘identification parades’ directed

<sup>2</sup> <http://www.hrdc.net/sahrdc/hrfeatures/HRF164.htm>  
accessed on 10th June 2008.



under the Code of Criminal Procedure for identifying the accused.

### **Effect on judges**

Another stressing component and one of the significant charges upon 'media trials' is prejudicing the judges upon some specific case. The American view states that Jurors and Judges are not at risk to be effected by media influence, while the British view is that Judges, may at present be subliminally (however not intentionally) impacted and public may feel that Judges are affected by such distributions under such a circumstance. Lord Denning stated in the Court of Appeal that Judges will not be influenced by the media publicity<sup>3</sup>. However, Hon'ble Justice D. M. Dharmadhikari, Chairman, M. P. Human Rights Commission likewise stated that there is constantly an opportunity that judges get impacted by the streaming demeanor of comments made upon a specific contention. The media exhibits the case in such a way to the open that if a judge passes a request against the "media decision", the individual is regarded either as contempt or biased

### **Innocent publication and distribution of matter**

According to section 3 of the Contempt of Court Act, 1971, Innocent publication and distribution of matter doesn't amount to contempt.

Section 3 states that -

(1) A person shall not be guilty of contempt of court on the ground that he has published

(whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid<sup>4</sup>

### **Justification by media**

The right to speak freely plays in important role in the formation of general opinion on social, political and monetary issues. Additionally, the people in power ought to have the option to keep the individuals educated about their approaches and ventures, in this manner, it can be said that freedom of speech and expression is the mother of every other freedom.

<sup>3</sup> Attorney General v. BBC : 1981 AC 303

<sup>4</sup> Contempt of Court Act, 1971



Expressing a similar view, Justice Venkataramiah, J. of the Supreme Court of India in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[12] has stated:

*“Freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate Government cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities”*

We have a rich custom of free news-casting. Truth be told, all the huge tricks were busted by the press. The law masters just tailgated them up. The ineffectively paid writer must be credited for discovering the information which looked difficult to reach, even for the top vigilance teams of the nation. This is the means by which HDW(Howaldswerske) marine case and Bofors hit the news. This is the means by which we discovered that Narasimha Rao had bribed the Jharkhand Mukti Morcha MPs and Satish Sharma and Buta Singh had handled the arrangement. The media made us proud at each point of such political junctures

Supreme Court of India has held that freedom of the press extends to engaging in uninhabited debate about the involvement of public figures in public issues and events. But, as regards their private life, a proper balancing of freedom of the press as well as the right of privacy and maintained defamation has to be performed in terms of the democratic way of life laid down in the Constitution.<sup>5</sup>

Accordingly, in perspective on the perceptions made by the Supreme Court in different decisions and the perspectives communicated by different law specialists, it is perfectly clear that the freedom of the press streams from the freedom of expression which is ensured to all natives by Article 19(1)(a). Press remains on no higher balance than any other native and can't guarantee any benefit (except if given explicitly by law), in that capacity. The press can't be exposed to any exceptional limitations which couldn't be forced on any resident of the country

#### Law Commission's 200<sup>th</sup> Report

The most reckoning look into on the positive and negative parts of media preliminary has been expounded in 200<sup>th</sup> report of the Law Commission entitled *Trial by Media: Free Speech versus Reasonable Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)*. The report has made suggestions to address the harming impact of sensationalized news writes about the organization of equity. While the report still can't seem to be made open, news reports show that the Commission has prescribed forbidding distribution of anything that is biased towards the blamed — a confinement

<sup>5</sup> Rajgopal vs. State of Tamil Nadu (SC)



that will work from the hour of capture. It likewise allegedly suggests that the High Court be enabled to coordinate deferment of distribution or broadcast in criminal cases. The report noticed that at present, under Section 3 (2) of the Contempt of Court Act, such distributions would be scorn just if a charge sheet had been recorded in a criminal case. The Commission has proposed that the beginning stage of a criminal case ought to be from the hour of capture of a blamed and not from the time the charge sheet had been filed. In the impression of the Commission such a revision would keep the media from prejudging or prejudicing the case. Another disputable proposal recommended was to enable the High Court to coordinate a print or an electronic media to delay production or broadcast relating to a criminal case and to control the media from falling back on such distribution or broadcast. The 17th Law Commission has made suggestions to the Center to order a law to keep the media from detailing anything biased to the privileges of the accused in criminal cases from the hour of capture, during examination and preliminary.

### Conclusion

Any organization, be it a governing body, legal executive or administration, is obligated to be manhandled on the off chance that it surpasses its genuine purview and capacities. Be that as it may, once in a while these ultra vires activities are surprisingly positive development just like the instance of legal activism. Media Trial is likewise a calculable exertion alongside the progressive sting tasks as it keeps a nearby watch over the examinations and exercises of police organizations and government officials. Be that as it may, there must be a sensible self-

restriction over its field and due priority ought to be given to the free trial and court strategies must be regarded with sufficient awareness. Media ought to recognize that whatever they distribute has an incredible effect over the public and even the judges. In this way, it is the ethical obligation of media is to demonstrate reality and that too at the perfect time. While the print media has come to at a point where it knows about lawful rules and moral points of confinement yet the electronic media is testing and is depending upon 'experimentation' strategy for what to show and all the more significantly what not to. The time will come when electronic media will also be well restricted by self-controlled guidelines and we shall retain a 'completely free press', the dream of our first Prime Minister, Jawahar Lal Nehru and that too without any fear involved.

\*\*\*\*\*