

| LAW AUDIENCE JOURNAL |
| VOLUME 2 | ISSUE 1 | ISSN (O): 2581-6705 |
| INDEXED JOURNAL | IPI VALUE (2019): 2.32 |
| IMPACT FACTOR (2018): 2.527 |

| LAW AUDIENCE JOURNAL® |
| VOLUME 2 & ISSUE 1 |
| ISSN (O): 2581-6705 |

EDITED BY:
LAW AUDIENCE JOURNAL'S
EDITORIAL BOARD

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(ISSN (O): 2581-6705)

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“MEDIA TRIAL: NEED OF CAUTION IN INDIA.”

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I. ABSTRACT:

“Media can be referred to as the “eyes and ears of the general public”. It plays a necessary role in moulding the opinion of the public and has the power to change the whole viewing point through which people perceive various events. Media is regarded as the fourth pillar of democracy. It is now days reincarnated itself into ‘public court’. Media trial is a phrase that has become popular since the last few years to describe the impact of media coverage on television and print media. The Indian constitution under Article 19(1) (a) grants freedom of speech and expression to its citizens.

Freedom of the press is a necessary element of Article 19. This right is not absolute in nature; it is subjected to certain restrictions of contempt of court and defamation of a person. The first prime minister of independent India quoted beautifully “I would rather have a completely free press with all the danger involved in the wrong use of that freedom than a suppressed or regulated press”.

But he did not imagine the harm involved as he did not expect the press to get involved in the matter which are beyond its ethics, limits and hinders the “administration of justice” which is the essence of natural justice and rule of law. The trial is affected by the media sensation. Judges start considering the view of the media as their decision of the case just to save themselves from the criticism of media.”

II. INTRODUCTION:

In 1991 our Indian Economy has had a vast impact on all spheres of our lives. But we can say that the most significant impact was felt on the media sector and also through this sector. As soon as the private players came into the picture of Industry, the Scenario changed to a great extent, if not completely. The citizens of our country, both resident and non-residents became more enlightened and confident about the contemporary Scenario because of the exposure through the 24*7 news and entertainment channels. We feel lucky when we think that we have a sensible media team to help us fight the odds because the media facilitates us to become more aware of our rights and privileges. Now people of our country have sufficient means or mode to raise their voices against cruel acts on them or their fellow mates.

III. IMPACT OF MEDIA TRIAL:

Media in general means a means of communication. There are various means through which communication to society can be made, such as television, newspaper, radio, internet websites, etc., it generally involves broadcasting and publishing. Media is regarded as the “fourth pillar” of democracy. Since it brings to the people the information about “executive, legislature and judiciary” by making their work transparent. It keeps people updated about the social, political and economic activities going out around them. “Trail” in general means a proceeding which takes place before a court of justice. The term trail is also defined under section 2(7) of the Banker’s Books Evidence Act, 1891 as “any hearing before the court at which evidence is taken.” According to Black’s Law Dictionary, “trial” means “a formal judicial examination of evidence and determination of legal claims in an adversary proceeding”.¹ These definitions of media trial show that media is not adequate authority for conducting a trial. The Supreme Court of India has recorded on the consequence of media trial as under: - *“the impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial impossible but means*

¹ Justice V. Rajkumar, “Trial by Media”, <http://www.livewall.in/trial-by-media/> (April 27, 2018).

*that regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny”.*²

To be in the top, the media frequently perverts the facts and sensationalize news stories to grab the attention of the public. Various times it is found that media publishes biased opinion and gives its own decision even before the court passed any judgement. So, the media trial affects the judgement of the court and also affects the accused because he should be generally considered as innocent until he is proved guilty.

- **Media and Fair Trial:**

Fair trial means a trial that takes place before an impartial judge, fair prosecutor and in a calm judicial atmosphere. Article 10 of the UDHR state that, *“everyone is entitled 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”.*³ Article 11 of the UDHR says *“everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence”.* “Right to a fair trial” is also protected by article 14 and 16 of “International Covenant on Civil and Political Rights”. The Supreme Court of India held that *“an accused has a right to a fair trial. He has the right to defend himself as part of his human as also fundamental right as enshrined under Article 21 of the constitution of India”*⁴

- **Media and freedom of speech and expression:**

The word ‘Speech’ used in Article 19(1)(a) of the Indian Constitution is Comprehensive enough to cover the press. Press Council Act, 1978, creates an institutional forum of the media for maintaining and imposing the standards of newspapers and news agencies.

M. Hasan v. Govt. of Andhra Pradesh⁵, the court held that the denial by the authorities of the jail to a journalist and a videographer to interview the Condemned prisoners in jail amounts to deprivation of a citizen’s Fundamental Right of Freedom of Speech and

² R. K. Anand v. Delhi High Court, (2009) 8 SCC 106.

³ <https://www.humanrights.com/what-are-human-rights/universal-declaration-of-human-rights/articles-01-10.html>

⁴ T.Nagappa v. Y.R. Muralidhar, (2008) 5 scc 633.

⁵ AIR 1998 AP 35

Expression under Article 19(1)(a) of Indian Constitution. There is no mention of freedom relating to media in Part III of the Indian Constitution. There is no explicit guarantee of such freedom in the Constitution of India. This freedom is implied in Article (19)(1)(a) of the Constitution of India which guarantee “freedom of speech and expression”. But then also it is not difficult for the court of India to protect the freedom of media.

As, in Constituent Assembly Debates, *Dr. B. R. Ambedkar* said that: *“Press has no special rights which are not to be given or which are not to be exercised by the citizens in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press.”*⁶

Various times conducting media trial of an accused violates the principle “presumption of innocence”, on which the criminal justice system of India relies. Media should not forget that law is not governed by emotions. Article 21 of the Indian Constitution deals with the fair trial, cannot be suspended even during an emergency in Nation. There are several cases where the lawyer representing an accused was criticized by media. Such as lawyer Ram Jethmalani and lawyer Abbas Kazmi in case of Jessica Lal Case and 26\11 Case respectively. Thus, the higher probability is that lawyers may refuse to take up such cases.

- **Media and Right to Privacy:**

Privacy in simple words means a state in which one is not observed or disturbed by others. Others here mean any person or government or any institution. However, privacy differs from situation to situation and person to person. The media generally in order to draw out the information for being in the top in the race invades with the right to privacy of persons. Right to privacy is deemed right under Article 19 and 21 of the Indian Constitution. The former article deals with the right to freedom and later deals with the right to life. Some exceptional rule regarding the right to privacy is made in India. Section 8(1)(j) of Right to Information Act, 2005, exempts disclosure of any personal information which is not connected to any public activity or of public interest or which would cause an unwarranted invasion of privacy

⁶ Dr. Ambedkar’s Speech in Constituent Assembly Debates, VII, 980.

of an individual.” In the case of *R. Rajagopal v. State of Tamil Nadu*⁷, and *PUCL v. Union of India*⁸, the court has held that the right to privacy is an essential ingredient of the right to life.

IV. IS MEDIA TRIAL A CONTEMPT OF COURT?

Media trial is contempt of Court and it should be punished. The Contempt of Court Act, 1971 defines into Civil and Criminal. “Section 2(b) in the Contempt of Court Act, 1971 defines ‘*Civil Contempt*’ means wilful disobedience to any judgement, decree, direction, Order, Writ or other process of a Court or wilful breach of an undertaking given to a court.”⁹

Section 2(c) in the Contempt of Courts Act, 1971

(c) “*Criminal contempt*” means the publication (*whether by words, spoken or written, or by signs, or by visible representation, or otherwise*) of any matter or the doing of any other act whatsoever which:

- (1) *Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or*
- (2) *Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
- (3) *Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;*¹⁰

Former Justice Kurian Joseph of the Supreme Court of India has said that the trial by the media on pending cases is virtually the same as to the contempt of court. Every time the media trial is not right because it is not legal in any way. The interference of media can have a serious effect on the life of the person who directly collides. It affects the judge also who is presiding over that matter not only accused and judges but sometimes other functionaries like the police are shown in a bad light which downgrades their reputation. Media have the right

⁷ (1994) 6 S.C.C. 632.

⁸ AIR 1997 SC 568

⁹ <https://indiankanoon.org/doc>

¹⁰ <https://indiankanoon.org/cdoc/231480/>

to freedom of speech and expression but it does not mean that the right to freedom of speech and expression does not embrace the freedom to commit contempt of court.

The Chief Justice Gopal Rao Ekkbote of Andhra Pradesh High Court said in the case of Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr.¹¹, In the time of litigation, no one should comment on it. Because sometimes Media and other functionaries comment in such a way there is a real and substantive danger of prejudice to the trial of the action. And it affects the judge, Witnesses and accused. Even if a person honestly believes himself that the comment which he is making is true, still it is considered as a contempt of court if he prejudices the truth before it is ascertained in the proceedings. And one rule may add to this general rule of a fair trial that none shall bring unfair pressure on the bearing parties by misrepresentation or otherwise that he should drop his complaint or defence.

V. REGULATORY MEASURES:

There should be a reasonable restriction upon media. It is the constitutional obligation of all the courts to ensure that the restrictions on the media imposed by the law are reasonable and relate to the purpose specified in Article 19(2).

In Papnasam Labour Union v. Madura Coats Ltd¹², the Supreme Court has laid down some principles and guidelines regarding provision imposing restriction on fundamental rights. It shall always be kept in view while considering the constitutionality of a statutory provision imposing restriction on fundamental rights guaranteed by Articles 19(1)(a) to (g) when challenged on the grounds of the unreasonableness of the restriction imposed by it.

Rajendra Sail v. M.P. High Court Bar Association¹³, the High Court Punished and sent to suffer a six months imprisonment to the printer, editor and publisher and a reporter of a newspaper along with the petitioner who was a labour union activist. At a rally of Workers,

¹¹ AIR 1975 AP 30

¹² (1995) 1 SCC 501

¹³ (2005) 6 SCC 109 per Y.K. Sabharwal, J.(for himself and Tarun Chatterjee, j.)

they published derogatory remarks against the judges of a High Court made by a Union activist. The remarks affected the decision given by the High Court was rubbish and fit to be thrown into a dustbin. When the appeal was filed before the Supreme Court then Supreme Court upheld the Contempt against them, but modified and reduced the Sentence.

VI. 200TH LAW COMMISSION REPORT:

“Article 19(1)(a) of the Constitution of India guarantees freedom of Speech and Expression and Article 19(2) permits reasonable restrictions to be imposed by statute for the purposes of various matters including ‘Contempt of Court’.”¹⁴ Article 19(2) does not specify to the administration of Justice but in the definition of Criminal Contempt and in Section 3 the interference of the administration of justice is clearly referred which is considered as contempt.

Therefore, if any newspapers, media or any publications interfere or tend to interfere with the administration of justice amount to Criminal Contempt under the Contempt of Court Act and in order to prevent such interference, the provisions of that Act impose reasonable restrictions on Freedom of speech then such restriction would be valid. At present under section 3(2) of the Contempt of Court Act, 1971, read with the explanation below it, if by the date of publication, a charge sheet or challan is not filed or if Summons or warrants are not issued then in such cases that Act gave full immunity granted to Publications even if they prejudicially interfere with the course of Justice in a criminal case.

If the criminal proceeding is actually pending i.e., any charge Sheet or challan is filed or warrant is issued by the court by the date of publication then such publications would be considered as contempt of court. The Law Commission in its 200th report, Trial by Media, Free Speech v. Fair Trial under *Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)*, has suggested a law to debar the media from reporting anything prejudicial in criminal cases to the rights of the accused from the time of the arrest to investigation and trial.

¹⁴ <https://www.lawoctopus.com>

VII. CONCLUSION:

The concept of “*trial by media*” is not new. It is referred to as “*eyes and ears of the general public*”. It acts as the backbone of our society. There is a need for responsible media because the general public accepts the truth in the news published by media. For acting as a responsible media, it should take the following steps related to any news they are going to publish;

- *Cases should be verified before publishing or broadcasting.*
- *Accuracy of the case should be maintained.*
- *Unlawful acts shall not be appreciated.*
- *Right to privacy of an accused shall not be invaded.*

The media act as a watchdog and give a platform to bring people a voice to the notice of society and legislatures. But nowadays the media focuses much on TRP’s various times. Only those news are broadcasted for which channels are paid off. The 200th law commission report has come up with a report on “*trial by media: Free speech v. fair trial under criminal procedure.*”

The media can be regulated by the court by exercising contempt jurisdiction of the court to punish those who violets the basic code of conduct. The media cannot be allowed to exercise the right of freedom of speech to an extent as to prejudice the trial itself.

In the earlier time, journalism was not under pressure to push up TRP ratings. They did not announce people guilty without making a serious attempt to study charges, investigate them and come to their own independent conclusions, without fear and favour. That is why people blindly trust them but nowadays we ate seeing a different role of media in the form of ‘media trial’.