**MEDIA GLARE AND FAIR TRIAL**

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**ABSTRACT**

Media acts as the fourth pillar of democracy which keeps the other three pillars in checks and acts as the fabric and mirror of society. It has the power to sway, manipulate, and revolutionize the masses either in a positive or in a negative manner. Free media is a sine qua non to democracy. Media is not only a medium to express one’s opinions and views, but it is also instrumental for building point of views and thoughts on numerous topics of regional, national and international interests. In many cases, media has been justified in calling for the perpetrators to be punished in accordance with the law. However, recently the media has been taking over the functions of the judiciary and is deviating from its main role of unbiased reporting. The implications of the unaccountability of media are proving to be unhealthy for democracy. This article analyses the concept of media trials and their intervention with the judiciary. Moreover, this paper will discuss the positive as well as the negative points of the media trial. It further suggests the necessary steps that should be taken to prevent media trials from eroding the civil rights of citizens.

**Keywords:** *Media, Media Trial, Democracy, Judiciary, Civil Rights*

**INTRODUCTION**

“The demi-world of journalism is like the fun house of mirrors that one finds in carnivals. In one reflection you are too fat; in another you are absurdly thin; in another reflection you appear to have an elongated neck; in another, a flat head,- in still another you have next to nobody. Yet there you are, standing in front of these bizarre reflections, *fully* formed and hearing little resemblance to any of the images before you. The difference is, however, that unlike the fun house of mirrors, the distortions of the media are rarely a joke” -**John Hofess**

Before beginning with the concept of media trail, lets first understand what prejudice is. Prejudice is a prejudgment that often relies on biasedness and stereotypes. It lacks adequate knowledge of the subject manner. Prejudice kicks in a moment when a scenario is posted or telecasted by the source. It is often believed at a first stance by looking through the lens of the first party completely ignoring the other party’s side.

Media plays a significant role in shaping a person’s prejudice and hence affects his or her thought process. . It has the power to destroy or make a person’s reputation and may cause irreversible damages Participative media is contemplated as the ‘cornerstone’ of the Indian democracy. From the ink of its pen to the sound of its mic, media can build as well as malign a person’s reputation simultaneously. To a large extent, media plays an irrefutably positive role and its role can be commended for bringing the accused to the hook. For instance, in some infamous cases, like the Jessica Lal murder case[[1]](#footnote-2), and PriyadarshiniMattoo rape case[[2]](#footnote-3), the court would have declared the accused innocent if the media had not been involved. In these cases, the widespread coverage of media led to the guilt of the accused. The advancement in cable television, local radio networks, and the internet has significantly enhanced the coverage area and the impact of the mass media. The expanding readership of newspapers, magazines in English language and vernacular languages along with viewership coupled with the use of modern technologies for gathering news has given media organizations an unprecedented role in shaping popular opinion.

**TRIAL BY MEDIA**

In the case of Sushant Singh Rajput[[3]](#footnote-4), journalism ethics have been in controversy again. The tormenting eyes of the media have spiked the personal life of the main accused Rhea Chakraborty which has kicked in a fresh debate on the issue of the media trial. Every facet of her personal life and character which has no relation with the investigation of the case legally, are under the public lens of scrutiny via the media.

'Trial by media' is a phrase that has been used widely in the last few decades to narrate the impact of television and print media coverage on a case, and its attempt in holding the accused guilty even before to his trial and regardless of any verdict passed by the court of law.

The history of trial by media goes back to the 20th century when American movie star Roscoe “Fatty” Arbuckle (1921), was arguably charged by the media with the death of a woman, however, he was acquitted by the court, but nevertheless lost his reputation and job after the media declared him “guilty”. Another famous instance is the trial of former National Football League player, actor, and broadcaster OJ Simpson(1994) who was acquitted on two counts of murder of his ex-wife, and her friend. But the media influenced the mind of viewers negatively and declared him guilty. The relation is less about guilt or innocence but more about the role of the media coverage on the minds of the public which is above the status of the court.

**APPLICABLE LAWS**

The role of media in a democracy is well acknowledged and its importance has been increased in this tech- savvy globalised world. Article 19 of the Indian Constitution provides The Right to freedom of speech and expression which is inclusive of freedom of press. This right is not absolute and is subjected to various limitations mentioned under Article 19(2) of the Constitution of India.

In  Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[[4]](#footnote-5)* case,the Supreme Courthas stated that*:*

“Press freedom is the heart of political and social intercourse. The press has now taken the role of the public educator making formal and informal education feasibleon a large scale particularly in the developing world, where modern kinds of communication like television and other are not still available for all the sections of society. The motive of the press is to advance the public interest by broadcasting facts and opinions without which a democratic electoratecannot make accountable judgments. Newspapers being providers of news and views having a relevance on public administration very often carry substance which would not be flavourful to Governments and other authorities.”

The above statement clearly illustrates that the freedom of press is crucial for the proper functioning of the democratic process. Every citizen is entitled to participate in the democratic procedure in this democratic country where there is Government of the people, by the people and for the people. In order to enable an individual to intelligently exercise his freedom of choice, free and public discussion with regards to public matters is absolutely essential.[[5]](#footnote-6) This provides an explanation of the constitutional viewpoint of the freedom of press in India.

In R. Rajagopal v. State of T.N*[[6]](#footnote-7)* case, the Supreme Court of India stated that freedom of the press has a widen scope to engage in uninhabited debate about the involvement of public figures in public issues and events. A proper balance of freedom of the press with the right of privacy, maintained with defamation has to be performed in terms of the democratic way of life laid down in the Constitution in regards to the private life of the individuals.

The right to report legislative proceedings comes under the freedom of press. The press has the privilege of sitting in the Courts to keep the general public them informed on matters of public importance. The journalist therefore possesses the right to attend proceedings in Court and publish fair reports. However, this is not an absolute right and is subjected to certain restrictions. For instance, the reporting of names of rape victims, children, juvenile and woman should be prohibited. Therefore, in the interests of justice, the court may restrict the publicity of Court proceedings in order to avoid exploitation of the victim. Under section 151 of the Civil Procedure Code, 1908, the Court has the inherent power to order a trial to be held in camera so that the verdict is not presented by in a twisted manner.

**FAIR TRIAL-**

Harry Browne has correctly said “A fair trial is one in which the rules of evidence are honoured, the accused has competent counsel, and the judge enforces the proper courtroom procedures - a trial in which every assumption can be challenged.”

Fair Trial is an integral part of thejudicial system in India. It encompasses numerous other rights including the right to be presumed innocent until proven guilty, the right to a public trial, the right to legal representation and the right to speedy trial. Within the territorial limits of India, the Right to a fair trial is considered as an absolute right of every individual under articles 14 and 20, 21 and 22 of the Constitution.

**MEDIA TRIAL AND THE CONTEMPT OF COURT**

Contempt of court in India is of two types, i.e. Civil and Criminal Contempt. Under the Contempt of Courts Act, 1971, civil contempt is defined as disobedience of any judgement, decree, order or any order process of a court wilfully.[[7]](#footnote-8)On the other hand, criminal contempt is defined as the publication, either 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: (i) Scandalizes, or lowers the authority of, any court, or (ii) Prejudices, with the due course of any judicial proceeding, or (iii) Tends to interfere or obstruct and actually interferes and obstructs with,the management of justice in any other manner[[8]](#footnote-9).

Under the Contempt of Court Act, 1971, immunity is granted to media. Its Pre-trial publications are protected against contempt proceedings. However, any publication which interferes with and tends to obstruct any proceeding, whether civil or criminal, and the course of justice, constitutes the contempt of court. It can be declared as contempt because of the fact that the acts which are broadcasted before the court passes its verdict, can mislead the public and affect the rights of the accused of a fair trial. Such kind of publications related to his earlier convictions or the confession he made can cause a great damage to his reputation.

The Law Commission of India in order to balance the two rights offreedom of press Versus right to free and fair trial, in its 200th Report[[9]](#footnote-10) which was submitted on 31st August 2006 recommended some amendments to the Contempt of Court Act 1971 and measures of postponement of proceedings and further said that such powers cannot be vested in the subordinate courts where the criminal proceedings are 'active'. Since under the Contempt of Court 1971 Act, the subordinate courts have no authority to take measures for contempt. Under Section 15(2) of the Act, they can only refer it to the High Court. Further, the harmonizing of the rights of freedom of speech and the due process right of the suspect/accused as explained in Maneka Gandhi’s[[10]](#footnote-11)case can be done more accurately by the Constitutional bench of High Court. A bench of not less than two judges can pass the postponement orders in High Court.

**MEDIA MAYHEM: NEGATIVE ASPECTS OF MEDIA HEGEMONY-**

These days, media has reincarnated itself into a ‘JantaAdalat’ and to a great extent has started its interference into court proceedings. They have completely forgotten the principle of ‘presumption of innocence until proven guilty’ and the gap between an accused and a convict. Media now-a-days are conducting their separate investigation which reaches the public at large and forms an opinion against or for a person much before the court takes cognizance of the case. As per Ray Surette, media trial has the following flavour and it sticks to these same stereotypes throughout their reporting, i) Sinful rich type ii) Evil stranger psychotic killer, and iii) Abuse of Power trial[[11]](#footnote-12). There has always been a tug-of-war between the principles of ‘media trial’ and ‘fair trial’ where the public at large is involved. In an increasingly ruthless market for seeking the attention of readers and viewers, media reports often turn to distortion of facts and sensationalism. The pursuit of commercial interests motivates the use of intrusive newsgathering practices which tend to impede the privacy of the people who are the subject of such coverage. The problem becomes worst when the media widely covers sub judice matters by publishing the matter and opinions that are clearly detrimental to the interests of the parties involved in litigation that is pending before the Courts. It has changed Yellow journalism has become a reality of media industry. There have been numerous incidents where media has pronounced the accused guilty and the people passed verdicts socially, even before the court trials began. The law clearly states that a person is “innocent until proven guilty”, but people tend to make a person guilty without any substantial evidence through social media. For the sake of TRP, media has been sensationalizing reality which results in unfair denunciation of a person. It hampers the administration of courts and their decision-making procedure by setting a pre judice in the minds of the judges.

**MEDIA TRIAL AS A NECESSARY EVIL: POSITIVE ASPECTS**

*“Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.” -****Jeremy Bentham***

Media plays a positiverole in revealing corruption in government and exposing out the government's inaction on many occasions to the lime light. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and taken Suo-moto cognizance of the matters in various cases after relying on their reports.

The accused in many criminal cases would have gone unpunished but due to intrusion of media they were convicted. For instance, in the case of RuchikaGirhotra, when she reported the molestation and opposed it, she, her family and friends were harassed by the accused Inspector General of Police S.P.S. Rathore. The girl went through so much trauma that she committed suicide. The case caused tremendous anger among the public and was highlighted by the media. After, 19 years, 40 adjournments and more than 400 hearings, the court pronounced the accused Rathore guilty. Further in the infamous case of Jessica Lal Murder, media investigationwas done in the right spirit. An upcoming model, Jessica Lal was shot dead by Manu Sharma in the head when she refused to serve him alcohol after the closing hours. The accused was the son of a prominent leader. After the trial of seven years, Manu Sharma was acquitted in 2006, because of the fact that most of the witnesses had turned hostile and claimed they know nothing about the accused. The acquittal led to a huge public outcry and a lot of pressure was created on the judiciary and the Delhi High Court. Media extensively covered this brutal case. This resulted in the admission of an appeal against the previous order. Sting operations was conducted by the Tehelka magazine on the hostile witnessed, which revealed that the father of the accused had bribed them all. Based onthe evidence collected, Justice was finally served and Manu Sharma was sentenced life imprisonment. Media’s strong criticism over the decision of the court in PriyadarshiniMattoo’s case mounted pressure on the administration where it was later found that, vital evidence had been overlooked while deciding the case. An appeal filed by the CBI resulted in the reversal of the earlier judgement and the culprit was sentenced life imprisonment. In this case, Santosh Kumar, son of a going to be Additional Commissioner of Police, harassed a law student, raped and murdered her at her residence. He was let off after warnings owing to the influential position of his father whenever any complaint was filed against him. The CBI, arrested Santosh, who later was acquitted due to benefit of doubt and the lack of evidence.

**CONCLUSION AND SUGGESTIONS**

Media in its role as a gatekeeper has done commendable job since ages. But the conflict arises when media crosses its boundaries and tries to usurp the power of judiciary and has become an agenda setter and law enforcer. The need of the hour is to establish a balance between the rights of the people to know and presumption of the accused to be innocent until proven guilty. The investigative journalism should maintain its code of ethics, social responsibility and credibility by not overstepping in the matters of court so early. Instead, should do the research, keep a check on high profile cases, find the evidences and keep it to them until and unless they find the truth suppressing.Both have to uphold the constitutional philosophy and the rule of law. The judiciary and the press have to supplement and not supplant each other. In a conflict between fair trial and freedom of speech, fair trial has to necessarily prevail because any compromise of fair trial for an accused will cause immense harm and defeat justice delivery system Trial by Media is a requisite in this 21st century nascent democracy where violence, crime & corruption are at its peak and where human life is not priceless anymore.

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4. (1985) 1 SCC 641 at p. 664, para 32. [↑](#footnote-ref-5)
5. Maneka Gandhi v. Union of India, (1978) 1 SCC 248 [↑](#footnote-ref-6)
6. (1994) 6 SCC 632 [↑](#footnote-ref-7)
7. The Contempt of Courts Act 1971,s 2(b) [↑](#footnote-ref-8)
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