

Chapter - I

CONFLICT BETWEEN MEDIA TRIAL AND FAIR TRIAL

BY

Sudhamoy Bhowmick & Payel Talukder

Abstract

Freedom of speech and expression is recognised as a fundamental right under the Indian constitution as well as many international laws. This right includes the freedom of press and media as unenumerated rights under Indian constitution, which empowers the media to disseminate information to the public. Media through investigative journalism, televised debate, panel discussion and newspaper articles informs the public about social, political and economic issues. The investigative journalism extends to reporting crimes also. However, sometimes these right crosses its boundaries and makes conflicts with others enumerated right. Sometimes this right portrays the person as guilty without any investigation, where law considered an individual innocent until proved as guilty. Such unjustified news changes perception of general public as a result they post their own opinion targeting the suspected person which affects his personal life as well as the fundamental rights like right to live with dignity and right to get fair and trial. The expansion of print, electronic, and social media in India has transformed the public sphere, strengthening democratic participation and transparency. While the judiciary recognises the essential role of a free press under Article 19(1)(a), it insists on maintaining boundaries that prevent interference with due process, the right to privacy, and the dignity of courts. However, the judiciary in this matter tries to balance between this competing rights. In light of the above discussion, this chapter seeks to explore the concept of media trial and its adverse effect on the right to a free and fair trial. Lastly examining the approach adopted by Indian courts in balancing these intersecting constitutional rights.

Keywords: Media trial, Fair trial, Freedom of speech, Freedom of press, Censorship

Freedom of Speech and Media freedom:

Freedom of speech and expression is recognised as an important human right, as well the first condition of democracy. The idea develops on the idea of free dialect, the necessity of discussion and debate, that create informed citizens. The right includes the authority of individuals to speak freely even against the power and the majority. In this philosophical aspect this right is hazardous as this freedom allows all kind of expression even those are false, hateful or destabilizing. It is a socially constructed right, that sense two approaches-

The first is individual cantered approach where freedom of speech and expression is considered as personal right which emphasize the idea of self-expression means every person has the right to express their own opinion.

The second approach can be society cantered approach where freedom of speech and expression considered as collective right which focuses on how the open debate allows the exchange of idea which may convince public to take decision. Therefore, sometime the reasonable restriction is needed for the interest of society.

Internationally this right has been recognised under *Universal Declaration of Human Rights, 1948* as:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

UN human right committee in general comment no 34(2011) interprets article 19 of *International Convention of Civil and Political Rights, 1966* also ensures freedom of speech and expression as an essential part of human right.

In Indian constitution has recognised and protects freedom of speech and expression under the part III of constitution, i.e. fundamental rights. Article 19 recognised six freedoms as fundamental right of freedom, “*freedom of speech and expression*” is first among them however “*freedom of press*” is not directly mentioned under the text of the constitution. However, judges always ruled for the free media in India. Freedom of Press is thus recognised by judiciary as unenumerated right under Article 19(1)(a). In *Ramesh Thappar vs. State of Madras, 1950*¹ case *Justice Patanjali Sastri* (as he was then) observed that “*Freedom of speech lay at the foundation of all democratic organisation*”.

¹ *Romesh Thappar v State of Madras* [1950] SCR 594

While discussing about the utility of “freedom of press”, in *Indian Express Newspapers V. Union of India* (1985)², supreme court observes follows:

“The expression ‘freedom of press’ has not been used in Article 19 of the Constitution but, as declared by this Court, it is included in Article 19 (1) (a) which guarantees freedom of speech and expression.”

Again, in *Indian express Newspapers V. Union of India* (supra), also provide that “Press not only to satisfy the public interest by throwing up a broad spectrum of views but also to fulfil the individual interest by enabling virtually everyone with a distinctive opinion to find some place to express it”. Hence where in democracy people have right to know. Press has the duty to inform people to satisfy their interest to know. Press and media satisfy such interest by providing news about social, political, economic, and other issues. Such news can include news about occasion of crimes and investigation of the same, as well updates about the trail. Media through investigative journalism produce news about crimes and which in many cases are under trial or even pre-trial stage. However, such news needs authenticate, biasfree, and responsible reporting.

What is Media Trial:

The term “*Media Trial*” is a portmanteau of ‘*Media*’ and ‘*Trial*’. Where the term *media* refers to, mass communication including broadcasting, publishing, and internet, while *trial* refers to a formal meeting in a law court, at which judge and jury listen to evidence and decide whether a person is guilty of a crime. Hence, together it means exercise of trial by media.

From previous several decades, the phrase “Media trial” has been used to suggest the large and bias news reporting of under trial and pre-trial matters by the news organizations such as Newspaper, T.V. Channels, etc. Statutory definition of the term media trial is not possible, as it is not a legal procedure or principle. However, supreme court in *R.K. Anand v. Delhi High Court*³, tries to define it in following words:

“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 court 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 nearly impossible but means that, regardless of the result of the trial, in

² *Indian Express Newspapers (Bombay) Pvt Ltd v Union of India* [1985] 2 SCR 287

³ *RK Anand v Registrar, Delhi High Court* (2009) 8 SCC 106

public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.... ”

Though the court and Media both has duty to bring truth before the public, both working of institute is not same. Judiciary functions on due process of law also, where the both the parties in conflicts presents evidence before the court, other party get a chance to cross-examine the evidence which are produced against him and finally the adjudicator pronounce the judgement, which can again be reviewed and challenged before higher authority through appeal. The press and media bring the truth before people through news article, televised debate, discussions. so media in search of sensational news can interpret and presents one-sided option as truth.

It is important to mention here that the media plays an important and responsible role reporting to interpret judiciary in many cases. Indian courts have often taken *suo moto* cognizance of news reports to uphold justice and protect fundamental rights. For instance, *Sheela Barse V. State of Maharashtra*⁴, the supreme court acted on report about women prisoners. Again, in *Bandua Mukti Morcha V. Union of India*⁵ and *People's Union for Democratic Rights V. Union of India*⁶, court intervened after media exposed bonded labour and worker exploitation. While media and press have the duty to inform people about various news, including crime.

Hence, reporting of crime is different from media trial in many aspects. Media and press have the duty to inform people about various news, including crime. While crime reporting is factual, neutral informing to the public about commission of crime with journalist ethics. One the other side in media trial, media replace the role of judge without any knowledge or experience about functioning or nature of judicial proceedings. Such reporting functions solely on speculation and emotion to sensitize the issue to get more views, including declare someone guilty or innocent to an accused whose case is under trial or pretrial before a court, and by this influencing public opinion. So the discussion on the conflict between free media and fair trial, and the adverse effect of the irresponsible reporting on individuals' dignity and administration of justice.

Conflict Between Freedom of Speech and Free Trial:

*Zahira Habibullah Sheikh v. State of Gujarat*⁷, the Supreme Court explained that a “*fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial*

⁴ *Sheela Barse v State of Maharashtra* (1983) 2 SCC 96.

⁵ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161

⁶ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161.

⁷ *Zahira Habibullah Sheikh v State of Gujarat* (2004) 4 SCC 158.

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.”

Exercising the adjudicating function by the media results a huge number of problems regarding justice system. In our country judiciary functions on the established procedural function and passing judgement which mandates the principles of natural justice and constitutional mandates. The determination of guilty and innocence is based on legally accepted evidence not on emotion. But when the media assumes the role of a judge by publishing anything without any evidence this affects the structured judicial process.

Press and media in often publish news emotionally charged and one-sided narrative, which can hide the truth. In *M.P. Lohia v. State of West Bengal*⁸, the Supreme Court strongly criticised one-sided media reporting in a dowry death case and observed that such articles, which publish only the prosecution’s allegations while ignoring the defence material, stated following:

“These types of articles appearing in the media would certainly interfere with the course of administration of justice”.

However, as fundamental principal of criminal law works on the presumption of innocence, individual’s guilt needs to be proved beyond reasonable doubt before declaring such individual as guilty. This principle is internationally recognised under *article 11(1)* of the *Universal Declaration of Human Right* as *“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 had all the guarantees necessary for his defence.”*

In the case of *State of Maharashtra v. Rajendra Jawanmal Gandhi*⁹, the supreme court held that *“There is procedure established by law governing the conduct criminal trial of a person accused of an offence. A trial conducted by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice”.*

Despite of this the media is observed to have habitually overlooked the legal presumption of innocence until proven guilty by indulging in media trials or parallel investigations, thereby negatively impacting the serious prejudice accused in the case.

Article 21 of the constitution also mentioned that No person shall be deprived of his life or personal liberty except according to procedure established by law. Which enumerated fair trial as fundamental

⁸ MP Lohia v State of West Bengal (2005) 2 SCC 686

⁹ State of Maharashtra v. Rajendra Jawanmal Gandhi is (1997) 8 SCC 624

right. *Sidhartha Vashisth @ Manu Sharma V. State (Nct of Delhi)*¹⁰ the Hon'ble Supreme Court emphasized that trial by media must not prejudice the accused's right to a fair defence or compromise the presumption of innocence, particularly during an ongoing investigation.

The impact of the media trial went further when a court of law pronounces a verdict contrary to what already decided by the media, it creates doubts in the mind of layman, who already assumes the guilt influenced by the media coverage, about the impartiality of the judiciary. It resulted in suspension of corruption and biasness about judiciary in the public. Such presumption can thereby undermine the public confidence and prejudice the fair administration of the criminal justice system.

Trial by media apart from adversely affecting the Fair Trial, prejudice to the individuals' right to privacy and human dignity, which are recognised fundamental right under article 21. Fundamental rights do not flee the person as he enters the prison.(sunil bharat).Hon'ble Supreme Court in *R. Rajagopal and Another v. State of Tamil Nadu and Others*¹¹ reminiscence of the limits of freedom of the press with respect to the right to privacy held, *"A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None 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."*

Hon'ble Andhra Pradesh High Court in *Labour Liberation Front v. State of Andhra Pradesh*¹². The Hon'ble Court observed, *"14. ...Once an incident involving prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts to examine the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitment to the noble profession. The freedom of speech and expression, which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively."*

¹⁰ *Sidhartha Vashisth @ Manu Sharma v State (NCT of Delhi)* (2010) 6 SCC 1

¹¹ *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632

¹² *Labour Liberation Front v State of Andhra Pradesh* (2005) 1 ALT 740 (AP)

Trial by media also prejudicial with the identity of victims, which is protected by the authority of the law, In *Nipun Saxena v. Union of India*¹³, the court held *“In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village, etc. is clearly visible. This also amounts to disclosing the identity of the victim.”*

It is clear from the above discussion that media trial has serious consequences on free and trial, on one hand such reporting habitually overlooked the presumption of innocence, vitiates the judicial authority, on the other hand it frequently undermines the individual dignity and privacy. Hence some precautionary measures need to be introduced to control such media trial while upholding free and authenticate media reporting.

Censorship and Freedom of Press:

Censorship: Censorship means suppression, restrict or control over publishing or expressing any Idea, news or expression by government, organization and judiciary also to give sensitive, objectionable matter to the society. The censorship can be both pre censorship and post censorship.

Types:

- I. Pre censorship is restriction on publishing something before publishing the news for the first time. During the time of emergency in 1975-77 the newspapers were required to submit the news to the government before publishing. The government had the power to impose restrictions on publishing such news.
- II. Post censorship means ban or prohibits the news after publishing. Contents which are defaming or having sensitive content that can be restricted publishing after publication
- III. Self-censorship where the journalists himself refrain from publishing such issues due to the fear of political pressure, legal consequences or any other reason.

Constitutional provisions:

As the freedom of press is not directly mentioned in the Indian constitution but such right is unenumerated right under Indian constitution. The Freedom of press is recognized under article 19(1)(a) but this right is not the ultimate right. This right can be restricted by imposing article 19(2)

¹³ *Nipun Saxena v Union of India* (2019) 2 SCC 703

of the constitution in the interest of sovereignty and integrity of India, friendly relationship with foreign state, security of the state, defamation, contempt of court etc. but the censorship is constitutionally permissible when they satisfy the test of reasonableness. Judicial perspective: for defining the term censorship the court played an important role on the two cases that are *Brij Bhushan vs State of Delhi*¹⁴ and *Ramesh Thappar vs. state of Madras*¹⁵ the supreme court held that the pre-censorship of newspapers violates the right of press it infringes the freedom of press. The pre-censorship is only permissible only under exceptional circumstances and reasonably under article 19(2). In the case of *KA Abbas vs. union of India*¹⁶ the court mandates the validity of censorship of the film. But the court also emphasized that the censorship must be reasonable and transparent when the court by order restricts any fundamental rights, the restriction should be reasonable, justified with the legitimate aim. The restriction should be justified by the test of proportionality. This test is important to safeguard the arbitrary state action to restrict fundamental rights. For the essence of the proportionality test the state must not adopt any disproportionate measures that harm individual rights when less restrictive or other alternatives are available. The doctrine of proportionality is deeply rooted in the European jurisprudence and international human rights law and the Indian judiciary adopted such doctrine to evaluate the reasonableness of restrictions of fundamental rights.

The test of reasonableness contains four requirements.

1. Legitimate aim
2. Rational connection
3. Necessity/ least restrictive means
4. Balancing

In the case of *Modern Dental and Research Centre vs. state of Madhya Pradesh* (2016)¹⁷ the supreme court held that four steps of proportionality test are important to restrict any fundamental rights. This concept was reaffirmed in the case of *K.S. Puttaswami vs. union of India* (2017)¹⁸. The steps include legitimate aim is the first requirement which requires the restriction should be lawful, valid and the aim should be constitutionally permissible ground such as public order, national security, morality, protection of right etc. in *K.S. Puttaswami vs union of India* (2017). The court mandates that the legitimate aim should be fulfilled in such restrictions. Rational connection is suitability test which

¹⁴ *Brij Bhushan v State of Delhi* [1950] SCR 605

¹⁵ *Romesh Thappar v State of Madras* [1950] SCR 594

¹⁶ *KA Abbas v Union of India* [1971] 2 SCR 446

¹⁷ *Modern Dental College & Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353

¹⁸ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1

mandates There must be a logical and reasonable nexus between the restrictive measure adopted and the objective sought to be achieved. In modern dental college case the court held, the means adopted should be suitable to achieve the legitimate object. The necessity or least restrictive means that there is no least restrictive means available on the object the restoration should confirm that. In case of *Anuradha Basin vs union of India* (2020)¹⁹ the court use this principle and held that the restriction should be temporary, proportionate and least instructive. The balancing is the final step of this stage where the court balance between the sovereignty of restrictions and the public right here the benefit of the society must overweigh the harm cause to the individual. In the case of *Sahara India estate corporation Ltd. Vs security and exchange board of India* (2012)²⁰ the supreme court saw the conflict between article 19(1)(a) which is freedom of trial and the article 21 that is right to a fair trial. Here the issue arises whether the unrestricted Media reporting infringe the right to fair trial and whether the court can impose the temporary restriction on such media reporting. The supreme court found that though the freedom of press is pillar of democracy but this is not absolute. The court introduced “doctrine of postponement” and held that the court may impose temporary restriction on publishing of aspects of ongoing proceedings to keep fair trial.

In *Vidyadhar v Multiscreen media pvt.Ltd* (2013)²¹ where the petitioner was convicted in a corruption case but his appeal was pending. The court restricted to telecast because fair trial includes the appeal proceedings also. In *Swatenter Kumar vs. The Indian express*²² where the court impose the temporary restriction to protect reputational right under article 21.

Conclusion:

The conflict between the media trial and the fair trial reflects the continuous effort to balance between the individual rights with the interest of the society and the democratic rights as freedom of speech and expression of the media. The balancing derives the constitutional protections of 19(a)(1) at the same time it protects the personal liberty under article 21 of the constitution by imposing reasonable restrictions under article 19(2). The judicial scrutiny of state restrictions of media has evolved through the test of reasonableness and test of proportionality. The cases like K.S Puttaswami, Shahara India , Anuradha Bhasin the supreme court affirmed such tests to balance between media trials and fair trials.

-----*****-----

¹⁹ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

²⁰ *Sahara India Real Estate Corp Ltd v Securities and Exchange Board of India* (2012) 10 SCC 603

²¹ *Vidya Dhar v Multi Screen Media Pvt Ltd* (2013) 10 SCC 145.

²² *Justice Swatanter Kumar v The Indian Express Ltd* (2014) 207 DLT 221