FREEDOM OF SPEECH AND MEDIA TRIAL - A CRITICAL LEGAL STUDY

Shreya Shukla, Galgotias University [BA-LLB Hons]

ABSTRACT

We square measure aware that in a very democratic country like Asian country, freedom of speech and expression as well as freedom of the press is a crucial elementary right however such right isn't absolute, the maximum amount as Constitution itself. Article 19(1) (a), permissible the assembly to impose affordable restriction on the correct, within the interests of assorted matters, one in all that is that the honest administration of justice as protected by the Contempt of Courts Act, 1971. Media is that the fourth pillar of our Indian Democracy. If media exercises associate degree unrestricted or rather unregulated freedom in publication data a few criminal case associate degree prejudices the mind of the general public and people UN agency square measure to adjudicate on the guilt of the suspect and comes a suspect or an suspect as if he has already been adjudged guilty well before the trial in court, there will be serious prejudice to the suspect.
INTRODUCTION

In fact, although ultimately the person is innocent once the group action in courts, such associate degree final decision might not facilitate the suspect to build his lost image in society. The criminal justice system followed in Asian country relies on the idea that associate degree suspect is entitled to honest trial and is innocent till well-tried guilty on the far side any affordable doubt. however the media on associate degree account of exclusive coverage goes an extended thanks to cover and publish interviews of witnesses, victim’s relatives, comments of the members of legal fraternity, which can cause prejudice to the trial proceedings within the explicit judicial mind. If excessive promotional material within the media a few suspect or associate degree suspect before trial ends up in characterizing him as someone UN agency had so committed the crime, it amounts to undue interference with the “administration of justice”, line proceedings for contempt of court against the media.

After the judgment in R. Rajagopal v. State of Tamil Nadu, alternative problems concerning Right to privacy of people or defendants might also arise. within the higher than case the Supreme Court control that it absolutely was vital to strike a balance between the liberty of the press and also the right to privacy, and located that the state and its officers don't have the correct to impose previous restraints on the publication of materials that will denigrate the State. Public figures, with slender rights against defamation square measure a lot of at risk and a lot of vulnerable within the hands of the media. The media additionally creates alternative issues for witnesses’ i.e if the identity of witnesses is revealed, there's danger of the witnesses coming back stressed each from the suspect or his associates moreover as from the police. At the earliest stage, the witnesses wish to retract and acquire out of the muddle. Witness protection is then a significant casualty. This results in the question concerning the acceptability of adverse witness proof and whether or not the law ought to be amended to forestall witnesses dynamic their statements. Again, if the suspect’s photos square measure shown within the media, issues will arise throughout ‘identification parades’ conducted underneath the Code of Criminal Procedure for distinctive the suspect. Sometimes, the media conducts parallel investigations and purpose fingers at one who could so be innocent. It tries to seek out fault with the investigation method even before it's completed and this raises suspicions within the minds of the general public concerning the potency of the official investigation machinery.
The print and electronic media have gone into fierce competition. Thanks to that, multitude of cameras square measure flashed at the suspects or the suspect and also the police aren't even allowed to require the suspects or suspect from their transport vehicles into the courts or the other way around. The Press Council of Asian country problems tips from time to time against media in several cases, however there's no action against it, that makes media associate degree whimsey platform. And, although apologies square measure directed to the media that has to be revealed, revealed in such the way that either they're not self-deprecating for it or the apologies that has to be revealed within the papers are revealed at pages that aren't terribly outstanding. excluding these circumstances, primarily there's bigger ought to strike a right balance between freedom of speech and expression of the media and also the group action rights of the suspect and suspect, Art 19(1) 1(a), 19(2), Art twenty one and Art fourteen of the Constitution play a really vital role in hanging a fair balance between them.

**Concept of media trial**

Trial is basically a method to be dispensed by the courts. The trial by media is unquestionably an undue interference within the method of justice delivery. Before delving into the problem of justifiability of media trial it might be pertinent to 1st try and outline what really the ‘trial by media’ suggests that. Trial could be a word that is related to the method of justice. It's the essential part on any judiciary that the suspect ought to receive a good trial. Recently, Hon’orable

---

1 Section 54 A of the Code of Criminal Procedure, 1973 states that, “Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit”.

**Provided that**, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with.

**Provided further** that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be video graphed.

Supranote 2

Justice Kurian Joseph of Supreme Court of India whereas addressing Bar Council of India Meet at Madras on 26-07-2015 citing pressure on the judiciary throughout the Nirbhaya rape case, had remarked that Media Trials in unfinished cases ought to be avoided and thereby judges saved of the large strain created by it. "Please stop making an attempt (cases) within the media until a case is over. ne'er attempt a case within the media, it creates loads of pressure on judges, they're additionally persons," relating "the quantity of pressure that's designed," he recalled however a decide UN agency restrained the case had once told him that "had he not as long as social control, they'd have decorated him." The decide same "If I had not as long as social control they'd have decorated ME, the media had already given their finding of fact, (like) it's aiming to be this only". He however, added, "He (the decide UN agency went into Nirbhaya case) had reasons to relinquish the social control, not as a result of the media same it, however as a result of he had reasons.

**Freedom of Speech vs. Media Trials**

Freedom of speech i.e. Article 19(1) (a) plays a crucial role within the formation of belief on social, political and economic matters. Thus, it will be same that freedom of speech is that the mother of all alternative liberties. yielding with the statement Justice Venkataramiah of the Supreme Court in Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India (1984) has iterated:

“Freedom of press is that the heart of social and political intercourse. The press has currently probable the role of the general public professional person creating formal and non-formal education possible in a very giant scale notably within the developing world, wherever tv or trendy communication devices aren't still out there for all sections of society.” generally wherever there has been high promotional material of proceedings, the media has vie a vital role in making panic among the viewers, creating honest trial nearly not possible. There are grounds why the eye of the media around sure cases is sensationalistically high. The grounds are:

1. Cases might involve youngsters or they may be therefore barbaric or ugly that the media considers it necessary to sensationalize such cases.

2. The case might concern a number one celebrity either as a victim or as associate degree suspect.
In the cases wherever leading celebrities square measure concerned, the influence of the media might drastically amendment the opinion of the "fans" of such prestigious celebrities. One such case has been Sushant Singh Rajput Death Case wherever media had vie a vital role and also the suspect raised the problem of media trials.

**Right to be legally Represented**

Through media path, we've began to produce pressure on the lawyers even — to not take up cases of suspect, therefore forcing these suspect to travel to trial with none defence. is that this not against the principles of natural justice? every one features a right to induce himself diagrammatical by a professional person of his selection and place his purpose before the adjudicating court and nobody has the correct to debar him from doing therefore. For associate degree instance, once eminent professional person Ram Jethmalani determined to defend Manu Sharma, a major suspect in a very murder case, he was subject to public derision. A senior editor of the tv news channel CNN-IBN known as the choice to represent Sharma an endeavor to “defend the indefensible”. This was only 1 example of the media-instigated campaign against the suspect. As we tend to all knew that in this case we tend to had one in all the most effective lawyers of the country, Gopal Subramaniam, showing for the state and also the case of Manu was bimanual to some mediocre professional person. Media went ram down tongues once mister. Jethmalani took the case and exhibit him as a villain. Don’t we would like to relinquish civil rights to the defence to prove its case, or have we tend to lost religion within the judiciary? The media got to perceive their limit before it becomes too late. Suspects and suspect apart, even victims and witnesses suffer from excessive promotional material and invasion of their privacy rights. Police square measure conferred in poor light-weight by the media and their morale too suffers. The day once the report of crime is published; media says ‘Police haven't any clue’. Then, no matter gossips the media gathers concerning the road of

---

Dr. Sumayya H, Media trial and Indian legal system, International Journal of Law ISSN: 2455-2194; Impact Factor: RJIF 5.12, [www.lawjournals.org](http://www.lawjournals.org), visited on 2/10/2020 at 8:00 a.m.
1986 AIR 515, 1985 SCR (2) 287
Media Trials in India, ‘Freedom of Speech vs. Media Trials’, [https://blog.finology.in](https://blog.finology.in), visited on 02/10/2020 at 9:00 a.m.
investigation by the official agencies, it offers such promotional material in respect of the data that the one who has so committed the crime, will move away to safer places. The pressure on the police from media day by day builds up and reaches a stage wherever police feel compelled to mention one thing or the opposite publically to safeguard their name. generally once, underneath such pressure, police act with a story that they need nabbed a suspect which he has confessed, the ‘Breaking News’ things begin and few within the media seem to know that under the law, confession to police isn't admissible in a very criminal trial. Once the confession is revealed by each the police and also the media, the suspect’s future is finished. once he retracts from the confession before the justice, the general public imagine that the person could be a deceiver. the total procedure of group action is therefore obtaining distorted and confused. The media additionally creates alternative issues for witnesses. If the identity of witnesses is revealed, there's danger of the witnesses coming back stressed each from the suspect or his associates moreover as from the police. At the earliest stage, the witnesses wish to retract and acquire out of the muddle. Witness protection is then a significant casualty. This results in the question concerning the acceptability of adverse witness proof and whether or not the law ought to be amended to forestall witnesses dynamic their statements. Again, if the suspect’s photos square measure shown within the media, issues will arise throughout ‘identification parades’ conducted underneath the Code of Criminal Procedure for distinctive the suspect.

Media trial and contempt of courts act

Contempt of court operates on a rather totally different plane. The preponderant concerns here area unit dignity of the court and fairness of trial. thus it follows that when a case has reached the court nobody is allowed to publish his own versions of facts. Violation of this rule amounts to contempt of court. The rule evolved judicially that is supplemented by special statutory provisions, that disallow the publication even of bound matters truly happening in course of trial. currently the question arise is whether or not this negative approach of law is inconsistent with the constitutionally bonded right of freedom of speech and expression. during this affiliation it should be discerned that the constitution in Art: 19(2) expressly save the operation of law of contempt of court. whereas Judiciary is that the third pillar of the democracy media is taken into account to be
Associate in Nursing integral a part of it. Media cross the demarcating line of management that resulted invasion on functions of alternative organs of democracy particularly judiciary. Unfair and inaccurate news of unfinished cases adversely affects the criminal justice administration in Asian nation. The remedy against such Associate in Nursing act is that the Sec.2 of Contempt of Court Act 1972. The Contempt of Court Act defines contempt as each civil and criminal. In M.P. Lohia V. State of West Bengal the Supreme Court powerfully deprecated the media for busybodied with the administration of justice by business enterprise one-sided articles relating deserves of cases unfinished within the Courts. Saibal Kumar v. BK. Sen, the Supreme Court tried to discourage the tendency of media trial and remarked, “No doubt, it'd be mischievous for a newspaper to consistently conduct Associate in Nursing freelance investigation into a criminal offense that a person has been in remission and printed the small print of investigation. this is often as a result of trial by newspapers, once a shot by one in every of the regular tribunals of the country goes on, should be prevented. the idea for this 3read is that such action on the a part of a newspaper tends to interfere with the course of justice, whether or not the investigation tends to prejudice the defendant or the prosecution.”

**Freedom of speech under press council of India Act**

The Press Council of Asian nation Act, recognised a body named Press Council of Asian nation. it's a statutory autonomous body. Its object loosely was to preserve freedom of press. The Council may warn, admonish, or censure a newspaper or a wire service for any skilled misconduct, or breach of code of print media ethics, or offence against the general public interest. It may additionally condemn the govt or alternative Organizations for interferering with freedom of press. It enjoyed an equivalent powers, whereas holding Associate in Nursing inquiry beneath Press Council Act, as area unit unconditional during a civil court whereas making an attempt a suit beneath the Code of Civil Procedure. The Council may additionally raise a defaulting newspaper

---

3 Trial by Media Prejudicing the Sub-Judice, [http://www.rmlnu.ac.in](http://www.rmlnu.ac.in), visited on 02/10/2020 at 12:00 p.m. (2005) 2 SCC 686.

to publish the council’s finding. The Council is empowered on complaints created it or otherwise, against offensive newspapers. The Press Council safeguards freedom of press maintains and improves standards of newspapers and news agencies. It's comprised chiefly from the newspapers that area unit charged with the responsibility of control the conduct of brethren. The Council has so assumed the role of a self-activating body of the newspapers themselves. The Council has the ability to contemplate complaints suo moto; additionally to enquiry into complaints brought before it. It's empowered to form observation against authority, together with Government, if it considers it necessary for the performance of its functions. So the Press Council could be a statutory, quasi-judicial and self-activating body while not teeth (power to impose legal penalties). The power of Press Council of Asia is restricted and increase in tendency of media sensationalism and competition among the newspapers that accelerated media to deviate from their ancient responsibilities and moral values. Consequently the invasion on individual rights in addition as collective rights is raising, thereby would like for a reinforced statutory body is need of the media world.

**Freedom of press and its restrictions under press laws**

In spite of those constitutional restrictions there area unit many general laws and state legislations for regulation of freedom of speech and expression. The Indian legal code, the Criminal Procedure Code, the Press laws of the States etc. that govern numerous media. Additionally to the present, there exists some Organization like News Broadcasting Association, Press Council of Asia etc. for control the liberty of speech and expression by the media. However the self-regulation by Press Council of India unsuccessful in publication Associate in Nursingd broadcasting lead an encroachment upon individual privacy and 3 pillars of state general assembly, government and therefore the judiciary.

**Judicial views on media trial**

Our Constitution doesn't one by one talk over with the liberty of the press or of the electronic media partly III however these rights area unit treated by the law as a part of the ‘Freedom of
speech and expression’ bonded by Article nineteen (1)(a) of the Constitution of Asian nation. The guarantee is subject to ‘reasonable restrictions’ which may be created by legislation to the extent permissible by Article 19(2).

There area unit some changes in sight of the law that has been declared by the Supreme Court a minimum of in 2 leading cases, one is A.K. Gopalan vs. Noordeen and therefore the alternative is Maneka Gandhi vs. Union of India. In these cases the Judgment enlarged the scope of non-public liberty considerably and preserved the basic and Constitutional right to life.

The Supreme Court of India, in Life insurance of corporation of India v. Manubhai D Shah of Iran has declared that the “freedom of speech and expression” in Article 19(1)(a) means that the correct to specific one’s convictions and opinions freely, by word of mouth, writing, printing, photos or electronic media or in the other manner.

In Romesh Thapar v. State of Madras 1950 SCR 594, it absolutely was control that the liberty includes the liberty of ideas, their publication and circulation. it absolutely was declared in Hamdard Dawakhana v. Union of India that the correct includes the correct to amass and impart ideas and data concerning matters of common interest.

The Supreme Court just in case of State of Maharashtra v. Rajendra Jawannmal Gandhi control that a shot by press, electronic media or by means of a public agitation is that the terribly anti-thesis of rule of law and may cause miscarriage of justice. A choose is to protect himself against such pressure.

In India, media trials have assumed significance. There are many cases wherever the media had taken the case into their own hands Associate in Nursing declared judgment against an defendant contrary to truthful trials in court. There are quite ill-famed cases in addition that incensed the general public and compact the Judiciary like The Jessica Lal case(2010) wherever the media rejoiced over their efforts in transferral justice to Jessica Lal and therefore the tribunal had clean-handed the defendant of all the fees. The Priyadarshini Mattoo case (2006) where a law student was raped and dead and therefore the judgment of this case was suspected to possess been influenced by Media Trial.
The Bijal Joshi rape case and Nitish Katara murder case gave credits to media wherever the defendant would have gone unpunished if media wouldn’t had intervened. However on the opposite facet media additionally pinpointed innocent folks within the case of Malegaon blast and Maria Susairaj case ignoring the importance of accuracy.

Even Judiciary isn't free from faults. Judges and alternative judicial officers being humans can not be aforementioned to be free from faults either, they will even be “subconsciously influenced” by media trials or media subject matter. Therefore, it becomes vital to pass laws with relevance media subject matter whereas a shot goes on or unfinished.

In the words of Justice Pathanjali Sasthri, it's declared that Art: 19(1) (a) is that the foundation of all democratic establishment. While not free political discussion public education isn't potential. The free media is important for the right functioning of democracy. Dr Ambedkar in his speech in Constituent Assembly Debates says “The press has no special rights that aren't to be or that aren't to be exercised by the voters in his individual capability. The editor of press or the manager is simply workout the correct of expression, and thus no special mention is critical of the liberty of press. Indian Constitution doesn't specifically mention the freedom of mass media. however the speech and expression covers the rights with reference to broadcasting. The choice in Maneka Gandhi's case reinforces this read. during this case it's control that “it isn't correct read that the correct that is specifically mentioned by name will ne'er be a basic right or takes of same basic nature Associate in Nursingd character because the named basic right so the exercise of such right is really and substance nothing however an instance of the exercise of named basic right. The court declared that the day this financial institution closes down would toll the death knell of democracy.

The constitution of Asian nation provides restrictive provisions to safeguard each side of electronic media ventures. The broadcaster in addition because the beneficiary of the media is brought inside the umbrellas of protection in addition as regulation. Art: thirteen prescribes that any law in derogation to the principle of basic right area unit void ab intio. Indian Constitution doesn't

4 1969 (2) SCC 734
AIR 1978 SC 597
1992 (3) SCC 637
1960 (2) SCR 671,
1997 (8) SCC 386
specifically mention the freedom of mass media, however the word speech and expression upheld this read. The Press Council of Asian nation has expressed that “Democracy will thrive not solely beneath the watchful eye of the general assembly, however additionally beneath the care and steerage of opinion and therefore the press is par excellence, the vehicle through that

**Conclusion**

Media has wide reach and a simpler and a additional direct approach to the individuals. that's why it's referred to as as a fourth pillar of the society. The judiciary mustn't dismiss, while not reflection, complaints that it's uninventive, narrow and dislike regarding the free press/fair trial issue. Nor ought to it decline any chance to succeed in bent communicate to the media and also the public, just as a result of it resents criticism or is crucial of press performance. The media usually act and will act because the friend of the society and will thus dependably replicate its mood, its thinking and its issues and report events that have an effect on public interest. whereas presenting facts it should offer their context and discuss their professionals and cons to alter individuals to understand properly their significance and to create their wise views to them. The courts square measure obligated to respect the liberty of the press thanks to the essential social interests this principle serves: the improvement of democracy, the vigor of the marketplace of ideas, style and also the public scrutiny of the administration of justice. However, by doing therefore, the courts don't endorse those aspects of the media that tend towards the industrial, the sensational, the shallow or the sexy. the proper to a good trial doesn't in and of itself succeed the press‘right to free speech. the proper to honest trial tho' browse beneath Article twenty one of the Constitution of Asian nation is additional involved with the conduct of the State in affording a good trial to the defendant instead of a non-public publisher or a journalist. the difficulty is nonetheless to be determined by the courts - ultimately any such conflict is probably going to come back right down to a determination of wherever the bigger public interest is deemed to dwell the actual facts of the matter. The judiciary isn't entitled to freedom from criticism nor to uniformly positive assessments, square measure they entitled to no over a good hearing. The media should conjointly perceive that though the courts support it out of respect for the social interests it promotes, even as the courts should settle for all manner of honest criticism, the media should settle for and act on criticism, and conjointly
acknowledge that the character of its establishment is such it's right smart potential to interfere with the right administration of justice. a good trial is one in all the tenets of a philosophy system supported the rule of law and once in conflict with the liberty of speech, it's doubtless that the previous can prevail unless adequate grounds will be shown that justify the expression or the necessity for an equivalent. it's pertinent to say that, the proper of the press is drawn from the proper to speech and expression that is proscribed by the affordable restrictions as enumerated beneath Article 19(2). Article 19(2), expressly contains, —contempt of court‖ as a ground beneath that the Contempt of Courts Act, 1971 falls. This law limits expressly limits the proper of the Press to free speech. This reasoning has even been adopted by the Law Commission of Asian nation, in its two hundredth Report titled as, —Trial by Media: Free Speech and honest Trial beneath the Code of Criminal Procedure, 1973‖. it's thus within the interests of each side of the difficulty to hunt to develop bigger sympathy and respect.⁵

⁵ CS OS 253/2017 Delhi High Court.
Ramesh Thapper V. State of Madras A I R 1950 SC
Dr. Myneni SR. Media law (with right to Information Act), Hyderabad Asia Law House, 2014, 51.
Bibliography

4. www.sodhganga.in
5. www.jstor.com