

MEDIA COVERAGE OF TRIALS - THE NECESSARY EVIL??

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Guaranteed under Article 19(1) of the constitution the ‘freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible.’¹ The said Article ensures freedom of speech and expression to all the citizens subject to restrictions imposed by Article 19(2) which empowers the state to put reasonable restrictions on various grounds for instance contempt of court, decency, and morality.

Freedom of Press:

The American press commission has said “freedom of the press is essential to political liberty. When men cannot freely convey their thoughts to one another, no freedom is secured, where freedom of expression exists, the beginning of free society and means for retention of liberty are already present. Free-expression is, therefore unique among liberties”²

Unlike America, where the first amendment protects free press, the Indian constitution does not expressly talk about the freedom of the press but the liberty of press is inherently contained in the freedom of expression. The “press has no special rights which are not to be given or which are not to be exercised by the citizen 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”.³ In **Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer**,⁴ the Supreme Court had reiterated that though not expressly guaranteed in the constitution, freedom of press forms an inherent part of freedom of speech and expression.

¹ Romesh Thapper v. State of Madras, AIR 1950 SC 124

² Brij Bhushan v. State of Delhi, AIR 1950 SC 129

³ Dr. Ambedkar’s Speech in Constituent Assembly Debates, VII, 980.

⁴ (1994) 2 SCC 434

Freedom of press and Right to a fair trial – prior restriction on publication of court proceedings:

The prime objective of a free press is to create a fourth institution outside the three branches of government to check the unauthorized use of power by any of the 3 branches of government.

In **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India**,⁵ it has been stated that “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.”

The scope of Article 19(1)(a) has been widened to include the right to acquire information and disseminate the same. It incorporates the right to disseminate it through any available media whether print or electronic.

In **People’s Union for Civil Liberties v. Union of India**⁶, the apex court dealt with this elaborately. The citizen’s right to know information about matters of public importance is contained in Article 19(1)(a). The acts of judiciary and judicial orders are an undeniably important aspect of public information.

Imposition of pre-censorship on a newspaper,⁷ or forbidding it from publishing its own views or that of its correspondents on burning topics,⁸ constitutes an encroachment on freedom of speech and expression.

In one case, Reliance Petrochemicals undertook a major issue of debentures. Suits and writ petitions were filed to secure an injunction against the said public issue. All these petitions were transferred to the apex court for speedy and efficient disposal of the matter. Indian Express

⁵ (1985) 1 SCC 641 at p. 664, Para 32.

⁶ AIR 2003 SC 2363

⁷ Brij Bhushan v. Delhi, AIR 1950 SC 129.

⁸ Virendra v. State of Punjab, AIR 1957 SC 896

published an article questioning the validity of the order given by the Controller of Capital Issues to the said issue. Reliance secured an injunction from the apex court forbidding the newspaper from publishing any article related to the same as the matter was sub-judice. Indian Express filed for the vacation of the injunction and Reliance opposed the vacation on the ground that at that before the allotment is made, the subscribers might withdraw their applications and that the “danger still persists”. The newspaper argued that pre-restraint on a newspaper from publishing on a matter of public importance constituted a violation of right to freedom of expression. In this case of **Reliance Petrochemicals Ltd. v. Indian Express**,⁹ the Supreme Court relied on the test laid down in the case of **Anita Whitney v. California**¹⁰. The test is to see whether the danger complained of is “real and imminent”. In Whitney, it was held that the mere fact that the speech might result in some violence or destruction of property is no ground for allowing its suppression. Thus, in the instant case, the court had to secure a fine balance between a free press and free trial. Therefore, the court held that “preventive remedy in the form of injunction is no longer necessary.”

The newspaper reporters can interview prisoners sentenced to death. In an instant case, the president had declined to commute the death penalty of the prisoner who later was willing to be interviewed. The apex court held that the denial of right to interview the convict is a violation of fundamental right.¹¹ The Andhra Pradesh high court delivered a similar ruling in the case of **M.Hasan v. State of Andhra Pradesh**.¹²

The main tussle is between the freedom of press under Article 19(1)(a) of the constitution and Article 21 which guarantees the right to free and fair trial. The media has proved its worth and efficacy in several cases the most notable of which is the **Jessica Lal murder case** in which after the initial acquittal of Siddharth Vashisht better known as Manu Sharma, it was disclosed by a leading magazine, Tehelka, that Venod Sharma had bribed the witnesses to suppress the truth. The effect of this investigative journalism was the reopening of the case and a reversal in the verdict with Manu Sharma being convicted for the horrific murder of Jessica Lal.¹³ Just like the Jessica Lal case, the journalistic vigilantism was at its best in the case of **S.K. Singh**

⁹ AIR 1989 SC 190

¹⁰ (1926) 71 Law Ed. 1095

¹¹ Smt. Prabha Dutt v. Union of India, AIR 1982 SC 6

¹² AIR 1998 AP 35

¹³ Kathakali Nandi, Investigative Role Of Media: Responsibility To The Society, Global Media Journal – Indian Edition/ Summer Issue (June 2011), p1, available at <http://connection.ebscohost.com/c/articles/71947182/investigative-role-media-responsibility-society>

vs. State through CBI¹⁴ or better known as **Priyadarshini Matto** rape and murder case. In this case, a 25-year old law student was raped and brutally murdered by one Santosh Kumar. The accused stalked and harassed the victim even after the lodging of several FIRs against him by the victim. Later, he raped and murdered the victim at her uncle's house and disfigured her beyond recognition. The accused was acquitted by the Additional Sessions judge due to lack of proper evidence. The acquittal took place around the same time as when Manu Sharma was acquitted. The media responded to the public outcry and once again pulled up its socks and discovered shreds of evidence which later led to the conviction of the accused under sections 302 and 376 of Indian Penal Code.

However, it is an undeniable truth that certain instances of unnecessary meddling by media have been frowned upon not only by the parties involved in dispute but also by the apex court. The most famous instance which comes to mind is the case of **Sahara India Real Estate Corpn. Ltd. v. Securities and Exchange Board of India**.¹⁵ In this case, the Securities Appellate Tribunal directed Sahara to refund the amount invested with the Sahara in the form of Optionally Fully Convertible Bonds (OFCD). When directed by the apex court that they should attempt to reach a consensus with respect to an acceptable security in the form of an unencumbered asset for securing liability of Sahara to OFCD holders during the pendency of litigation, a personal letter was addressed by the counsel of Sahara to the counsel of SEBI enclosing the proposal with details of security to secure repayment of OFCD to investors as pre-condition for stay of impugned orders pending hearing of appeals together with the valuation certificate indicating fair market of the assets proposed to be offered as security. A day before the appeal, a news channel published the details of the said proposal which had been communicated only inter parties. Moreover, the channel mentioned the valuer as well. The question arose as to whether the court should give directions regarding reporting of matters sub-judice. It was held that all courts have inherent powers i.e. the Supreme Court and high courts and the civil courts can issue prior restraint orders in exceptional circumstances temporarily prohibiting publication of court proceedings. Similarly, in the case of **Bata India Ltd. v. A.M Turaz and Ors.**,¹⁶ it was held that movie censorship is necessary to check what is presented to the public at large.

¹⁴ Criminal Appeal No. 87 OF 2007, Supreme Court of India.

¹⁵ AIR 2012 SC 3829

¹⁶ IA No. 18245/2012 in CS (OS) No. 3010/2012

To strike a proper balance between the freedom of press and right to free and fair trial, the law commission came up with its 200th report titled, '**Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)**'. Earlier, section 3(2) of Contempt of Court Act, 1971 applied to prejudicial publication only when charge sheet was filed in criminal cases however the report suggested eliminating this lacuna by recommending the time for contempt to run from arrest of the accused in such cases, thus, giving media less time to publish prejudiced material. Another suggestion made in the report is the empowering of the high courts to restrain the publication of any biased material relevant to a criminal matter.

Prior censorship:

Just like any other fundamental right, the right to freedom of expression and by extension, freedom of press is not absolute. It is subject to restrictions imposed under Article 19(2) of the constitution. However, there is no constitutional provision regulating censorship of press.¹⁷

In the case of **Brij Bhushan v. State of Delhi**,¹⁸ the Chief Commissioner of Delhi, pursuing section 7 of East Punjab Safety Act, 1949 issued an order against the printer, publisher and editor of a English Weekly called the Organiser, instructing them to submit the duplicate copies of all communal matter, all the news, views and cartoons relating to Pakistan, before publication until further orders were given. The court struck down the order as a violation of Article 19(1)(a).

In **Romesh Thapper v. State of Madras**,¹⁹ a law prohibiting the entry and circulation of a journal in a state was held to be invalid.

The dark age of Indian press and media can mostly be attributed to the emergency during the reign of former Prime Minister Indira Gandhi when the publication of even slightly critical material invited the wrath of the government. However, even then the judiciary, in cases like

¹⁷ Priyanka Mittal, Trial by Media: Growing Influence of Media Over Implementation of Law available at <http://ijlljs.in/trial-by-media-growing-influence-of-media-over-implementation-of-law-priyanka-mittal-final-year-campus-law-centre-faculty-of-law-delhi-university/>

¹⁸ AIR 1950 SC 129

¹⁹ AIR 1950 SC 124

Binod Rai v. Masani,²⁰ issued verdicts stating that mere dissent or difference in opinion is no ground for forbidding the publication of any material.

In **R.Rajagopal v. State of T.N.**,²¹ the Supreme Court has held that the government has no authority in law to impose a prior restraint upon the publication of defamatory material against its officials. Public authorities cannot take this ground to prevent the publication of such material. However, if any false defamatory material is published then damages can be claimed through usual legal proceedings in the ordinary courts of the land. The direction was given by the apex court while allowing the writ filed by a Tamil Weekly called *Nakheeran*, seeking to stop the interference of Tamil Nadu government in the publication of the autobiography of the notorious criminal, Auto Shankar who was tried for six murders and whose mercy petition was pending before the president.

However, no amount of freedom provided to the Indian press can compare to the independence enjoyed by the press of our American Counterpart, which, to this day remains unmatched. The ultimate freedom enjoyed by the American press is evident from the decision given in the famous **Pentagon Papers case or New York Times Co. v. United States**²² where the court allowed New York Times and Washington Post to publish the confidential information in relation to the Vietnam War.

To conclude with the words of Justice Hand of the U.S Supreme Court, “The hand that rules the press, the radio, the screen and the far-spread magazine, rules the country”. It can be said that India is yet to find the right balance between the freedom of speech and expression and freedom of press. Our freedoms often succumb to the restrictions imposed under Article 19(2). The constitution provided for the reasonable restrictions to ensure public order, peace and safety however at times these excesses indulged in by our media and its activism bears sweet results. Relentless support offered by the media was one of the biggest reasons which brought justice in the **Nirbhaya rape case**. The commendable role played by media in several cases raises questions about the police investigation and prevalence of rule of law in the nation. The utopian society would be the one in which the media does not have to indulge in excesses like the sting operation in Jessica Lal case in order to bring justice to the victims. However at the

²⁰ (1976) 78 BOMLR 125

²¹ (1994) 6 SCC 632

²² 403 U.S. 713 (1971)

same time to curb the unnecessary interference by media the suggestions of the Law Commission report can be implemented. As mentioned above, the 200th report of the law commission had come up with comprehensive suggestions on this subject of media trials. The elephant in the room is the media verdict and media sentencing of the accused, which reasonably eliminates their chances to live a normal life even after a discharge or acquittal. If the law is the lion then media is its paws.

