

## MEDIA TRIALS IN INDIA VIS-À-VIS ABUSE OF PRINCIPLES OF NATURAL JUSTICE

*Written by Anmol Singh Khanuja*

*3rd Year BA LLB Student, NMIMS School of Law, Navi Mumbai, Maharashtra, India*

---

### ABSTRACT

With the reinvigoration of policies in India in the early years of the 21<sup>st</sup> century, it can be observed that Corporate houses have entered the field of journalism, and to earn and sustain in the market it is necessary for them to have profits, this gives rise to many of the unfair practices that can be played under the garb of being the 4<sup>th</sup> pillar of the democracy. Amongst those practices exists a practice that is commonly known as ‘Trial by Media’ and this term is very fascinating because of its relevance in the last 2 decades. Trial by media is done under the garb of Article 19(1)(a) of the Indian Constitution which guarantees the right to freedom of speech and expression but the imbroglio is that, whether that right is used, misused, or abused? And that is the main aim of this paper. This paper investigates the judicial interpretations on Media trials and their comparison with the Principles of Natural Justice.

**Keywords:** Media Trial, Violation of Rights, Journalism, Natural Justice, Fair Trial.

## INTRODUCTION

The Indian Constitution guarantees Freedom of Speech and Expression under Article 19(1)(a) to its citizens. Prime Minister Jawaharlal Nehru once in a speech stated that '*I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press*'<sup>i</sup>, but a point to note here is that, did he envisage a media that would sustain by defying all the principles of the Natural Justice or a media that would defy the purity of the administration of Justice. These are certain questions that arise on the very character of media that we observe today and in recent years.

In the words of Justice Hidayatullah<sup>ii</sup> - '*Freedom, of speech and expression is that cherished right on which our democracy rests and is meant for the expression of free opinion to change political or social conditions or for the advancement of Human Knowledge*'. It is this form of freedom given to the individual explicitly in the Constitution. Press is an important medium that facilitates the communication of Political, social, and public activities and being hailed as the fourth pillar of democracy, it has an obligation attached to educate people about the facts in a cogent way so that they become capable of opining on an issue or any issue.

Some of the important cases related to freedom of the press:

It is pertinent to note that Freedom of the press is not expressly mentioned under Art. 19 of the Indian Constitution like the US Constitution where freedom of expression is mentioned explicitly, Indian context is a bit different and it is the Judiciary that has enunciated on this issue through its interpretations of Article 19(1)(a). In the Indian context, it not merely includes the freedom of publication but there are a lot of things that come under the ambit of freedom of speech, be it business or circulation or the quantity of publication.

One of the important keystone cases that had determined the freedom of the Press, is the case of *Romesh Thappar V. State of Madras*<sup>iii</sup>, herein this case the circulation was prohibited by the madras government of a journal that ought to incite or disrupt public order. This order by the Madras government was challenged before the Supreme Court and, the Supreme Court applied the Golden Rule of interpretation i.e. to peruse the intention of the law and the Supreme Court

came to a conclusion that this order by the concerned government was void and unconstitutional because article 19(1)(a) also guarantees the propagation of Ideas.

In the case of *M.S.M. Sharma V. Sri Krishna Sinha*<sup>iv</sup>, it was held that Article 19(1)(a) of the Indian Constitution included the freedom to access all sources of information that a normal person has from the information provider.

But it is also pertinent to note that the Judiciary has also limited the freedom of the Press so that it is not abused per se and in the case of *Harijai Singh, re*<sup>v</sup>, the Supreme Court here, in my opinion, applied the Golden rule of interpretation of Article 19(2) and gave a wider perspective about the role of press and journalists vis-à-vis Article 19(1)(a) and it stated that a free and healthy press is an indispensable thing for a better functioning the democracy so that there exist participation from all levels of the society, and to achieve this kind of objective the Press has some very important obligations to fulfill and that is to be clear and well accounted with the facts and it is only on that basis when a reasonable opinion should be conveyed, and it has to be something that possesses an educational and mobilizing role in people's lives. But the Supreme Court here also held that Freedom of Press is not absolute per se and it is not unlimited or unfettered all the time because if that freedom is given and if reasonable restraints are not monitored then things might lead to disorder, hindrance, anarchy, etc. if freedom is given to a person then those are not to be misunderstood as if the press has no obligation to be held accountable for and if a newspaper or press something that is improper or is false or has illegalities attached to it or it abuses the liberty of someone then that should be punished by a court of competent jurisdiction. The Supreme Court in this decision also said that a responsible journalist is the one who thrives on legitimate news and strives to communicate the same to the people with utmost accuracy and impartiality and that such presentation of news should be truthful, comprehensive, and objective by keeping aside any kind of false or partisan expressions.

Therefore, all of the aforementioned interpretations question the credibility of Media in recent times.

## WHAT IS A MEDIA TRIAL?

Describing in a much general sense, Media trial is the presentation of facts that are required to be kept secret so as to ensure better administration of Justice. A common aspect that can be inferred when the word ‘trial’ is added to Media, and that is Media in recent times has acknowledged itself to be a ‘Public Court’ or ‘Janta ki Adalat’ and they’ve presumed this position after the abolition of the Jury system, it is indeed an ironic thing to witness. A thing that we can observe in these trials is that the Press per se entrenches a special investigation to build public opinion against any party involved in a particular case and this is how biasedness is generated by the portrayal of unverified or illegitimate facts and many times it is observed that a person who should be presumed to be innocent until proven guilty is presumed to be guilty until proven innocent and it is all these things that hamper the civil rights of the very person and it also hinders the opinion of Judges that may lead to erroneous decisions, that in turn causes the mis-administration of Justice.

## HOW DID MEDIA TRIALS EVOLVE IN INDIA?

As stated earlier a new evolution of Indian Media started after the 1990s i.e. after the liberalisation policy, this was the time when international agencies like Bloomberg, BBC, CNN, Tv 18 and other famous brands entered the Indian Media market. In the case of *Secretary, Ministry of I&B V. Cricket Association of Bengal*<sup>vi</sup>, The Supreme Court said that the Government in a democracy doesn’t have a monopoly on the electronic media and the citizen and Under Art. 19(1)(a), the telecasters and broadcasters have got the right to communicate significant things to their viewers about the things happening around them and if the Government wants to restrict programs or information then it can only perform that function under Article 19(2) of the Indian Constitution and should have a reasonable justification of doing the same. Because freedom of the Press explicitly means that there should be autonomy from any authority even if the authority is trying to restrict the content circulation merely on the grounds of ‘Public Interest’<sup>vii</sup>.

Now, because of the extensive competition between the Media market, generally, the Media houses use infallible methods to sustain in the market through extensive advertisements and

through these advertisements, one can observe the biasedness of a media house in the issues that it deals with, to gain Television rating Points (TRPs) and it is the TRPs that compels media houses to opt the method of investigative journalism, this investigative journalism is good till the extent it is done with a bona fide intention and without maligning the character of the Individual or group of Individuals through programs but this investigative journalism hampers the administration of justice when Media houses press on matters that are *Sub-Judice*.

The position of public and private life has been perused by the Supreme Court in the case of *R. Rajagopal V. State of Tamil Nadu*<sup>viii</sup>, here in the instant case in my opinion the Apex Court applied the Harmonious rule of Interpretation, and it said that freedom of press extends to a level where people who are involved in Public life can be questioned on public issues and related events but there also exists a responsibility wherein the freedom of press and right to privacy is maintained in a proper manner and if there is defamation performed then that should also be in consonance with the Constitution and the Law of the Land.

## **PRINCIPLES OF NATURAL JUSTICE**

While iterating 18 tenets for the dispensation of Justice in a case, Sir Mathew Hale<sup>ix</sup> said- '*That I suffer not myself to be possessed with any judgment at all till the whole business of both parties are heard*', this line is something that is based on the cardinal principles of Justice.

The term- 'Principles of Natural justice' are derived from a Roman Law term '*Jus Natural*', one cannot find this expressly mentioned in the Indian Constitution but these are principles that are mandatorily required to be followed during the adjudication process. These are principles that are considered to be the basic or minimum rights that are guaranteed to a person against whom any kind of arbitrary actions may be imposed by an administrative or Judicial or Quasi-Judicial authority and it is necessary for these authorities to adhere to these principles with utmost diligence and this thing has been reiterated in 2 cases namely, *A.K. Kraipak V. Union of India*<sup>x</sup> and *Maneka Gandhi V. Union of India*<sup>vi</sup>.

There exist three principles of Natural Justice and those are as follows:

1. *Nemo Debet Ex Judex in propria causa.*
2. *Audi Alterem Partem*, and
3. *Speaking orders or reasoned decisions.*

Herein it is important to note that 1<sup>st</sup> and 2<sup>nd</sup> are derived from Roman Law while the 3<sup>rd</sup> one is a recent concept developed by Jurists, let's discuss those briefly:

1. Nemo Debet Ex Judex in propria causa:

This principle is widely known as the doctrine of *Bias* and the literal meaning of this Latin Maxim is that no Individual should be a judge on his own cause or in a cause in which that very individual is interested. Meaning thereby that the adjudication authority should not be partial or biased and that the case is adjudicated on merits.

2. Audi Alterem Partem:

This Latin maxim literally means that one should hear the other side and that the other individual is provided a fair chance to convey his side of the story. And from the above two rules there's a corollary that is derived and that is also a Maxim- '*Qui aliquid statuerit parte inaudita alteram actquam licet, haud acquum facerit*'. The literal meaning of this maxim is that 'One who decides anything without hearing the other side, even though he might've said the right thing then also this act won't be right' because 'Justice should be seen if Justice is done'.

3. Speaking orders or reasoned decisions.

The third and the most important part of adjudication is to provide a reasoned order meaning that if a petition is allowed or dismissed by a competent Court then that adjudication has to have merits over which a case is decided and if the reasons are refused then this may generate suspicion on the legitimacy of the very decision.

## IMPACTS/ REPERCUSSIONS OF MEDIA TRIAL

Trial by Media affects the Public at large, it would not right to say directly that the judges are coerced by the Trials that are carried out by the Media but it is sure that Media trial has an effect on the public at large, in a society there exists everyone be it the wrongdoers or the victims and even the Judges, so when a society is affected by the Media trial then it cannot be denied judges have evolved from the normative society because many a time it is observed that news bulletins or reports are inaccurate. People who don't know about the essential elements of a criminal trial and then telecasting things without accuracy may turn out to be a heavy ball.

In the case of *R.K. Anand V. Delhi High Court*<sup>xii</sup>, NDTV (a private television channel) conducted a sting operation to show the involvement of the prosecutor and the defendant in the same case where the prosecutor was dealing with the defendant's lawyers and his witnesses. Then Suo-Motu cognizance was taken by the Delhi High Court where the Counsel was held guilty of contempt of court and was also barred from appearing before the Delhi High Court. An appeal to this order was filed before the Supreme Court was filed where the Apex court endorsed the Delhi High Court's order. Before the Apex court, there was also a contention made that NDTV was guilty of Media Trial, but the Apex Court rejected this contention but they pointed out that 'The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt even without the verdict of the Competent Court'.

In another case of *Manu Sharma V. State of Delhi (Jessica Lal's case)*<sup>xiii</sup>, wherein 2006 the Delhi High Court acquitted the accused because of the very fact that many of the witnesses turned hostile and after this, the media launched a revolution against the acquittal that was done, this media trial caused so much of dismay and distrust towards the Judgement of the Delhi High Court that the Court without waiting for the state to appeal, ordered a re-investigation in the very case which led to the conviction of the accused who was acquitted earlier. When the appeal was made by Manu Sharma, though the Supreme Court upheld the Delhi High Court judgment but the division bench herein made a very noteworthy point regarding the role of media while reporting a particular case and that was "*Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very*

*threshold through a process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would infringe upon the protection granted to an accused under Article 21 of the Indian Constitution.”* And in my opinion, herein the Court used the Harmonious Rule of Interpretation.

In another case of *Sahara India Real Estate Corporation Ltd. V. SEBI*<sup>xiv</sup>, media guidelines were discussed, where ongoing reporting was going on in the media of the cases that were pending before the court and during this period, a news channel aired the communication of settlement that took place between the counsels of the two parties. After this leak, the Supreme Court passed an order that stated that the Apex court was distressed by the leak that has been aired, and this renunciate the trust and sentiments of the people involved in the business. And the Supreme Court of India while recognizing the Media’s right to report held that there are certain exceptional cases where the reporting or trial by media can affect the administration of Justice, so in such cases, reporting can be deferred for a limited period of time as set by the Supreme Court or the High Courts through Interlocutory orders.

There exist many more cases like the *Aarushi Talwar’s case*, *Priyadarshini Matoo’s case*, *Shina Bora’s case*, etc. where the credibility of Media is questioned regarding many Controversial aspects of the Criminal proceedings and public scrutiny’s that were superseded, dismayed and flawed by the Media. A classic example of how media influence the people is the case of *K.M. Nanavati*, where the jury was influenced by the Newspapers and this led to obstruction in the Administration of Justice.

## **FAIR TRIAL**

As mentioned in the rulings of the Supreme Court stated above, the Judiciary has indeed focused on the Compliance of principles of Natural Justice and the Right to get justice and the Right to a fair trial is an essential part of an Individual and it is guaranteed under the Indian Constitution under Article 21, wherein the case of *Dwarka Prasad Agarwal V. B.D. Agarwal and others*, the Right to get a fair Trial is recognized as a basic fundamental right<sup>xv</sup>, and a Fair trial here is based on the 2<sup>nd</sup> Principle of Natural Justice i.e. *Audi Alterem Partem* and all of



these things include proper opportunities encouraged in the law to prove a person's innocence like production of relevant pieces of evidence, etc. and these issues has been dealt properly and concluded in the case of *Kalyani Baskar V. M.S. Sampooram*<sup>xvi</sup>.

An important case to discuss here is the case of *Zahira Habibullah Sheikh V. State of Gujrat*<sup>xvii</sup>, This is a case that appears to talk about the 1<sup>st</sup> and 2<sup>nd</sup> principles of Natural Justice, Herein the Apex Court enunciated that the value of a fair trial is that the trial takes before an impartial judge and by a fair prosecutor with an atmosphere that represents Judicial calmness and A trial where there exist no prejudice or bias against or in favor of the Accused or the Victim or the witnesses.

## **WHAT ARE THE REGULATIONS CONCERNING THE VERY ISSUE?**

There exists a lot of regulations on the representation part, but the sad part is that they're not followed to the best of one's conscience and accuracy of facts. Let us discuss some of those provisions.

### **1. Constitutional Regulation:**

It is pertinent to note that only reasonable restrictions can be imposed on the freedom of the Press, those decisions should not appear to be arbitrary in nature and the restriction that can be imposed should be in consonance with the terms mentioned in Article 19(2) of the Indian Constitution. So here, there exists a lot of responsibility on the Constitutional Courts to comply with the constitutional provisions vis-à-vis Principles of Natural Justice.

### **2. Norms set for Journalistic conduct by the Press Council of India<sup>xviii</sup>:**

The Press Council of India (PCI) was established in the year 1966 by the Parliament on the basis of the report and recommendations made by the 1<sup>st</sup> Press Commission with the main object to preserve, protect and maintain the Journalistic conduct and the ethics of this profession. And amongst those provisions there exist provisions that talk about the Right to privacy (Norm 13,

14 and 15), where the press should refrain from talking about the privacy of an Individual unless it appears to be genuine for the sake of Public Interest, Public record, etc. but the legitimacy should be maintained. If the information is concerning heinous sexual crimes like Rape, kidnapping, molestation, Domestic violence, etc. then the Press should refrain from using the names of the victim and that they should preserve the Identity of the victim. Norm 20, 21 and 45 talk about regulation on investigative Journalism and then Norm 47 to 49 describes the diligence that has to be maintained while criticizing the Judicial acts.

### 3. Judicial Interpretations vis-à-vis Contempt of Court:

The Judiciary has given some noteworthy interpretations, so that professional ethics are maintained and monitored, like, in *Arundhati Roy, In Re<sup>xix</sup>*, In this case the Supreme Court accepted the opinion of a United States Judge who enunciated the use of Contempt of Court provisions and said that the power to punish for Contempt of Court is not a safeguard for the judges but it is for the people who exercise it.

## CONCLUSION

It is very important to mention the fact that media plays a very significant role in determining the functioning and fate of a country and this responsibility even increases when there is democracy in a country because in that case, the media is considered to be the eyes and ears of the general public, and in any case, a body wouldn't function properly when its eyes and ears are affected or are not doing their jobs in a much obligatory manner.

It was also observed that in many of the cases the Judiciary has applied the Golden and Harmonious rule of interpretation while enunciating the duty of press between Article 19(1)(a) and Article 19(2) of the Indian Constitution and then connecting the Media trial with the Right to fair trial and representation under Article 21 of the Indian Constitution.

So it is necessary for the Press in toto to maintain the accuracy of the content they're publishing and posting, that content should possess utmost neutrality and they should avoid defaming of

any of the parties by maintaining their Right to privacy as interpreted under Article 21 of the Indian Constitution and most importantly that content should not promote enmity, hatred, sensitive content, etc. that may provoke or propagate violence.

Media Houses don't fairly follow the regulations that are enunciated, and that to a lot of extents they even don't comply with the principles of Natural Justice. So, then it is the duty of the Lawyers to protect and preserve the purity of criminal or civil proceedings and that they shall do the same with utmost sincerity and conscience.



## BIBLIOGRAPHY

- Kiran, Aayushi. *Do Media Trials Serve Any Purpose?* Latest Laws, [https://www.latestlaws.com/articles/do-media-trials-serve-any-purpose/#\\_ftnref11](https://www.latestlaws.com/articles/do-media-trials-serve-any-purpose/#_ftnref11) last accessed on 30-Nov-2020.
- Nair, Shivani. *Constitutionality of Media Trials*, Ipleaders Blog, <https://blog.ipleaders.in/constitutionality-of-media-trials-and-landmark-cases/>, Last accessed on 29-Nov-2020
- Deshpande, Sanatan. & Jagawanshi, Priyank. *A critical analysis of media trial and its effect on Indian judiciary*, IJRAR, Vol. 6, Iss.1, Jan. – Mar 2019.
- Singh & associates, *Trial by media a administration of justice*, Lexology, Last accessed on 28-Nov-2020.

## ENDNOTES

- 
- <sup>i</sup> Speech at the Newspaper Editor's Conference. 3/12/1950  
<sup>ii</sup> *Ranjit Udeshi V. State of Maharashtra*, AIR 1965 SC 881.  
<sup>iii</sup> AIR 1950 SC 124.  
<sup>iv</sup> AIR 1959 SC 395.  
<sup>v</sup> (1996) 6 SCC 466.  
<sup>vi</sup> (1995) 2 SCC 161.  
<sup>vii</sup> *Indian Express Newspaper V. Union of India*, (1985) 1 SCC 641.  
<sup>viii</sup> (1994) 6 SCC 632.  
<sup>ix</sup> Chief Justice of King's Bench (1671-76) in 1676.  
<sup>x</sup> AIR 1970 SC 150.  
<sup>xi</sup> AIR 1978 SC 597.  
<sup>xii</sup> (2009) 8 SCC 106.  
<sup>xiii</sup> AIR 2010 SC 2352.  
<sup>xiv</sup> AIR 2012 SC 3829.  
<sup>xv</sup> (2003) 6 SCC 230.  
<sup>xvi</sup> (2007) 2 SCC 258.  
<sup>xvii</sup> (2005) 2 SCC (Jour) 75.  
<sup>xviii</sup> Press Council of India, Principles and Ethics of Norms of Journalistic Conduct.  
<sup>xix</sup> (2002) 3 SCC 343.