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TRIAL BY MEDIA: JUSTICE OR PREJUDICE

~Jashandeep Kaur

INTRODUCTION

The media is often referred to as the fourth pillar of democracy because it plays a very important role in a democratic country. The media provide important information to the general public. It informs about important events and provides a voice for the people who are ignored. The media questions power and exposes corrupt practices in the system. The media plays a significant role in spreading awareness about issues among the people of the country. The reach of media has significantly increased with the growth of television channels and social media platforms, and people receive information within a few seconds.

Along with these plus points of the media, there are some downsides of the media, particularly in the criminal justice system of India. Over the past few years, the media trial has become common. Before the actual trial or before the decision of the judge, the media already decides who is guilty and who is innocent. This practice is called trial by media because the media decides the case before the court pronounces its judgment. This gives rise to a serious question: Does the media help in justice or destroy it?

Media trials influence the opinion of people and can have a negative impact on the reputation of the accused, victim, and even on the judicial process itself. Before the final decision of the court, when the media influences or shapes the opinion of the public in relation to the guilt or innocence of the accused, it is called trial by media. This is done by continuous or repeated coverage on television channels. General people read or watch the same thing multiple times and form a perspective without actually knowing the reality. The image of the person gets damaged for the lifetime even if he is found innocent at the end of the trial.¹

¹ R.K Anand v. Delhi High Court, (2009) 8 S.C.C.106 ¶ 293 (India).

The media is under a duty to provide information to the public, but at the same time, it should respect the boundaries which are essential for the administration of justice. It should not do excessive reporting which interferes with the investigation and hampers witnesses, and damages their dignity. The question is not whether the media should report or not, but what the way of reporting should be, which does not affect the rights of the parties involved and does not prejudice the judicial process.

WHAT THE LAW SAYS

No separate or direct law in India bans trial by media. The law of contempt is used by the courts to stop excessive media coverage that harms a fair trial. Criminal contempt is referred to as the publication of any matter that scandalises the court, prejudices the judicial proceedings, or interferes with the administration of justice. This definition is given under the Contempt of Courts Act, 1971.² Media can attract contempt proceedings if it reports about a pending case which leads to a real risk of prejudice. The Supreme Court explained this principle in the case of *Saibal Kumar v. B.K. Sen*. If a newspaper were to conduct an investigation of a crime and publish the results while the case was before the court, it could jeopardise the justice. The court said, “A newspaper is not a court, and it has no authority to hear witnesses or examine evidence, and when it acts like a real court, it puts the actual trial in jeopardy.”

The same principle was reiterated by the Supreme Court in *State of Maharashtra v. Rajendra Jawanmal Gandhi*. The court said that trial by the press, electronic media, or public agitation is the very antithesis of the rule of law.³ It can amount to a miscarriage of justice. The court strongly said that the trial outside the courtroom cannot deliver real justice because it is conducted without proper procedure.

THE CONSTITUTIONAL ANGLE

The two constitutional rights conflict with each other and put tension on media trials. Article 19(1)(a)⁴ of the Constitution provides the press with the freedom of speech and expression, and at the same time, the accused person has the right to a fair trial and personal liberty under Article 21⁵ of the Constitution. Both rights are equally important, and neither can be treated as superior to the other. Neither of the two is absolute.

² The Contempt of Court Act, section 2(c), No. 70, Acts of Parliament 1971 (India)

³ *State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997) 8 S.C.C. 386 (India).

⁴ India Const. art. 19, cl.1(a)

⁵ India Const. art. 21.

Press freedom is not mentioned under any specific article of the Constitution. It is derived from the right to freedom of speech given to the citizen. The right given to the press is the same as the right given to the citizen. The press does not have any extra privilege than citizens regarding the freedom of speech.

This is evidenced by the following statement of Dr B. R. Ambedkar: “The press is merely another way of stating an individual or a citizen. 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 all citizens, and therefore, when they choose to write in newspapers, they are merely exercising their right of expression; and in my judgment, therefore, no special mention is necessary of the freedom of the press at all.”⁶

So the freedom of speech of the press can also be subject to reasonable restrictions, just as citizens' freedom is subject to it. These reasonable restrictions are given under Article 19(2)⁷. The law of contempt is one of those reasonable restrictions.

Similarly, the right to a fair trial is also not written in any separate article or law. But the courts have held that the right to a fair trial falls under the scope of Article 21. The fundamental principle of a fair trial is the presumption of innocence of the accused. A fair trial is conducted when the evidence is examined properly, and the judge pronounces judgment without any external pressure. But the media exaggerates the case and builds public anger against the accused even before the evidence is tested. The presumption of innocence, which protects the dignity of the accused, is breached

THE JESSICA LAL CASE: MEDIA AS A CORRECTIVE FORCE

The Jessica Lal murder case is very important in the discussion of trial by media. This case shows both positive and negative sides of media trials. In this case, Jessica Lal was a model. One day, she was working at a private party in Delhi. During the party, she was shot dead. The amin accused was Manu Sharma, and he was acquitted by the trial court. This led to huge media coverage and resulted in widespread public anger. And hence the case was reopened, and the accused was convicted by the high court. Then the appeal was filed in the Supreme Court as Sidhartha Vashisht @ Manu Sharma v State (NCT of Delhi).⁸

⁶ G.S. Singhvi, *Trial by Media: A Need to Regulate Freedom of Press*, **Bharati L. Rev.**, Oct.–Dec. 2012, at 2.

⁷ India Const. art. 19, cl.2.

⁸ Sidhartha Vashisht @ Manu Sharma v state (NCT of Delhi), (2010) 6 S.C.C.1 (India).

In this judgment, the Supreme Court itself commented on the dangers of a media trial. The court said that there is a risk of prejudice to justice if the media uses excessive freedom while covering an ongoing case. But this case also highlighted how media activism and public pressure can correct a wrong acquittal. This case showed how the media wakes up the sleeping system and forces it to take action. Here, the media trial is not a villain, but we should not celebrate it so quickly. Because this method helped in one case does not mean that it is always as helpful; the same method can destroy the life of an innocent person in another case. So we should take the cautionary words of the Supreme Court seriously.

WHEN THE MEDIA COVERAGE BECOMES CONTEMPT

The detailed explanation was given by the Supreme Court in the case of *R. K Anand v. Delhi High Court* that when the media interferes with justice, then it becomes contempt. The case started from a case of hit and run by a BMW. The Television channel conducted a sting operation and showed how the lawyers and public prosecutors were trying to influence the witnesses. After the Delhi High Court started this contempt proceeding, and then matter went to the Supreme Court.

In this case, the Supreme Court explained the impact of a media trial on a person. The Supreme Court described what a media trial actually does to a person. The court said that excessive media coverage causes widespread perception of guilt and damages a person's reputation, even if the final verdict has not yet been given by the court. The court said that in cases of high publicity, the media creates an atmosphere of riots and violence among the general public by exaggerating the situation. This makes a fair trial nearly impossible. If, after the final verdict of the court, the accused is found not guilty, they cannot live their remaining life free from public scrutiny.⁹

In the same case, it was also shown that not all acts of media attract contempt. The court held that the sting operation broadcast in that specific matter does not amount to trial by media because that specific method did not directly talk about the guilt or innocence of any accused person. This tells us that the real test is that is whether the coverage tries to declare the guilt or innocence of the person on its own, replacing the function of the court. Investigative journalism is beneficial if it is performed neutrally.

THE SAHARA CASE: POSTPONEMENT ORDERS

⁹*R. K Anand v. Delhi High Court*, (2009) 8 S.C.C.106

Sahara India Real Estate Corporation Ltd v. Securities and Exchange Board of India is another important judgment which touched on the issue of media trial. In this case, the Supreme Court came up with the idea of postponement orders. The court held that if the reporting imposes a substantial risk on the fair trial, then the Supreme Court can temporarily stop the media from reporting on that specific case. Further, the court clarified that this rule cannot be applied to all cases directly as a blanket rule. Each case should be judged based on its facts, and then decided by the judges whether this rule is applicable or not.¹⁰

In this judgment, it was said that even fair and accurate reporting can sometimes create a substantial hindrance to a fair trial. The judgment highlighted this point, which is usually missed in public debates. The judgment said that risk is not always from false and exaggerated reporting. Sometimes even the tried facts, if published at the wrong time, can put significant influence on the mind of a judge and can also affect the witness's memory. That's why postponement orders are important, as these orders do not cause complete censorship but are just a temporary pause to protect the trial process.

PRESUMPTION OF INNOCENCE AND ACCUSED RIGHTS

The Supreme Court recognised the presumption of innocence as a legal principle in the case of Anukul Chandra Pradhan v. Union of India.¹¹ The court said that when the media builds a case against the person, builds dramatic and exaggerated scenes and confidently claims that the person is guilty, this presumption is damaged at the beginning, before the completion of the investigation process.

When the photos of the accused are published and leaked information is shown on channels, then the defence can argue and lead evidence that the eyewitness has not directly seen the accused at the time of the incident, but is recognising him from photos and videos circulated in the media. Defence can reverse the case by arguing that the witness does not identify the accused from his memory. He identifies him because he had already seen his face in the media. The witnesses can change their statements due to public pressure. Excessive media coverage can compel police officers to arrest someone quickly without following proper procedure because of public anger. Though judges are trained to be impartial, at the end, they are also human beings and members of the same society; they also watch television or read newspapers,

¹⁰ *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603 (India).

¹¹ *Anukul Chandra Pradhan v. Union of India*, (1996) 6 S.C.C. 354 (India).

and hence their decisions can also be affected by the media. The one-sided and constant coverage has a severe effect on the mood of the general public.

In the case of *M.P. Lohia v. State of West Bengal*¹², The media published an article showing a one-sided story, and this matter was still pending in the court. The Supreme Court strongly criticised the media for their actions. The court holds that if the matter is sub judice, it is not right for the press or electronic media to present only one side of the events. In this case, the court enforced the restrictive measures on the media. In this case, the magazine article presented the family of the deceased extensively and presented their version of events. The court found it improper because those facts were discussed in the article, which were later going to be used in the trial, and hence it was an interference with justice.

BALANCING TWO RIGHTS

The total ban on media coverage of criminal cases does not give a solution to the problem. In fact, that will be against article 19(1)(a), and it will amount to a reduction of public accountability. The investigative general has played a crucial role in exposing corruption and real crimes in our system, which were ignored by the authorities or the government. But at the same time, when the media coverage becomes unchecked and assumes the guilt before trial, it damages the constitutional rights of the accused and can result in wrong or unwanted outcomes.

The 200th report of the Law Commission of India, named “Trial by Media: Free Speech versus fair trial under criminal procedure”, provides a detailed study of this problem. The report has given suggestions to introduce changes in the Contempt of Court Act, 1971, regarding media reporting, which is against the constitutional rights of the accused, should be restricted not only from the time of formal framing of charge, but from the time of arrest itself. This recommendation has recognised that a person's reputation begins to be harmed right after arrest and long before the trial formally begins.¹³

The courts have tried to balance between the two rights through various case laws instead of a single rigid rule. The general rule that has developed is that the factual and neutral reporting of arrest, investigation, or trial is permissible, but the reporting that is impartial and declares guilt and presents only one side of the case is not allowed. Reporting to gain public sympathy for the victims and to enhance the views of the channels is not allowed. The reporting, which

¹² *M.P. Lohia v. State of West Bengal*, (2005) 2 S.C.C. 686 (India).

¹³ law comm'n of india, report no. 200, trial by media: free speech vs. Fair trial under criminal procedure (2006).

reveals the details of the case which are confidential or puts pressure on the witnesses and investigators, is prejudicial. For example, the identity of the victim in sexual offence cases should not be disclosed by the media, otherwise it will harm justice.

CONCLUSION

Trial by media is a sensitive point between two equally important constitutional rights. Freedom of the press is necessary for democracy as it asks questions of those who are in power. On the other side, the right to fair trial protects the accused from the punishment of public opinion as this right ensures that accuse should be punished based on evidence, not based on what the public thinks. The Supreme Court has held through various cases like Manu Sharma, R.K. Anand, etc., that the media cannot replace the court even if the intention of the media appears to be good.

The answer to this question, which right is superior, cannot be either yes or no. The trial by media is appreciable and just when it unveils what the system has failed to see. But it becomes unjust when it convicts the person based on public opinion, even before the court has started to examine the facts. The real solution does not lie in silencing the press but in teaching it reasonable restraint. The media should be taught to strengthen the legal boundaries that already exist but are not properly enforced in real scenarios.