



ISSN: 2249-7315

Vol. 11, Issue 10, October 2021

SJIF –Impact Factor = 8.037 (2021)

DOI: 10.5958/2249-7315.2021.00116.7

---

## FREEDOM OF PRESS AND MEDIA TRIALS

**B. R. Maurya\***

\*Teerthanker Mahaveer Institute of Management and Technology,  
Teerthanker Mahaveer University,  
Moradabad, Uttar Pradesh, INDIA  
Email Id: brmourya.mourya321@gmail.com

---

### ABSTRACT

*In India, we are now through a massive media experiment. A "media prosecution" is a lawsuit that appears in the newspaper and is now determined in the court of public opinion. It is normal procedure to conduct a media trial concurrently with a criminal investigation of this kind. The assassinations of Aarushi Talwar and Sheena Bora have re-emphasized India's fundamental right to privacy. The death of Indian star Sushant Singh Rajput, who died recently, drew comparable media attention, resulting in yet another clash with the basic human right to privacy. Despite his death, the Indian media has been engaged in an uncontrolled "media trial" for the last several months. The media published everything he'd ever done in his life, from his personal records to his bank account, purchases with strangers, and intimate pictures and videos of people he'd been with who were ignorant of the investigation. Because of this, the individual's personal integrity has been compromised, and the principle of "innocent until proved guilty" has been questioned. And this raises an intriguing question: Would the Indian Constitution allow the media to intrude into people's private life in the name of "press freedom"? We'll examine at media courts, often known as India's "fourth estate of democracy," since every new law is subject to various kinds of legal checks and balances, according to this article.*

**KEYWORDS:** Administration Of Justice, Fair Trial, Freedom Of Speech, Prejudice, Reasonable Restriction.

---

### INTRODUCTION

Our Constitution protects freedom of speech and expression, as well as freedom of the press, under Article 19(1). The significance of a free press in a liberal society cannot be overstated. However, the privilege's scope of use is restricted. The "equal administration of justice" is one exemption, although the legislature is free to impose any restrictions they see proper. It will do significant damage to the accused's right to a fair trial if there is no independent scrutiny.

Before being imprisoned, a person must be proven guilty beyond a reasonable doubt, according to criminal law. However, with the advent of next-generation news networks and cable channels, any criminal case is likely to get much more public attention than ever before. While the media and press may readily infiltrate the public, they can also swiftly influence

public opinion. This may be accomplished by publishing interviews with the victim's family, conducting "sting operations," and following the perpetrator's and victim's families as they leave the jurisdiction of the murder site. Suspects and suspects alike are subjected to intrusions of privacy and excessive scrutiny[1].

People may construct a false belief by comparing an accused offender to a "victim" and then "judging him based on what occurred in court," disregarding the broader context, and concluding that he was convicted because he was a terrible guy rather than what really happened. This public opinion may influence the judicial system, resulting in unjust treatment of the guilty and jeopardizing their right to a fair trial. It is thus critical to emphasize that in the area of criminal justice, there is minimal control over the administration of the law.

These remarks are not intended to imply that free speech and the press may be restricted in a democratic society like ours. Even the most significant safeguards, however, may be jeopardized to some extent; the fundamental idea is that the media should not be used to unjustly bias anybody. Everyone has a voice when there are more outlets. You are undermining the rule of justice and a fair process by using mainstream media trials. As a result, there is a need to balance free speech on the one hand with citizen safety on the other.

## **REVIEW OF LITERATURE**

The Supreme Court's decisions on the basic right to freedom of speech and expression under Article 19(1)(a) make it plain that freedom of the press is included. The question is whether it is necessary to recognize it expressly as an institutional freedom, as the first amendment does in the United States (Noorani, 1991).

However, the freedom of the press is just another expression of a citizen. However, freedom does not provide unrestricted immunity for any and all conceivable uses of language without repercussions (Gaur, 1994).

The significance of free speech has been acknowledged by the Supreme Court on many occasions, with the court identifying different aspects of the notion. However, the courts' broad interpretation of the term has recently sparked heated controversy in the context of media trials (Singhvi, 2012).

Trials by the media and sting operations are often justified on the basis of free speech, with the media having a duty to bring the criminal to the attention of the public when law enforcement officials are reluctant to bring about "justice." However, in the absence of a clear code of conduct and the impunity given to the media (as described later in the article), what were once ostensibly honest and accurate publications have devolved into a competition for viewing numbers, turning severe tragedies into spectacular spectacles (Eco & Pol Weekly, 2008).

The media trail does more damage than benefit. The 'doctrine of innocence until proved guilty' is openly disregarded, and the accused's basic right to a fair trial is being ignored (Muralidharan, 2012).

Even though it is not expressly stated in our constitution, fair trial is a fundamental element of natural justice. Excessive media coverage of a suspect or accused person before a trial begins biases a fair trial or results in the character assassination of the suspect as a person who committed the crime, and thus amounts to excessive interference with the "administration of justice" (Law Commission, 2006).

The fundamental issue is whether unrestricted press and media freedom always serves the aim of freedom of expression. The answer is a resounding no. The right to keep the public informed is accompanied with a strong sense of duty, accountability, and ethics. The type of protection granted to media outlets often goes against the principles that underpin the right to free expression, which is one of human dignity. The rule of law is the bedrock of a

democratic society, and the state must ensure that all people have equal rights, the most important of which is the right to a fair trial (Philipson, 2008).

## **DISCUSSION**

### *Analyzed Press Freedom In accordance with Article 19*

Article 19(1)(a) of the Indian Constitution guarantees people the right to free speech and the freedom of the press. While the issue of whether the United States should have a separate first amendment freedom of expression for the press was hotly debated in the state legislature, the bill of rights did not contain such a declaration. The general agreement was that the right to free speech was broad enough to include newspapers, therefore no special provision was needed. People say "species of which is recognized as a genius" in this sentence, "the right of expression is one of the species." Dr. Ambedkar's remark during the legislative discussion proves that the media is just a tool for individuals to express themselves. " Journalists and citizens alike do not have any special rights that are not granted to them by the law of the country." The editor of a newspaper is an individual, and when they have the option, they use their right to freedom of speech; nevertheless, this is irrelevant to me. The right to freedom of the press, on the other hand, is included in the right to freedom of expression. As the Supreme Court said in the *Express Newspapers* case in 1958, freedom of expression encompasses freedom of the press[2].

Content is currently accessible at a rate never seen before in history, thanks to the increasing availability of television and electronic media. The importance of a free press in a democratic society has been clearly established in numerous Supreme Court decisions. Legislative and regulatory measures aimed at restricting press freedom have been declared unconstitutional. This view was proved true in the case of *Bennett Coleman & Co. v. India*, when the High Court of Justice said, "One may trust in democracy so long as the channels of communication remain open." Traditional trust in government is based on the principle of "letting the people know the truth and discuss it at their leisure." As a result, although press freedom is important in all democracies, it is only "The Art of the Covenant" in the United States. repeated in a number of judicial cases Without media freedom, societal and political transformation would be impossible; media are an essential and powerful instrument for advancing social change; and media are an indispensable check on the branches of government. Without a free press, no government that respects the rule of law can survive[3].

### **Freedom of the Press and the Right to Privacy Are At Odds**

There has long been a philosophical discussion over the relative weight of private vs. public interest since considering the conflict between media freedom to communicate information and the right to privacy. While India presently lacks codified privacy law, it has received constitutional support, paving the way for the development of the Personal Data Protection Bill in 2019[4].

One question to consider is if the PDPB, which will shortly become India's privacy law, has a provision that protects people against media intrusion into their private. Unfortunately, the answer is no, since the PDPB has granted exemptions for gathering personal data for journalistic reasons under Article 36(e). Journalists have been given the freedom to disseminate thoughts and points of view on any information that they, as data fiduciaries, believe the general public will be interested in.

According to the Indian government, the purpose of granting such unrestricted freedom is to guarantee that the journalists and media outlets are not hindered from performing their jobs. However, Article 36(e) creates the impression that the government should have given more thought to exempting journalists from the PDPB's obligation to protect privacy.

In fact, the government has not only been unconcerned about media privacy violations, but it has also oversupplied media intervention and expanded its control as a result of this

legislation[5]. First, the data fiduciary's responsibility to decide which information they believe the masses are interested in does not seem to be a perfect balance between the universal right to privacy and the data fiduciary's duty to determine which details they believe the masses are interested in.

Rather of portraying "what the media is interested in," media outlets should be required to disclose "what is of public interest." Second, the PDPB does not compel media to apply necessity and proportionality standards before infringing on the right to privacy. Furthermore, it exempts the media from certain duties imposed on data fiduciaries, such as the provision of object limitation and data retention. The data protection law tries to address the need to safeguard people's privacy from the internet's intrusion[6].

The sole need for the media to qualify for this exemption is that they adhere to the code of ethics established by media self-regulatory organizations.

### **Immunity From Prosecution Under The 1971 Contempt Of Courts Act**

Writings produced prior to judicial proceedings in England and Wales, such as articles and serials, are immune from criminal contempt charges under the 1971 Contempt of Court Act. Any book, whether civil or criminal, that interferes with or attempts to interfere with a criminal or other judicial process is liable to contempt of court. It's been characterized as contempt for the media since some of the press's activities before a judgment is handed down may affect the public and jeopardize the accused's legal rights. Amenities may be connected to his previous arrests or, alternatively, to the confession he wrote while in custody[7].

There are duties that go along with all of the rights that exist. The press has the right to print anything it wants, but that doesn't mean it may propagate falsehoods. Such news that has the potential to insult or affect public opinion must be held to a single set of criteria.

You may be punished if you commit a criminal offense in front of a court, and you can be imprisoned if you violate a lawful order in front of a judge. Any conduct that demonstrates disdain for the judicial process or negatively affects the capacity to obtain justice, as well as any speech that delays or otherwise hampers the proceedings, is considered criminal contempt under Section 2(c)[5].

Section 3 of the legislation, on the other hand, grants the media immunity before the tribunal. Under the term "pre-trial distribution pending the procedures," pre-trial releases, including clause 2 of Section 3, do not constitute contempt of court. A court case may only be said to be "ongoing" once a charge-sheet or challan has been filed. An indictment does not imply that the pendency procedure has started. The media had already declared "who did it" and "who didn't" in the well-known AarushiTalwar murder case. Her own parents were deemed accountable for her suicide, which created a commotion. However, in the case of newspapers, an exception has been given to the press, even if they have fully fallen for the misinformation, which has gone unchecked without legislative action.

In a number of countries, the date of custody is considered the start of the procedure, resulting in the classification of some arrests as "pending." When nations like the United Kingdom, Australia, and New Zealand follow the concept of "innocent until proved guilty," publications that accuse the victim of committing the crime after the fact are labeled "incriminatory" by the law. According to the judges, such publications have a reputation for influencing jury members as well as a positive reputation among them.

### **Media Trial Criticism**

In a democratic society, the media performs a critical role that must not be overlooked. All of the basic rights and freedoms guaranteed by the United States Constitution should be unaffected by federal government intervention. Although high-profile criminal cases like

Indrani Mukerjee and Jessica Lal enthralled the public, the courts lost some of their respect. Because of the media coverage, any of the accused are exempt from prison[8].

According to the Supreme Court in Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr., 1961, it will be detrimental for a newspaper to interfere with an ongoing investigation and publish the results. This may be hazardous since the country's legal system has been expecting a long-awaited trial, and now the media is conducting a paper trial. This conclusion is founded on the assumption that investigation is difficult for both the defense and the prosecution.

Despite significant media attention, no conviction can be decided in Sushil Sharma v. The State (Delhi Administration) and Ors, 1996; just the evidence presented to the court may be examined. In this case, it is assumed that the judge will be objective. The complaint would depend on a charge of bias if the judge focused his or her judgment on agreed-upon news articles, and therefore seek a trial where the facts were not examined. Charges must always be specified on the basis of what is presented in the file, even if there is no new information[9].

## CONCLUSION AND SUGGESTIONS

In any democratic society, freedom of speech and expression, from which the freedom of the press derives, is a basic fundamental right. In a developing democracy like ours, the courts and the media must work together to preserve the rule of law. They must complement rather than replace one another. Of course, people have a right to be informed, and the media is a critical fourth pillar in achieving this goal, but this comes with a great deal of duty and accountability. The media, as an institution, has tremendous power and influence, which it must wisely use. As previously mentioned, although the right to free expression is critical to the rule of law, so is the right to a fair trial. Both should be treated equally, since free expression cannot and should not jeopardize the administration of justice, which can only be accomplished via a fair trial.

The freedom of the press cannot be used to smear the accused's reputation or create bias against him, undermining the presumption of innocent. In media trials, justice is often delayed, if not derailed, by turning a tragedy into a spectacular story. The concept of "mob justice" must be abandoned. The media should use caution while presenting facts, and even when offering an opinion on a case, it should not overstep its boundaries by assuming judicial responsibilities. Even if a defendant is found not guilty by the courts, he or she is nonetheless socially ostracized.

Another significant factor is that the PCI's journalistic ethical standards are inadequate, giving the media a lot of leeway in covering criminal cases. As previously stated, these standards cannot even be legally enforced. Another problem is the PCI's lack of punitive powers to enforce the same. Even the courts seldom go beyond issuing warnings to publishing companies and news organizations, and punishing them is very uncommon.

There is a need to extend the definition of the term "pending" in the Contempt of Court Act to include "from the moment the arrest is made" in order to have a greater restriction on the dissemination.

## REFERENCES

1. K. G. Prithvi and M. Punngai, "Media Trial - an Overview," *Int. J. Trend Sci. Res. Dev.*, 2019, doi: 10.31142/ijtsrd20295.
2. M. Rae, "Trial by media: Why victims and activists seek a parallel justice forum for war crimes," *Crime, Media, Cult.*, 2020, doi: 10.1177/1741659019874179.
3. R. Surette, "Media trials," *J. Crim. Justice*, 1989, doi: 10.1016/0047-2352(89)90034-2.
4. A. K. Singh and A. Kumar, "Media Trials in India," *SSRN Electron. J.*, 2015, doi:

10.2139/ssrn.2552426.

5. "Media Trial of Indian Judicial Proceedings: A Journalistic Approach," *J. XI'AN Univ. Archit. Technol.*, 2020, doi: 10.37896/jxat12.04/838.
6. D. Singh and S. Singh, "Media Trial: Freedom of Speech VS. Fair Trail," *IOSR J. Humanit. Soc. Sci.*, 2015.
7. J. N. Spencer, "Contempt of Court Act 1981," *J. Crim. Law*, 1983, doi: 10.1177/002201838304700108.
8. K. M. Roy and D. R. Tyagi, "Effect of Social Media Trial on the Indian Judicial System," *SIJ Trans. Ind. Financ. Bus. Manag.*, 2020, doi: 10.9756/sijifbm/v8i1/ifbm20002.
9. "Privacy as a Human Right and Media Trial in India," *Age Hum. Rights J.*, 2014.