



“BALANCING JUSTICE: THE INTERSECTION OF RIGHT TO FAIR TRIAL AND MEDIA ETHICS”

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ABSTRACT

When we celebrate the gains of freedom and liberal interpretation by courts of our Constitutional rights, media trial are solemn reminders of the need for eternal vigilance against creeping encroachment on human rights by unrestrained avoidable ‘Media Trials’, effected under guise of increasing TRP by the media. The ‘Trial by media’ and unverified reports of court proceedings getting published or telecast, by which it canvasses and conveys public opinion in favour of one side or the other, has become increasingly frequent in recent times. For instance, it reveals from the reporting by the Media in Aarushi Murder case a lot of speculative reports had appeared in the media and many private details were printed.



KEYWORDS: *Constitutional rights , Media Trials’ , gains of freedom .*

INTRODUCTION:

It does appear to be a parallel trial conducted by media without any accountability. In this paper attempt is made to find out how far this intrusion by the media in the life and liberty of the common citizen of democratic state is justified in view of the Constitutional provisions under Article 21 & 22. The researcher through this research paper further wants to point out that the fairness always has the primacy over the freedom of press.

There is a provision of fair trial under relevant procedural laws, which means a trial in which law has been administered with fairness, without prejudice to any of the parties to the hearing...,¹

Researcher submits that the Delhi High Court’s decision in the popular Hawala case² affirming that the charge sheet against Mr. L K Advani and others were not supported by legal evidence and therefore, prima facie without basis is a judicial affirmation of the popular perception that investigating agency was pushing ahead with untenable cases. This has raised suspicion, perhaps unwarranted, that the agency was being misused by vested interest to serve political agendas, and publicity agenda by media, with no thought to the fundamental rights of the accused and other citizens. In other words the ‘publicity oriented Investigation’ by the state investigating agencies, has besmirched personnel

¹ O. VI, R. 16(b), C.P.C. (5 of 1908)

² Pradhan v Union of India 1996, 2 SCC 199

reputations of many public persons through avoidable media exposure even before the charge sheet was filed. The case of Mr. Laloo Prasad was an example; the selective media Leakages by the CBI in Fodder Scam, similarly the Bofors investigation and recent reporting of the Sheela Bora case is seen by some as intended to silence the agency's critics at a time whenever its credibility is being questioned. The irony is that the pain and infamy brought to the accused and their families, the invasion on their privacy, the subversion of the process of 'fair trial' and avoidable delays in the investigative process are being unreasonably traced to the directions of the Supreme Court in some of these cases.³

In the backdrop of the afore cited cases it can be safely said that a court has secured dignity and fundamental freedom for undertrials and those condemned to serve prison sentences can only disapprove of the infraction of basic human rights of the accused as a consequences of half-baked prosecutions by the State agencies and avoidable media trials. Lamenting on the investigating agencies in its directions in hawala case, sought to ensure that investigation into accusations were conducted on a reasonable basis, irrespective of the position and status of the person, and were completed expeditiously so that public confidence in the impartial working of the investigating agencies could be retained. The court declared that there should not be the slightest impression of any parallel proceeding by the media in respect of those charge sheeted in the Supreme Court.

Right To Fair Trial and Media Ethics

Recently the Court also took judicial notice of 'Considerable publicity in the Media' surrounding the cases and found it appropriate to issue directions aimed at ensuring that government agencies investigating into the accusations fairly. Those directions reaffirm the Court's concern for fair trial based upon presumption of 'innocence'. [emphasis supplied]. It is worth to be noted that the concern expressed by courts dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into the Article 21 of the Constitution.

No occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of criminal jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement undoubtedly has to be kept in view during the entire trial. Care must be taken to ensure the credibility of the judicial process is not undermined in any manner.⁴

Researcher submits that our Constitution does not enumerate specially freedom of the press as fundamental right. However, the Apex Court in its several decisions from 1950 onwards held that freedom of the press is implicit in the guarantee of the right to freedom of speech and expression. Thus, Freedom of the press, one of the pillars of the democracy, has acquired the status of fundamental right due to activist judicial interpretation. However, the government is constantly under increasing pressure from the society to bring in a 'content code' for media. But, the Broadcaster rejected any idea of Government interference in their job, saying the check has to come from within the industry.

The reporting of the matter before the Courts for trials, by media, while expressing concerned over 'trial by Media' and unverified reports of Courts proceedings getting published or telecast, the then Chief Justice of India K G Balakrishnan said that this was a danger to a "free, fair and constitutional judicial process."

Trial by media, by which it canvassed and conveys public opinion in favour of one side or the other, has become increasingly frequent in recent times. The phenomenon questions the very premise on which the Indian judicial system is based the right of every party involved in a court proceedings, civil or criminal, to have his case adjudicated in a manner that is 'free, fair and unbiased'.

³ Hitvada Daily News paper on 10th August 2010.

⁴ HITVADA Daily News Paper Article By Ashwani Kumar, Senior Advocate of the Supreme Court of India

As mention earlier, for instance, it reveal from the reporting by the Media in Aarushi Murder case a lot of speculative reports had appeared in the media and many private details were printed. The question which struck to the mind is that How far can the media go into the private lives of people? The manner in which modern media and telecommunication can intrude into a person's life and give embarrassing and damaging publicity, if left unhindered, is "alarming". Justice Balakrshnan said: "The tendencies of newspaper and news Channels to give unverified accounts are a development that raises a lot of concern".

Researcher is of the opinion that it appears to be a parallel trial conducted by media without any accountability, ruin the reputation of the individual, amount to intrusion in the lives of individual to live a dignified life envisaged in the Article 21 of the Constitution. Thus, the respect for human dignity, rights and liberty pervades the entire Constitution. That's why the Constitution of India, the fundamental law of the land, forbids invasion on personal liberty without fair and reasonable procedure established by law, public persons in particular and citizens in general are reasonably entitled to expect that their career will not be ruined and reputation wrecked without a basis in law, as it abundantly evident from the said instances that all the accused suffered the loss of reputation and fair name- the single most important asset of any individual.

To sum up, on the broader spectrum, harmony must be restored in functioning of different media based on the principles that human rights, the guarantees applicable to them and the rule of law applied in its best traditions form a triad that secure the foundations of our Democratic Republic. In view of the recent avoidable media trials and other broadcast, publications in periodicals and newspapers, in the humble opinion of the researcher, it is imperative for the government that to prescribe '**content code**' for both print and electronic media to be observed while publishing and broadcasting their reports, so that the precious human rights can be protected from blatant violations through avoidable media trial.