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MEDIA TRIAL V/S FAIR TRIAL: CONFLICTS AND CHALLENGES

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social, economic, political, legal.

INTRODUCTION :

We are living in the area of science and technology. There are innumerable opportunities for press freedom. One of the objects of media is to produce, update as well as to promote free flow of sharing information and idea to the people. In this context, present freedom of expression stands at the heart of Media freedom.³

Hence, at present context, we come across many of the times that media is having tremendous capacity to improve the socio-economic complexities. It is evident from the role played by the media is that they are having many challenges in this democratic nation. There are so many complexities from the perspective of freedom of press. Freedom of Press and restriction upon the freedom of press are the two aspects of present media. In democratic nation, importance and

ABSTRACT

After adopting the Constitution of India, everywhere the wave of welfare scheme spread throughout the India. We recognized two tier Government i.e. Union and State level. In any democratic nation, an appraisal as to the role of media always been taken into consideration. Media can create such impression in the society wherein it may ameliorate the social, economic, political, legal, ethical situations. Apart from three organs of the Government, contribution of media in meeting the socio-economic complexities in the society became

inevitable. To retain the spirit of democracy, power and function of media becomes more worthwhile if they acted in consonance with the Constitutional and Statutory norms. Hence this paper is concerning how the role of media in the society deviated its traditional norms. What are the conflicts and challenges before media today? How the trial by Media encroached upon the Principle of fair trial? It is analysed how the extensive role of media is beneficial in order to retain the value and true spirit of democratic nation.

KEYWORDS: Media Trial , Fair Trial ,

value of Media cannot be repudiated. Media is the basic component of democratic nation like India. Trial by Media is the phrase used in 20th century which means as unlawful interference by media into the judicial proceedings. It appears everywhere that present media loosed its traditional norms and turned itself under threat. It has created threat to the life and liberty although having freedom of press subject to reasonable restrictions.⁴

2. SIGNIFICANCE OF PAPER

- 1) Today at each and every platform, the importance of freedom of speech and expressions are increasing. Hence not only nationally but also globally the notion of freedom of expression have become more valuable.
- 2) In the constitution of India, Free speech and fair speech is of utmost importance
- 3) Freedom of Press can be used as an important tool to achieve the concept of social justice as enumerated in the Constitution.
- 4) It is needed that press freedom can be used as a foundation for exercising the right to freedom of expression and access to information.
- 5) It is required to know the real facet of Principle of Fair Trial under the Principle of Criminal Law.
- 6) Status of Media have tremendously increasing at National and global level. Therefore, media is bestowed with rights, duties and responsibilities which they have to follow according to legal mandate.
- 7) Today in increasing world of Science and Technology, the extensive activities of media are growing. Hence, freedom of press exercised by media is having some limitations.

3. OBJECTIVE OF PAPER:

- 1) Free flow of information to all is one of the purposes of media. So in the context of present scenario, it is required to analysis the role of media vis-a-vis Indian perspective
- 2) To study how the present Media arrested the mind of society in transgressing the limitation imposed under freedom of press.
- 3) To suggest some concrete guidelines to prevent Trial by Media
- 4) To provide how the role of media becomes more fruitful in maintaining true spirit of democracy.
- 5) To provide suggestions in order to bring media in accordance with Constitutional and statutory norms.

4. FREEDOM OF PRESS- CONSTITUTIONAL PERSPECTIVES

Role of present media extensively increased as well as there is innumerable responsibility shouldering by the media in maintaining the true spirit of democracy. Media regarded as great potential instrument. Therefore, Media serve as platform for society in generating information. But some time it is feasibility to commit such act which is not in consonance with the law. Media exercising freedom of press as well as it have to follow duties. "The press has no special right, which are not being given to be or which are not to be exercised by the citizens in his individual capacity. The editor of the press or the manager is merely exercising the right of expression and therefore, no special mention is necessary of the freedom of press".⁵

Protection of certain rights regarding freedom of speech, etc.⁶ —(1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

Here, under 19 (1) (a) gives the right to speak freely and expression. The right to speak freely and expression are deciphered by the Supreme Court generally and have been given rule in different cases to practice the right to speak freely and expression by remembering restrictions forced under 19 (2) of Indian Constitution.

Flexibility of Press not explicitly given under 19 (1) of the Indian Constitution however it streams from this. The majority rule nation like our own, right to speak freely and expression is not supreme right. The privilege delighted in less than 19 (1) might be liable to sensible confinements. Constraint for the right to speak freely and expression gave under 19 (2) of Indian Constitution⁷ as takes after: 19 (2) expressed that-Nothing in sub-proviso (an) of condition (1) should influence the operation of any current law, or keep the State from making any law, in so far in that capacity law forces sensible confinements on the practice of the privilege gave by the said sub-provision in light of a legitimate concern for the power and uprightness of India, the security of the State, well disposed relations with remote States, open request, fairness or ethical quality, or in connection to disdain of court, criticism or actuation to an offense.

The freedom of thought and expression, and the freedom of the press are not only valuable freedoms in our constitution but these are basic to the democratic form of government like India which can solved by the free exchange of thoughts and idea through the medium of public communication/ discussion.⁸ For proper and effective working of any Government, role of media is more important and therefore, the high values are attached to the constitutional notion of freedom of press. Any type of encroachment upon the freedom of press should be restricted by every legal means available to citizens in our Constitution.⁹ In Gopal Das v. Assam case it was held that section 11 of Press (Objectionable Matter) Act, 1951, could not be held void as imposing an unreasonable restriction on the fundamental rights of freedom of Speech and expression.¹⁰

There are some Constitutional Protections guaranteed by the Constitution of India to the accused persons reads as under:

Protection in respect of conviction for offences:-¹¹

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Here, in respect of cl. 3 of Article 20 is specifically important from the point of protecting rights of an accused person.

"Art. 21 provides that- No person shall be deprived of his life or personal liberty except according to procedure established by law'. So procedure must be just, proper and equitable.

Right to life and personal liberty is the lifeblood of the Indian Constitution. So even accused person who is alleged to have been committed any offence also entitled right to life and personal liberty. Hence it is the duty of media to publish information and news in such manner so that it should not hamper the right of an innocent person.

Article 22(2) requires that- a person who is arrested has to be produced before a nearest Magistrate within 24 hours of the arrest excluding the time journey requires from the place of arrest to court.

Contempt of Courts Act, 1971:

Contempt of Court is not the part and parcel of freedom of press. Therefore, contempt of court may be a good ground upon which freedom of press can be challenged. So it is the duty of media not to involve in such activities by which it will cause an act of contempt of court. So here it is required to know what exactly the contempt of court. In so far as Contempt of Courts Act is concerned, this Act may be deals from the point of role of Media in the society. This Act has been provided the term 'Criminal Contempt' reads as under:-

'Criminal contempt'¹² means the publication, (whether by words, spoken or written or by signs, or by visible representations, or otherwise), of any matter or the doing of any other act whatsoever which

(i) Prejudices or interferes or tends to interfere with the due course of any judicial proceedings; or

(ii) Interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any manner".

Section 3(1) provided as to "innocent publication, if the publisher having no reasonable and justifiable grounds for believing that the proceeding was pending, then he will be exempted from the criminal contempt. Contempt of Court Act is one of the effective weapons for working of media within the limitation. An element should be removed and the notion of rule of law should be followed by the media.

5. CONCEPT OF TRIAL BY MEDIA AND FAIR TRIAL

At the outset, it is evident by the Supreme Court of India that a trial by press/media, electronic media is the very anti-thesis of rule of law and can lead to miscarriage of justice to the accused person.

It is one of the important principles of media that they have to provide true and correct information but the increasing role of media resulting into generating fanciful information which may hamper upon the principle of fair trial. Apart from this, the term 'Trial by Media/Media trial' used in the 20th century to describe the impact of media upon person's life, liberty, reputation which can create adverse effect upon the minds of society. When the media assumes the role of public court, it can create the strong impression upon the legal and judicial process. It can pass the judgment even before the court. Therefore, media trial creates strong influence upon the judicial proceeding which can violate the human rights of an accused person. Therefore, judiciary has been stated in number cases that media can exercise freedom of press subject to reasonable restriction given under the constitution of India.¹³

Principle of Presumption of Innocence has been provided in International document named the Universal Declaration of Human Rights. It deals with the right to be presumed innocent and reads thus:¹⁴

"Article 11 (1) Everyone accused of a corrective offense has the privilege to be assumed honest until demonstrated liable as indicated by law in an open trial at which he has every one of the ensures fundamental for his barrier.

(2) No one might be held blameworthy of any corrective offense by virtue of any demonstration or oversight which did not constitute a reformatory offense, under national or global law, at the time it was conferred. Nor might a heavier punishment be forced than the one that is material at the time the correctional offense is conferred."

Our criminal law and criminal jurisprudence are based on the premise that the guilt of any person charged in a court of law has to be proved beyond reasonable doubt and that the accused is presumed to be innocent unless the contrary is proved in public, in a court of law, observing all the legal safeguards to an accused.¹⁵ Therefore, every accused person is entitled proper, just and fair procedure and presumed as innocent until the final verdict pronounced by the court.

6. TRIAL BY MEDIA- A THREAT TO PRINCIPLE OF FAIR TRIAL

Right to Fair Trial-¹⁶

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

The paramount function of the Judiciary is to provide administration of justice. So every accused person is entitled to receive fair trial. It is the responsibility of Judiciary to provide fair trial without fear or favour. It means judiciary should be impartial. It should not be affected by the media coverage.

In every democratic nation, there are some necessary relationships among the media, law and society. In so far as present media is concerned, there are so many challenges and issues. Apart from this, it is creating inclusive knowledge societies in which all have the opportunity to participate "regardless of frontiers." Indeed, as

the Fourth principle states, "Communication is a fundamental social process, a basic human need and the foundation of all social organization. Everyone everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers."¹⁷ It is the basic crux of media. There are some guidelines and standards laid down in various statutes which are imposing upon the freedom of press. Any news provided by media becoming alarming issues which may hamper the right of fair trial of an accused. Adverse publicity concerning a criminal prosecution carries an inevitable risk which may be threat to the principle of fair trial of an accused person. If media exercises an unrestricted, unlimited and unregulated freedom in publishing information about a criminal case and prejudices the mind of the public and tends to lower the dignity and reputation of an accused person from the right thinking members of society, then there can be serious prejudice to the accused.

The evils of media trial are that-¹⁸

- + Trial by media may strongly influence the minds of an accused as well as society
- + It may influence upon the witnesses in the court. If identity of witness is published, it will create problem to the witnesses. Question as to the security of witness may be creating.
- + It may create interference in the whole legal system.
- + It may disturb the administration of justice and impair the principle of natural justice.
- + When media creates pictures as to the suspicious act of any person, then it may hamper the crux of administration of justice.

In India, trial by media has assumed significant proposition. It is having some positive and negative results. However, some famous criminal cases like Priyadarshini Matoo case, Jessica Lal case would have gone unpunished but intervention of media created overall impact upon justice delivery system.¹⁹ From this situation, it has been stated that media should not do such act by which he himself become victim in the court of law.

7. CONCLUSIONS AND SUGGESTIONS:

While concluding the role of media from Indian perspectives is concerned, following are some of the concrete and useful suggestions which may transform the society.

- + In India, there is lack of enough skilled journalists. It is evident that we have little investigative journalism and few really good analytical writers. We also still have a culture and habit in which so many people do not feel free to speak out if their opinions differ from the right destination.
- + Present media have become more orientated towards commercialisation rather than professionalism. Hence, goal of achieving social, economic and political justice will have remained unanswered.²⁰ Contribution of media will be more fruitful in achieving the real notion of social welfare state.
- + Every media should exercise freedom of press within four walls. Media can do everything within four walls but it cannot cross limitation and encroach upon the life, liberty and privacy of an individual.
- + It is required to maintain the balance between independence of judiciary, freedom of the press and to protect & preserve the rights of an individual.
- + Right to information is fulfilled by the Media. Therefore, media should provide true, correct and justifiable information.
- + Legal awareness should be created among the media at maximum level so that they can understand the law. Legal knowledge among the media will exempt the media from being arising future conflicts and challenges.
- + When the media conducting any type of investigations as to any alleged offence committed by accused person and when media criticizing upon such person. It creates doubt and suspicion upon the mind of public. It becomes difficult challenges to the enforcing machinery to find out the real culprits.
- + It is the duty of media to remove some anti-element in the society and it should not be involve in such act by which he himself will be culprit in the court of law.

REFERENCES:

- 1) World Trends in Freedom of Expression and Media Development, UNESCO Publishing- 2014
- 2) Dr. B.R. Ambedkar in Constituent Assembly Debate (CAD), vol. III page 980.
- 3) H.M. Seervai, Constitutional Law of India, Universal Law Publishing co. Pvt. Ltd. Vol. 1, fourth edition
- 4) J. JUSTICE M. JAGANNADHA RAO, Law Commission of India, 200th Report, on TRIAL BY MEDIA
- 5) FREE SPEECH AND FAIR TRIAL UNDER CRIMINAL PROCEDURE CODE, 1973, August 2006
- 6) New Media, The Press Freedom Dimension, Challenges and opportunities for New Media for press Freedom
- 7) Trial by Media- a Critic from Human Rights Angle, published on NYAYA DEEP, Vol. XI, and Issue 1, written by Dr. A. Raghunadha Reddy.

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3. World Trends in Freedom of Expression and Media Development, UNESCO Publishing- 2014
 4. Supra
 5. Stated by Dr. B.R. Ambedkar in Constituent Assembly Debate (CAD), vol. III page 980.
 6. Article 19 of the Indian Constitution
 7. Hamdard Dawakhana v. Union of India : 1960 (2) SCR 671, Supreme Court of India stated that- the freedom of press reflected under constitution of India includes the right to acquire and impart ideas and information about matters of common interest.
 8. H.M. Seervai, Constitutional Law of India, Universal Law Publishing co. Pvt. Ltd. Vol. 1, fourth edition, page at. 711
 9. Ibid
 10. Id at 721, see also Gopal Das v. State of Assam (1954)
 11. Article 20 of the Indian Constitution
 12. Section 2 (c) of Criminal Contempt Act, 1971
 13. In Romesh Thapar v. State of Madras : 1950 SCR 594, it was held that the freedom includes the freedom of ideas, their publication and circulation.
 14. Article 11 of UDHR
 15. J. JUSTICE M. JAGANNADHA RAO, Law Commission of India, 200th Report, on TRIAL BY MEDIA FREE SPEECH AND FAIR TRIAL UNDER CRIMINAL PROCEDURE CODE, 1973, August 2006. page at 20
 16. Article 6 of the European Convention on Human Rights
 17. New Media, The Press Freedom Dimension, Challenges and opportunities for New Media for press Freedom
 18. Trial by Media- a Critic from Human Rights Angle, published on NYAYA DEEP, Vol. XI, Issue 1, written by Dr. A. Raghunadha Reddy.
 19. Judicial Activism of Media, published on NYAYA DEEP, Vol. IX, Issue 4, written by Dr. Shobha Ram Sharma, Lecturer in Law, Government Law College, Bharatpur (Raj.)
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