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Media Trial, Fair Trial and Procedural Justice

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ABSTRACT

This article aims at briefly analyzing the ideas of media trial, fair trial and procedural justice. The author has also attempted to bring out an inter-relationship between the three concepts and how they are inter-dependent. The three are like different organs of a single body, meaning, an adverse impact on one would also adversely impact the other much like the human body. In today's highly digitalized world, freedom of press has acquired new dimensions and with this new dimension it has also acquired new powers to shape the opinion of its respective audience. While the freedom of press should be a cause to celebrate, it also comes with a few caveats. The author tries to portray an accurate picture of the ramifications in cases when the media crosses its boundary and marches into the territory of judicial autonomy.

Keywords: Media Trial, Fair Trial, Freedom of Speech, Procedural Justice.

I. INTRODUCTION

India has a glorious past in the matter of right to freedom of speech and expression. The founding fathers of the nation, envisioned a nation where expressing oneself would be the ultimate bulwark against all kinds of encroachment of power. In the words of Benjamin Franklin: "Without freedom of thought, there can be no such thing as wisdom – and no such thing as public liberty without freedom of speech." This celebrated right has been solidified in India by putting Article 19(1)(a) in the Constitution. The proviso reads as follows: "All citizens shall have the right to freedom of speech and expression". Judiciary has time and again put on the vest of activism and protected and defended this right. Not only have they safeguarded the right throughout but also have given it a very wide amplitude so as to include within the right to freedom of speech and expression, the right to remain silent², the right to broadcast³, right to criticize⁴, right to freedom of press⁵ etcetera. The right to freedom of press cannot be over-emphasized. Freedom of press is one of the most vital rights in a democracy seeking to defend

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² Nandini Satpathy v P.L.Dani, 1978 AIR 1025, 1978 SCR (3) 608

³ Odyssey Communications Pvt. Ltd vs Lokvidayan Sanghatana & Ors, 1988 AIR 1642, 1988 SCR Supl. (1) 486

⁴ S. Rangarajan Etc vs P. Jagjivan Ram, 1989 SCR (2) 204, 1989 SCC (2) 574

⁵ .Romesh Thappar v. State of Madras, 1950 SCR 594, 607; AIR 1950 SC 124

and continue its administration in a democratic manner. In the words of the first Prime Minister of India, Pandit Jawahar Lal Nehru: "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.". These words have become truer than ever.

II. MEDIA TRIAL

The misuse of this fundamental freedom bestowed on the press has been rampant especially in today's world where technology has taken over practically all the aspects of life. News reporting is not limited to the traditional ways of printing and publishing anymore. There are news channels and media houses which report news 24*7. In sharp contrast to earlier days when there was lack of information and ways of its communication, what the society suffers today is over-availability of and fast spreading information. There is so much information available, it becomes difficult for a person to choose what content to consume. In a world dominated by technology and information, it becomes important to give media a free hand to manage their operational bases, but at the same time, with power comes accountability. The media must behave in an accountable manner and take responsibility for its actions. However, more often than not, there has been absolutism in media and it seeks to take the reigns in its own hands and function according to its whim and fancy. The consequent result is media trial. The motivation of the media is no more only to spread the information after a fact-check but to increase its TRP (Television Rating Point) in order to sustain itself in the cut-throat competition. The term media trial connotes declaring a person guilty/innocent even before he/she is heard before any court of law by the media based on practically no evidence or minuscule evidence present if at all it is. The media probably does not contemplate the ramifications of its actions before launching a charade against a particular person. Media trial, other than influencing the judges and the masses, invades the privacy of a person and needless to say, takes a heavy toll on the person's mental health as well as his/her family members. The reputation of the person takes a hit, sometimes even before the court competent to look into the matter takes cognizance of the case. It is unfortunate that the media for its own gain virtually strangulates a person making it impossible to lead a normal life. There have also been drastic cases where the person could no more take what that media says and is driven to suicide. With the death of the person, there also goes the chance of a fair trial and the unspoken consequence of the misery that follows the death. If the ethical aspect is looked at, serious transgressions have been made and many evils have made inroads.

III. FAIR TRIAL

Fair trial as a concept is multidimensional. There are various tenets of fair trial some of which include an independent and impartial judge, the right to be heard, the right to have a speedy trial, protection from double jeopardy, right against self-incrimination, presumption of innocence unless proved other (save in exceptional circumstances where there is a reversal of burden of proof), the right of the accused to know the accusations levelled against him/her, the right to be tried in his presence, right of the accused that all evidence be taken in his presence, the right of the accused to cross-examine the prosecution witness and give their own evidence, etcetera. The norms of a fair trial flow directly from Article 21 as reiterated by the apex court over and over again. In the words of the Supreme Court in the case of *Rattiaran And Ors v State of Madhya Pradesh*⁶: “A fair trial is required to be conducted in such a manner which would totally ostracize injustice, prejudice, dishonesty and favoritism. Denial of ‘fair trial’ is crucifixion of human rights.”

The bedrock of “rule of law” and “procedure established by the law” is adhering to the principles of natural justice and a fair trial. Fair trial must be done in every possible way and any prejudice to the accused must be taken seriously. Such prejudice/harm caused due to whatsoever reason sets a bad precedent for the future course of criminal jurisprudence.

IV. PROCEDURAL JUSTICE

Procedural justice entails justice in the journey towards securing substantive justice. While substantive justice has been ensured by innumerable Codes in the country, it shall be rendered useless if procedural justice is denied. For example, if an accused is denied of being heard and this results in the story of the prosecution being proven and the consequent conviction of the accused, it would be a manifest violation of his right resulting in the trampling of substantive justice because no heed was paid to procedural justice. This is just one of the many instances where grave injustice could be done because the procedure established by law was not followed.

The Supreme Court has time and again reiterated the importance of procedural norms to be followed, especially in criminal matters. Some of these have also been codified in the Criminal Procedure Code, 1973. There have been several checks introduced especially after the *DK Basu Judgement*.⁷ To list some of these checks: production of the arrested person before the nearest Magistrate within 24 hours of arrest (Section 57 Cr.PC), explaining the person being arrested

⁶ CRIMINAL APPEAL NO. 223 OF 2008

⁷ AIR 1997 SC 610

the grounds of his arrest(Section 50 of the CrPC), the duty of the police to inform the accused his right to get a bail in a case where the offence is bailable (Section 50A CrPC), the right to inform a family member of the place where the arrestee is being held, the right of the accused to consult a counsel of his own choice. These are some of the mechanism that act as a valve in the criminal trial procedure so that any kind of arbitrary power does not make inroads.

V. MEDIA TRIAL VS FAIR TRIAL AND PROCEDURAL JUSTICE:

Procedural justice and a fair trial cannot be segregated from one another and be dealt with separately. They overlap and intertwine in a manner that it is difficult to contemplate one without the other. A failure at the part of the administration and the judiciary to follow the procedural safeguards would defeat the very essence of fair trial and vice versa. While fair trial and procedural justice run in parallel to one another, media trial is a serious dent on the pillar on which procedural justice and fair trial stand.

Activism in media to secure the ends of justice is a welcome step in a vibrant democracy like that of India. In different times in history, justice has been done only because the media relentlessly pursued the matter and effectively brought to the front governmental inaction and apathy. However, the problem arises when instead of bolstering the process, the media itself takes up the role of the judiciary. The pre-judicial interference of the media serves the exact opposite purpose of what the media is meant to do. The over-zealous media in an attempt to increase its views goes to unimaginable lengths to feed a gossip hungry audience.

The newly acquired media roles make the judicial system in place subservient to it. Intentionally, or unintentionally, the introduce a color of bias in the minds of the judges who preside over it. They paint a picture of the accused which might be far from what the reality is, which can only be revealed after the case has been heard on its merit. The judges are also under humongous pressure to yield to the public opinion. Needless to say, this public opinion has been created by the media through over-enthusiastic journalists, ceaselessly aiming at increasing the TRP. The fact that there has already been introduced an inherent bias itself indicates the denial of one of the most fundamental tenets of fair trial i.e. the right to be heard by an independent, impartial and competent judge. Another unintended consequence of the media trial is that it builds so much opinion of the public, that the public no longer is a passive audience to the case but an active participant in the matter. This in turn makes the lawyers reluctant to take the cases of such people (as mostly happens in the terrorism cases). The accused, thereby, is effectively denied the right to a counsel of his choice and has to settle for the one who is available. At times when the accused cannot afford the counsel, it is the duty of

the state to provide free legal aid. There are instances abundant, when the government gives a mediocre lawyer to the accused and a very strong and experienced one to the prosecution side. This is a flagrant violation of the safeguards of procedural justice, mandating that free legal aid be provided in the requisite cases. Even though on the face of it, justice appears to have been done, the accused is in a very disadvantaged position. Media trial takes a toll on the fair trial principles in as much as it forces the accused to accept the fate that the media has written for it.

VI. REGULATION OF MEDIA

Media in India is pretty much self-regulated and a very high degree of autonomy has been granted to it. In our country, media is probably one of the profession which practically is completely free from any outside interference, and subject to a very limited governmental control. There are certain self-regulatory organizations such as News Broadcasting Standards Authority, Press Council of India, etc. These however, only play an advisory role with no real powers of the Court vested in them and no procedure to try them.

It becomes a very important step today when information is at the fingertips, to regulate the media. It is very difficult to control what information the media spreads, but a check can be given for information that the media cannot spread. Sensitive information, cases sub judice, are a few examples of what the media should be prohibited from publicly discussing and debating. Though the media cannot be stopped from reporting the case, the media can be stopped from reporting the case in a manner that prejudices the accused or taints the victim. An elaborate code can be laid out specifying the code of conduct and other regulatory mechanisms governing profession.

VII. CONCLUSION

It has indeed been rightly said that the press is the 4th Estate. Media has been behind historic revolutions for times immemorial. It has played a pivotal role in mobilizing the masses when there was need for it and brought down tyrannies. The media has a right to speech, expression, publication and propagation. This is no ordinary right. It is a sacrosanct right and has rightly been recognized as a Fundamental Right. A fundamental right is one of the most elementary forms of right that are not given as state largesse, rather are basic and fundamental to the existence of man himself. On the one hand while Article 19(1)(a) protects and safeguards the right to freedom of speech and expression of the press, on the other hand, the right to a fair trial and procedural justice has been protected by Article 21. This conflict is a one between two of the most fundamental of rights without which the democracy shall be practically rendered

paralyzed. It is of vital importance to find the right balance between the right of media to express and the right of the accused to have a fair trial. The 200th Report of the Law Commission has made purposeful insights in its report titled: Trial By Media vs Free Speech And Fair Trial Under Criminal Procedure Code, 1973. While the end should be ensuring justice the means need to be fair trial with safeguarding the procedure. The role of the media should be to aid the process of justice rather than hindering it or passing judgements beforehand. As much as there are advantages of an activist media mode the ramifications weigh in heavier and should not be ignored. Apart from the role played by the media and the government, all the efforts shall be rendered counterproductive if the masses do not agree to cooperate. The masses have to be aware of consuming the content and have a fact-check before forwarding it ahead. A reliable source should be sought for any information needed and media intermediaries must also do a source check before publishing any information. The spread of fake news wreaks havoc in the society and this menace must be kept under strict surveillance with a pro-active team to take action immediately.

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