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# Media Trial and its Present Trend of Ensuring Justice in Bangladesh

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## ABSTRACT

*Media intrusion in under trial cases has got its deep root in our society which is sometimes observed as an ethical dilemma especially in the developing countries. In today's world, media is the gateway to get access to information covering various events, incidents and happenings related to our life and feelings. It is now playing a pivotal role in forming and molding opinion of mass people in a community and we, the people have developed the conviction that whatever exposed in media is nothing but true. Taking the advantage of this propensity, media has reincarnated itself as public court and is now interested to investigate the truth of a case in the name of preventing injustice, misdoing and favoritism especially in high profile cases. Such type of media response injects a vast pretrial knowledge in the mind of the judges and it is difficult to efface prejudicial publicity from the minds of them which may result in a taint verdict goes with public opinion ignoring the evidence produced at trial. Consequently, media verdict becomes the ultimate verdict in trial courts. Though media coverage of a case may be subversive, it basically works as spokesman of mass people whose plight goes unnoticed. In a country like Bangladesh where democracy is yet to be flourished, media, as the fourth pillar of democracy is taking the lead to ensure justice for everyone. It assumes the function of watchdog to safeguard the interest of public against malpractice and misfeasance.*

**Keywords:** Media trial, Justice, Bangladesh, Watchdog, Democracy, Court Contempt.

## I. INTRODUCTION

Media and justice are the two mostly uttered words of the day due to their importance and attachment in our day-to-day life. This scenario is manifested throughout the world and Bangladesh is not an exception in this regard. In today's world, media is the mirror of a nation and this device can properly be used to ensure accountability, involvement of civic and uprooting corruption. It reflects before us the uncovered truth and real scenario of our society. This 'magical hub' requires freedom especially in a democratic set up like Bangladesh since freedom of media connotes the freedom of people and it ensures active participation of

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people in state affairs. Freedom of media and the rapid outgrowth of social media have significant impression upon the judges which may trigger mistrials or media-oriented verdicts. So, there is an ever-present debate throughout the globe whether media should poke its nose into the administration of justice or not. The plain answer is obviously difficult. The preservation of freedom of media and judicial independence without any compromise between them is quite impossible. The difficulty of this problematic relation resides in the matter that politics, justice, economics and media are fundamentally intermingled. Realizing this quixotic fact, some researchers say that criminal justice and media are to be perceived together as both of them are 'wedded to each other in a forced marriage.'<sup>3</sup> Hence the key responsibility to ensure justice goes with judicial administration, media, in Bangladesh raises voice to keep its laudable role to bring the accused to hook only when justice is absolutely denied or delayed. So, it is now well-received in everywhere by public though political parties are not in favor of free media as well as media trial. Hopefully media of Bangladesh has extended its umbrella to ensure justice in our present society besides its other regular functions and has successfully become the pioneer in this arena creating new dimension.

## II. OBJECTIVE

Media works day and night to reach every necessary information to our doorstep within the shortest possible time to assist us to proceed towards the path of betterment. Free and independent mass-media can help integrate the democracy and establish human rights through ensuring justice. So, in no way, media stands apart from mass people where they fight for justice. But in this very process of participation, media sometimes exposes its own injustice affecting criminal administration system which might sometimes be the part of attack on the Constitution. So here, the very pertinent question is- 'To what extent media should involve in judicial activities and what should be the role of media in ensuring justice for everyone in Bangladesh? This paper strives to explore this burning issue analyzing the real nature of media trial in Bangladesh. This journey also proves into what type of restrictions should impose upon media to maintain the delicate balance required to ensure justice in the socio-economic perspective of Bangladesh.

## III. METHODOLOGY

This study concentrates on positive role of media in Bangladesh especially in ensuring justice and it is an analysis of documents based on diversified secondary data which have been

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<sup>3</sup> Zsolt Boda & Gabriella Szabo, *The media and attitudes towards crime and the justice system: A qualitative approach*, 8 EUROPEAN JOURNAL OF CRIMINOLOGY 330 (2011).

cumulated from pertinent books, newspaper reports, television news, television programs, websites, national and international journals & laws, case laws, opinion of adept etc. The study has been accomplished by systematic method of analysis and fertilization of understanding.

#### **IV. TRIAL BY MEDIA AND ITS EFFECT:**

‘Trial by media is a phrase popular in the late 20<sup>th</sup> century and early 21<sup>st</sup> century to describe the impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt or innocence, before or after, a verdict in a court of law.’<sup>4</sup> This is now a fairly well-known concept. Most of the time, we notice whenever any sensational case comes before the court, it creates great curiosity among public throughout the world and in Bangladesh, it is let alone. Observing such type of thirst for news relating to hair raising case, media comes forward with their own version of the case in the name of investigative journalism. This coverage creates a perception about guilt and innocence of the accused even before any judgment is pronounced by any court of law. It is termed as ‘Media Trial’ or ‘Trial by Media’. The trial by media found its formal acceptance in the western world in 1960s at the time of expansion of TV news coverage.<sup>5</sup> Afterwards, today’s modern form of it has developed overcoming political threat and now, it is practiced extensively throughout the world.

Right to fair trial and freedom of press are the beauty of democracy but in reality, they conflict and this conflict may thwart democratic as well as judicial administration system. So some exponent claims that media should only be carrier of information and incidents instead of taking the role of judiciary as well as should develop a perception as to media activism and media trial. But what impacts do this media trial have actually upon any case? In searching the answer, we see that media starts a separate investigation, forms public opinion against the suspect even before taking cognizance by the court and doesn’t pay any heed to the basic principles of criminal proceedings- ‘Presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’. It is also seen that investigative journalism covers prejudicial information like past criminal history of the accused, emotional interviews with the victims or their relatives, exciting statements by concerned police office etc. which are hardly allowed in the courtroom proceedings. Consequently, the accused who is to be presumed as innocent

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<sup>4</sup> Trial by media, WIKIPEDIA (2020), [https://en.wikipedia.org/w/index.php?title=Trial\\_by\\_media&oldid=962166759](https://en.wikipedia.org/w/index.php?title=Trial_by_media&oldid=962166759) (last visited Aug 21, 2020).

<sup>5</sup> Shaikh Haque, *Pre Trial Media Perception: Bangladesh’s Perspective*, DAILY SUN (2019), <https://www.daily-sun.com/arcprint/details/431126/Pre-Trial-Media-Perception:-Bangladesh’s-Perspective/2019-10-14> (last visited Aug 21, 2020).

is treated as criminal by the public and even by judges sometimes and it is more likely to mistrust any document produced as evidence by him which may change the total nature of the trial. Due to excessive media publicity, in some cases, not only the suspects but the victims have to undergo violation of their 'right of privacy' as well. This coverage may have irreparable consequences in some sensitive cases like rape. So, except for greater public interest, every individual's privacy right is to be protected and upheld.

## **V. NATURE OF MEDIA TRIAL IN BANGLADESH:**

Being the fourth pillar of state in a democratic set up like Bangladesh, media has an obligation to impart contemporaneous accurate information which may also cover legal reporting. A journalist's right to access court documents in our open justice system assures scrutiny of the court proceedings which helps to increase public confidence upon administration of justice. Freedom of media, guaranteed by Bangladesh Constitution, is the precondition of proper functioning of democracy and it is needless to say, it is the safeguard of nascent democracy and judiciary. Committed and just media helps to improve efficiency of judiciary and plug the loopholes existing in the system. In Bangladesh, media though enjoys unfettered freedom, media doesn't tend to interfere in the judicial process if it works soundly. It expands its hand in this regard if only judiciary fails to ensure justice. It maintains a line of control in covering public trials and endeavors to assist the court framing the right judgment. This role is not tantamount to a prejudice and in no way, to compel the court to take a different view. But a conflict with judiciary arises when media focuses some inherent flaws of the system causing procrastination and backlog of pending cases. Conflict also arises where media not being satisfied with the verdict given by the court, expresses its concern as well as commences a separate investigation in the name of investigative journalism resulting in a conclusion not compatible with the verdict of the court.

Amid this conflict, a new trend of media trial namely- 'Police directed media trial' has recently been evolved in our country. This is somewhat like bringing an accused or suspect after arrest in front of media under the aegis of law enforcing agency and delivering a statement as to the involvement of the arrestee which may be based on investigation or assumption. There exists another type of media trial like without any investigation releasing a list in press release having the names of suspects even before FIR is lodged which has damaging effect on some persons reputation who have no direct or indirect involvement with the alleged offence. Such types of media trial go against law and ethics. It presupposes that our judiciary is not functioning well and so law-enforcing agencies have taken the sole

responsibility of declaring the person's guilt. These folly activities contradict citizen's right to protection of reputation guaranteed under article- 31 of Bangladesh Constitution.<sup>6</sup> Reputation of an individual is a matter of utmost honor. If any arrestee is brought before electronic media and law-enforcing agencies present their own version of media briefing, the reputation of the arrestee is dabbed forever which can't be recuperated even though he is acquitted later. No one has right to ruin others inviolable right to reputation. Such type of state sponsored media showing drama should be stopped without delay. Realizing the true effect of such media coverage Chief Justice of India, JS Khehar in a petition calling for guidelines for the police or investigating agencies briefing the media about any ongoing investigation observed, "Reputation of a person is very important. People may be arrested God only knows for what. If they are shown on electronic media, their reputation is smeared forever, even though they may be acquitted later."<sup>7</sup>

## VI. MEDIA, IMPARTIALITY, JUSTICE AND LEGAL FRAMEWORK:

The term media covers print, electronic and social media. Every form of media has its influential role which may cause social or political tsunami in a society. We observed such type of extensive power of media from 'Watergate Scandal' of USA to 'Skype Scandal' related to War Crimes Tribunal in Bangladesh. Give and take, we all know, media coverage has wide and far-reaching effect so media representations should maintain standard of up to the mark. The flow of information of media should only be true, non-partisan, impartial and not anything else. Verily, media has a moral duty to cover the news related to backlog of three million cases in the lower courts, snail's pace of serving justice, procrastination in court proceedings etc. Otherwise, one can easily say, justice is unlikely to be well served in the absence of media coverage of court proceedings as the court is not spotless and it has a portion of black sheep as well. Likewise, no one can claim to be perfect and this is also hold true for media of ours. If media provides distorted news that could seriously impair one's right to fair trial. Media coverage creates dire pressure upon the judges, witnesses and suspects. This type of unusual pressure makes the presiding judges confused or influenced because they know their activities are closely being monitored and their judgment will affect not only their family but their community and society as well. This scenario certainly impairs an individual's constitutional right of fair trial by an uninfluenced and impartial tribunal. This

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<sup>6</sup> The Constitution of the People's Republic of Bangladesh, , <http://bdlaws.minlaw.gov.bd/act-details-367.html> (last visited Aug 21, 2020).

<sup>7</sup> Bhadra Sinha, *SC may frame guidelines for media briefings, coverage of criminal cases*, HINDUSTAN TIMES (2017), <https://www.hindustantimes.com/india-news/sc-may-frame-guidelines-for-media-briefings-coverage-of-criminal-cases/story-OxI7O7PIFg54bayGNMpkIL.html> (last visited Aug 21, 2020).

view is also expressed in the 200<sup>th</sup> report of Indian Law Commission entitled ‘Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendment to the Contempt of Court Act, 1971), 2006’- where the commission researched on the positive and negative aspects of media trial and strongly warned against covering sensationalized reports by the media considering its effect on the administration of justice. (*Law Commission Report No. 200- Trial by Media, Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971), 2006*) Right to have a fair trial is guaranteed not only by national but also by international instrument. Article-14(1) of the International Covenant on Civil and Political Rights provides-

“All persons shall be equal before courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society.”<sup>8</sup>

Article 11(1) of the Universal Declaration of Human Rights also emphasizes on an unbiased and fair trial mentioning-

“Every person charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”<sup>9</sup>

The principle of non-interference in the due course of justice has also been reaffirmed in the case of *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr*, by the chief justice Gopal Rao Ekbote of Andhra Pradesh High Court where he observed-

“When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of court if he prejudices the truth before it is ascertained in the proceedings.”<sup>10</sup>

So, media requires to be responsible and to maintain the line of control so that it is not to be chained strictly on flimsiest of grounds. Because limiting the power of media means limiting

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<sup>8</sup> OHCHR | International Covenant on Civil and Political Rights, 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited Aug 21, 2020).

<sup>9</sup> Universal Declaration of Human Rights, 1948, <https://www.un.org/en/universal-declaration-human-rights/> (last visited Aug 21, 2020).

<sup>10</sup> Gopal Ekbote, *Y.V. Hanumantha Rao vs K.R. Pattabhiram And Anr.* (1973), <https://indiankanoon.org/doc/299670/> (last visited Aug 21, 2020).

the right of citizen to make their voices heard which will endanger the very concept of democracy. In Bangladesh, to regulate media properly, there are about twenty five laws which are framed during 1800 to 2009. These laws help to maintain the delicate relation between media and judiciary. Some of these mention worthy laws are as follows:

- i. The Constitution of the People's Republic of Bangladesh.
- ii. The Special Powers Act, 1974
- iii. The Press Council Act, 1974
- iv. The Bangladesh Television Authority Ain, 2001
- v. The Draft Broadcasting Act, 2003
- vi. The Right to Information Act, 2009.

## **VII. MEDIA, A WATCHDOG IN ENSURING JUSTICE IN BANGLADESH**

Despite having a bit controversial role in some cases in Bangladesh, media is performing a fabulous job in bringing the miscreants on the hook. For the fear of media publicity, today even some most powerful and influential business tycoons and politicians are cautious about their words and actions which is indirectly curbing the number of crime cases. In doing its surveillance function, it is covering not only what is happening around us but what should happen in a democratic set up. This advocacy role of media helps to bring the fact as it is there and makes the government accountable for their act. In that way, it molds the mindset of the concerned authority as well as of the citizens to ensure effective justice for all in every aspect of our life. It also acts as podium to propagate the voice of the mass people. Observing these beautiful aspects of media, the first Prime Minister of India, Pandit Jawaharlal Nehru remarked, "I would rather have a completely free press with all the dangers engaged in the wrong use of that freedom than a suppressed or regulated press."<sup>11</sup>

At present, media of Bangladesh has spread its web in all the branches of our life and justice administered by judiciary is not out of its grip as well. So, to ensure administration of justice, it brings before us the information about the activities of police, investigating agencies, court and other concerned authorities so that we can keep ourselves up-to-date of the criminal proceedings or what is going on in the court arena. Not only that, in some cases it goes further and investigates the true fact of the case like a detective even taking the risk of life. Because of reducing trend of faith on our administration of justice, people now support the

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<sup>11</sup> Anamika Ray & Ankuran Dutta, *Media Glare or Media Trial Ethical Dilemma between two Estates of India Democracy*, 5 ONLINE J COMMUN MEDI 103 (2015), <http://www.ojcm.net/article/media-glare-or-media-trial-ethical-dilemma-between-two-estates-of-india-democracy> (last visited Aug 21, 2020).

trend of trial by media. In some cases like Nusrat Jahan Rafi rape and murder case, buetian Abrar Fahad murder case, journalist Sagor and Runi murder case etc., the masterminds and miscreants would have gone unpunished and untouched because of their power and political background if media intervention was not there. So, rightly we can say, media has taken the role of watchdog in favor of mass public to ensure justice. Besides, streaming regular news, almost all the news channels of Bangladesh as part of their investigative journalism, are making special programs based on crimes report to show with fingers current discrepancies in our society and to ensure justice by removing these. Some espionage based programs of different channels are - 1.Talash Team, Independent TV 2.Ekusher Chokh, Ekushey TV 3.Investigation 360 Degree, Jamuna TV 4.Onushondhan, Maasranga TV 5.Searchlight, Channel 24, 6. Crime Watch, NTV 7. Crime Fiction, GTV 8. Crime Patrol, ATN Bangla etc. What kind of role media can play to ensure justice, it will be understood better analyzing the cases in which media has played strong and effective role. Some of the instances are given below to realize the role of media in Bangladesh in ensuring justice:

**(A) BUET student Abrar Fahad murder case:**

This is one of the mostly focused cases in which the mighty role of media has been reflected and in this case, the people of Bangladesh saw how media compelled the government to take harsh and exemplary action against the accused who are allegedly involved with the youth wing of the ruling party. Taking such type of stern action against own party leaders due to backlash from every corner of the society is very rare in the political history of Bangladesh and the core credit in this respect goes to media unquestionably. Abrar Fahad, student of mostly prestigious learning center namely Bangladesh University of Engineering and Technology (BUET) was brutally murdered on the 9<sup>th</sup> October, 2019 in Sher-e-Bangla residential hall by a group of students involved with Chatra League due to his criticism of the government over a water-sharing deal with India in social media. This heinous murder triggered a flame of protest across the country because of media coverage and consequently, from every nook of the corner there raised a demand- 'Justice for Abrar'. Media covered every ins and outs of the case round the clock, informed the nation through news transmission and so the concerned authority as well as the government didn't get any single chance to hide the original murderers what we observed in many other political cases in our previous history. Not only that, due to media investigative journalism, six accused who were initially not in the First Information Report (FIR) and not arrested, were arrested and their names have been included in charge sheet which has also been produced in a record-breaking short time

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Most importantly, this case has been transferred to the Speedy Trial Tribunal-1 of Dhaka from Dhaka Metro Sessions Judge's Court according to the demand of Abrar's family as well as of the people.<sup>13</sup> This is the case in which the country observed with surprise how fast a charge sheet can be given, how fast the offenders can be arrested, how fast the proceedings of a trial can run and to what extent, even the government can be compelled to ensure justice. Without the positive role of media, most probably the case would get the same fate like other political cases where justice was denied.

**(B) 21<sup>st</sup> August Grenade Attack, 2004 case:**

21<sup>st</sup> August Grenade Attack, 2004 mostly known as Joj Mia drama was a gruesome attack on Awami League rally which left 24 people dead and hundreds of party leaders and workers injured including Sheikh Hasina, the then opposition leader. It is a glaring example of manipulation of a judicial proceeding politically which the media of Bangladesh didn't accept and endeavored to the utmost to bring out the real fact before the nation. However, in a mockery to justice, at first, it was claimed by the then government that the attack was made by Awami League men and later, they said that Joj Mia from Noakhali, a petty criminal was responsible for the attack. From the very beginning, media of Bangladesh denied the truth of the claim made by the government as well as by the police and afterwards, media revealed that a monthly allowance is being paid to the Joj Mia's needy family by the police in exchange of his admitting as an attacker.<sup>14</sup> At last, the truth came to light and justice is ensured in which media has a strong role.

**(C) Labour leader Nurul Islam murder case:**

Another soul-stirring case where media's role keeled the total nature of the case and ensured justice is labor leader Nurul Islam murder case at Puthia in Rajshahi. In this case, two investigative episodes were aired in Jamuna TV and Investigation 360 Degree Team made an investigation being informed that an innocent poor boy is made the victim of the case intentionally to save the real culprits. However, the fact of the case is that labor leader- Nurul Islam was murdered on 11<sup>th</sup> June, 2019 centering the election of Puthia Motor Sramik Union held on 24<sup>th</sup> April, 2019. He contested in the election for the general secretary post and lost to

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<sup>12</sup> Md Tipu, *Police charge 25 Buet students with Abrar murder*, DHAKA TRIBUNE (2019), <https://www.dhakatribune.com/bangladesh/court/2019/11/13/abrar-murder-charge-sheet-submitted-against-25> (last visited Aug 21, 2020).

<sup>13</sup> Abrar Murder: Case moved to speedy trial tribunal, THE DAILY STAR (2020), <https://www.thedailystar.net/backpage/news/abrar-murder-case-moved-speedy-trial-tribunal-1882588> (last visited Aug 21, 2020).

<sup>14</sup> Joj Mia drama: 'The real deal,' THE DAILY STAR (2018), <https://www.thedailystar.net/august-21-carnage/news/joj-mia-drama-the-real-deal-1644658> (last visited Aug 21, 2020).

Abdur Rahman Patal. Nurul Islam brought the allegation of artifice against the concerned election commission and lodged a case in the Rajshahi Judge's Court. The court restricted Abdur Rahman and three others from taking up their post by issuing an injunction.<sup>15</sup> Poor Nurul Islam personally served the copy of this order to the clerk of Puthia Workers' Office. At that very day, he went missing and his dead body was recovered from a brickfield. On that very 11<sup>th</sup> June, 2019, his daughter Nigar Sultana filed a murder case against eight persons. Unfortunately, later the First Information Report (FIR) was manipulated by the Officer-in-Charge of Puthia Thana in which six other suspects were included excluding the name mentioned by the daughter of deceased Nurul Islam. Surprisingly, Detective Branch investigated the case with the outcome of accusing a 14 years old boy, namely- 'Jibon', who has no direct or indirect involvement with the said murder. Police arrested Jibon and compelled by physical torture and threat to make a confession under section- 164 of the Code of Criminal Procedure, 1898 before the court to safeguard some influential ruling party figures and he was sent to prison.<sup>16</sup> Later Nigar Sultana made a writ petition before the High Court Division accusing Shakil Uddin Ahmed, the Officer-in-Charge of Puthia Thana for manipulating of the First Information Report (FIR) of Nurul Islam murder case in Rajshahi. The High Court Division (HCD) directed the Chief Judicial Magistrate of Rajshahi to conduct a judicial inquiry and to transmit the probe report.<sup>17</sup> Mehedi Hasan Talukder, Chief Judicial Magistrate of Rajshahi took into consideration the report of the team- Investigation 360 Degree which he mentioned in his report and found that the report has authenticity and the then Officer-in-Charge of Puthia Thana was the wire-puller of manipulating FIR of Nurul Islam murder case. Mehedy Hasan Talukder submitted the report to the HCD observing Shakil Uddin Ahmed and four other police officials responsible for the said manipulation.<sup>18</sup> Considering this report, the HCD issued the following directions:

a. The court ordered the Inspector General of Police (IGP) to take necessary departmental action against Shakil Uddin Ahmed, the then Officer-in –Charge of Puthia Thana through a departmental inquiry.

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<sup>15</sup> Altering Murder Case FIR: Hearing on petition deferred for 7 days, THE DAILY STAR (2019), <https://www.thedailystar.net/city/news/altering-murder-case-fir-hearing-petition-deferred-7-days-1828516> (last visited Aug 21, 2020).

<sup>16</sup> THIS IS LIKE ANOTHER JUDGE MIA! | INVESTIGATION 360 DEGREE | EP 234, 242, (2019), <https://www.youtube.com/watch?v=KYyD-n8HvLI> (last visited Aug 22, 2020).

<sup>17</sup> Manipulating FIR by ex-Puthia OC undoubtedly grave offence: HC, THE DAILY STAR (2019), <https://www.thedailystar.net/country/manipulating-fir-ex-puthia-oc-undoubtedly-grave-offence-1834327> (last visited Aug 21, 2020).

<sup>18</sup> Changing FIR of Nurul Islam Murder Case, JUDICIAL BODY FOR ACTION AGAINST 5 COPS | THEINDEPENDENTBD.COM (2019), <http://www.theindependentbd.com/arcprint/details/223327/2019-11-12> (last visited Aug 22, 2020).

b. It ordered the Anti- Corruption Commission to take necessary further initiatives based on the judicial inquiry report.

c. It ordered to transfer the case to the Police Bureau of Investigation for investigation.<sup>19</sup>

**(D) Union Parishad Member Monayem murder case:**

An episode is aired in the Maasranga TV with the name ‘Onushondhan’ where they showed various discrepancies of our society. In their episode-3 of season-2, they covered this Monayem murder case which was changed into a suicide case by a managed fake post-mortem report. In this episode, they also showed how a fake post-mortem report can be got with original signature and seal leaving no doubt as to its authenticity. In the Monayem’s murder case, it was seen that the murder was tried to expose as suicide and it was so reported in the managed post-mortem report. But Monayem’s family didn’t dishearten and they filed a naraji petition (objection) against the post-mortem report in the court with the claim to substitute the investigation agency. The court transferred the case to Police Bureau of Investigation (PBI) and after investigation, PBI found a deeply woven conspiracy behind the case. Based on their observations, they arrested some political rivalry of Monayem who were also involved in politics and the arrestees admitted to police that it was a murder, not any incident of suicide. Finally, this episode unfurled before us the process how a fake post-report can be managed in exchange of money which can change the nature and outcome of the case.<sup>20</sup> This conveys a message to the court as to the authenticity of the post-mortem report so that it can be more cautious at the time of scrutinizing such a report to ensure justice to the people.

**(E) Nusrat Jahan Rafi murder case, Feni:**

The murder case that stirred the nation as well as its collective conscience was the feral murder of Nusrat Jahan Rafi, Feni, a student of an Islamic school. The poor girl was sexually harassed by Siraj-ud-Dola, principal of her own institution- Sonagazi Islamia Senior Fazil Madrasa. Unlike other girls in Bangladesh who opt to keep secret their sexual harassment experiences for the apprehension of being disgraced by society, Nusrat went to the police station and filed a complaint on the happening of the alleged harassment which led to the arrest of the teacher. Afterwards, things got worse for poor Nusrat. After eleven days of the said harassment, she had to go to her institution to sit for final examination. Unfortunately, she was trapped and convinced to go to the rooftop of her school where she was pressured by

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<sup>19</sup> Manipulating FIR by ex-Puthia OC undoubtedly grave offence, *supra* note 15.

<sup>20</sup> POST-MORTEM- ONUSHONDHAN : SEASON 02 EPISODE 03, MAASRANGA TV., (2018), <https://www.youtube.com/watch?v=6YnEnsQlgnc> (last visited Aug 21, 2020).

a group of miscreants to withdraw the case and set her on fire after her refusal. She was burned 80% of her body and four days later, she succumbed to death. Nusrat's health condition news dominated for several days in all the media of Bangladesh. Because of regular coverage by media, the accident happened with Nusrat and sparked protest throughout the country and thousands have expressed in their anger using social media. For which even Prime Minister Sheikh Hasina paid a visit with Nusrat family in Dhaka and promised, "None of the culprits will be spared from legal action."<sup>21</sup> Due to regular follow-up of the case by the media, government took initiative to gear up the proceedings of the case though some of the accused were the influential leaders of the ruling party. The judgment unprecedentedly came only within seven months and so it is termed as landmark verdict by Maleka Banu, general secretary of Bangladesh Mahila Parishad, who also said, "It's not just about murder; the reason because of which Nusrat was killed shocked the whole country. She wanted to get justice for sexual harassment, instead of getting that, she was killed brutally... A verdict like this is necessary to let people know that you can't get away with sexual harassment."<sup>22</sup> So, this is for another time we noticed profoundly the power of the media in ensuring justice.

### VIII. MEDIA PRACTICE AND COURT CONTEMPT

When anyone intends to lower the court's authority or scandalize the court by his word or action or publish any article relating to the merit of a dispute pending before a court or attempt to influence a judicial officer in a case or make imputation about the neutrality of a judge or interfere with the administration of justice, these activities are observed in general as contempt of court. In case of media, contempt of court may arise from failure to comply with the lawful directions of a court or publication of article disrupting the administration of justice. The duty to ensure justice is rested upon the judiciary so the media shouldn't transgress its limit. Once any case is placed before the court for its adjudication, media has no right to publish its own version of the case. If it does so, ignoring reasonable restrictions, this will amount to contempt of court. What actually amounts to contempt of court is not clearly defined in the Court of Contempt Act, 1926 rather rested upon the court to define what activities will be considered as contempt. So, there is a legal gap what confers the court sweeping power to determine whether any act is contempt or not. In this regard, court plays the role of prosecutor as well as adjudicator what goes against the principle of natural justice. A heated debate raised throughout the country as to this point which drew mass people gaze

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<sup>21</sup> Mir Sabbir, *Burned to death for reporting sexual harassment*, BBC NEWS, April 18, 2019, <https://www.bbc.com/news/world-asia-47947117> (last visited Aug 21, 2020).

<sup>22</sup> Faisal Mahmud, *Bangladesh sentences 16 to death over Nusrat Jahan Rafi murder* (2019), <https://www.aljazeera.com/news/2019/10/191024060809761.html> (last visited Aug 21, 2020).

as well, when a conviction was made against Mr. Mahamudur Rahman, acting editor, daily Amar Desh and two other journalists. They were convicted for publishing a report entitled ‘Chamber bench means stay order in favor of the government’ and the court observed this report as scandalizing the court which would erode public confidence and undermine judicial authority. It also observed that the criticism of court in public and accusation of biasness and political influence would brought at stake not only the reputation of a particular judge but the collective reputation of the judiciary as an institution as well.<sup>23</sup> This point of court contempt drew public gaze as well when Asaf-Ud-Daula, former secretary and founder editor of daily Bangladesh Today passed a comment about the High Court Division during a discussion in the Jatiya Press Club. He raised a question about the impartiality of the court and mentioned that lawyers of the Supreme Court still search for neutral courts. Though these two reports were based on true information but the apex court, fountainhead of justice, took it seriously as contempt. Article 108 of the Bangladesh Constitution itself provides that the Supreme Court’s power to punish its contempt shall be ‘subject to law’ but the stance of the Supreme Court in ‘2008 Contempt of Court Ordinance Case’ is that the power to punish contempt is unconditional, is not convincing.<sup>24</sup>

Media, being the vehicle of freedom of expression of citizenry, it should have the right to publish the truth wherever it happens and it should have the scope to report without fear of criminal charges. Because freedom of press will conserve the integrity of the course of justice. But what guidelines the media should follow in Bangladesh, the Press Council Code and the Broadcasting Code are silent. So here is the biggest role to be played by the court. What type of activities should be considered as contempt, a crystal clear notion can be gained from the observation of former Canadian Chief Justice Brian Dickson- “Any act of writing calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court. However, the court must be satisfied beyond reasonable doubt that the publication of the alleged contemptuous material constituted a real and substantial risk of prejudice to the integrity of the administration of justice.” This extraordinary power belonged to the court should be used properly and sparingly. Otherwise it will impair the freedom of media. This message is clear in the words of Lord Denning M.R.-

“Let me say at once that we will never use this jurisdiction as a means to uphold our own

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<sup>23</sup> Irene Khan, *Gagging free speech or protecting judicial integrity?*, THE DAILY STAR (2010), <https://www.thedailystar.net/news-detail-152087> (last visited Aug 21, 2020).

<sup>24</sup> M. Jashim Ali Chowdhury, *Contempt of Court: In Search of a Law*, XVII THE CHITTAGONG UNIVERSITY JOURNAL OF LAW, 44 (2012), [https://www.academia.edu/40735052/Contempt\\_of\\_Court\\_In\\_Search\\_of\\_a\\_Law](https://www.academia.edu/40735052/Contempt_of_Court_In_Search_of_a_Law) (last visited Aug 21, 2020).

dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.”<sup>25</sup>

## IX. MEDIA TRIAL AND RESTRICTIONS

Media, at times presents best-cooked story to grab the attention of the citizenry where it may take resort of unjust information to make it sound interesting. This inherent trend of media will mar the administration of justice and so it shouldn't be allowed to usurp the duties of the judiciary. Media can at best take role of a facilitator but in no way, can exercise freedom of expression to the extent like covering sporting event what will prejudice the trial and public confidence upon the fountain of justice. Media enchained by scathing rules and regulations is unwholesome for democracy but an uncountable and unregulated media is much more dangerous. So, for 'peaceful cohabitation' of both of them and to safeguard the inviolable rights of citizens, reasonable and legitimate restrictions need to be imposed upon media. In many countries, there are certain level of restrictions which are to be strictly followed by media. For instance, in the United Kingdom, court contempt regulations restrict the reporting of media about legal proceedings after an accused is officially arrested. Such type of strict court contempt regulations are designed to ensure that suspects who are eventually charged can receive a fair trial by a jury that has not been tainted by prior media publicity.<sup>26</sup> The Canadian press can attend in the trial proceeding but it can report a bare minimum of information until the proceeding is complete.<sup>27</sup> Though the court contempt Act, 1926 has been repealed, there are various legal framework like Special Powers Act, 1974, Copyright Act, 2000, Code of Criminal Procedure, 1898, Censorship of Film Act, 1963, Penal Code, 1860,

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<sup>25</sup> R. v. Commissioner of police, ex parte Blackburn (No.2) [1968] 2 Q.B. 150, 154 (Court of Appeal), <http://thewislangcase.com/content/RvCommissionerOfPolice.aspx> (last visited Aug 21, 2020).

<sup>26</sup> Owen Bowcott, *Contempt of court rules are designed to avoid trial by media*, THE GUARDIAN (2011), <http://www.theguardian.com/law/2011/jul/05/contempt-court-rules-trial-media> (last visited Aug 21, 2020).

<sup>27</sup> Brian Breheny & Elizabeth Kelly, *Maintaining Impartiality: Does Media Coverage of Trials Need to Be Curtailed?*, 10 JOURNAL OF CIVIL RIGHTS AND ECONOMIC DEVELOPMENT 398 (1995), <https://scholarship.law.stjohns.edu/jcred/vol10/iss2/6>.

Children Act, 1974 etc. which impose restrictions upon media. But check and balance system maintained in those laws are proved to be inadequate in this ultramodern era. So, currently the guidelines and restrictions provided by the court in ‘Moinul Hossen vs. Sheikh Hasina Wazed’ case are to be pursued for a fair equilibrium between the freedom of media and authority of the court.<sup>28</sup>

## **X. RECOMMENDATIONS**

Judiciary brings and maintains beauty in a society by delivering justice. It preserves the equilibrium of relation among other organs of the society and it has a significant responsibility to apply the pertinent laws to factual situations and to deliver just adjudication for the concerned parties and for the society as well. It deserves pure respect as the guardian of the constitution and protector of the fundamental rights of the citizen guaranteed by the constitution. The standard developed by it has a significant positive role to make the lives of citizenry better and to facilitate achieving the goals targeted by the government. So, to keep human rights safe and to establish true democracy in the country, the current beneficial role of the judiciary is to be upheld. For this purpose, the restoration of public confidence upon the judiciary is the key task to be done and the fair image of the institution is to be kept untouched at any cost. In this respect, media trial and media interference in judicial activities are great menace which are to be checked and regulated properly for the greater interest of the society. But such regulations shouldn't be used to shackle the media's freedom of expression. So, to maintain a fair balance between the judiciary and media, following disciplinary guidelines can be considered for implementation:

- a. To define clearly and understandably what forms of activities and reports of media will be treated as media trial and contempt of court.
- b. To frame specific guidelines for media especially for cyber media as dimension of this arena is being expanded rapidly.
- c. To form a regulatory body to monitor the activities in the social media as today it has the most bludgeoning effect upon the mind of the judges.
- d. To engage a body like News Broadcasting Standards Authority (NBSA) in India which is empowered to warn, censure, admonish and fine the broadcaster.
- e. To issue guidelines about policemen as to what extent of information they can provide to media at the time of investigation and pre-trial stage of a case because most of the time their

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<sup>28</sup> Contempt of Courts Act, 1926, Cases, Part 1, THE LAWYERS & JURISTS , <https://www.lawyersnjurists.com/article/contempt-of-courts-act-1926-3/> (last visited Aug 22, 2020).

reports trigger the possibility of media trial.

- f. To organize obligatory legal training programs for the journalists who work in the media.
- g. To make arrangements to facilitate the flow of information regarding court proceedings to the journalists which will automatically reduce the trend of publishing made-up version of a case.
- h. To conduct meetings on regular basis for interaction between the judiciary and media.
- i. To include the media literacy and the guidelines as to the proper use of social media in the current education syllabus to make the future generations cautious about the use of their gadget.
- j. To include session in the training programs about how a judge can keep him free from the influence of the media.
- k. To take necessary initiatives to stop immediately police directed media trial which smashes the reputation of an accused or a suspect.

This list is obviously inclusive, not exhaustive. So, more research should be encouraged in this field for searching out effective mechanisms which will work as catalyst in the framing of effective Act in future.

## **XI. CONCLUSION**

Media and judiciary are two basic cornerstones of our ongoing social structure and these two are complementary. Judiciary is the fountain of justice whereas media is the storehouse of flow of information which plays a key role in making our judiciary and other institutions more accountable and connected with people. This type of accountable and just judiciary is the ultimate concern of a democratic country like Bangladesh. Media is now helping bring the courtroom into our living rooms providing every detail of the court arena for greater public interest.<sup>29</sup> In present perspective, media trial which has already been able to cause revolution is a praiseworthy effort to ensure justice as well as welfare of the society. Media, as watchdog is vigilant to safeguard the interest of the society and discloses the flaws of the judiciary, if any, which assists the government to make the institution more liable and citizen-friendly. On the other hand, media has a huge responsibility to fulfill very cautiously to bring the original facts in light without being biased towards any individual, political party or group and to treat every person on equal footing. Though media strengthens the interest of public, it

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<sup>29</sup> Olivia O’Kane, June 21 & 2017-01:00 Am, *Media plays vital role in ensuring justice is done*, IRISH EXAMINER (2017), <https://www.irishexaminer.com/business/arid-20452964.html> (last visited Aug 21, 2020).

shouldn't be allowed to prejudice the trial proceedings and reputation of the court. The media is to be controlled and regulated properly by the court under the umbrella of court contempt. Otherwise an unregulated and unbridled freedom may make our media biased and unruly. In Bangladesh, the positive and courageous role of media outweighs its negative sides. So, in conclusion, we can rightly say- media's freedom of expression needn't be curtailed or stifled rather the level of impartiality is to be developed for ensuring justice as well as upholding the image of the judiciary.

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