

## **Constitutionality Of Media Trail**

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### **ABSTRACT**

On In the end of 20th century and starting of 21st century, the term 'trail by media' was used to narrate the result of television and news report coverage on an individual's fame by fabricated by a public insight of culpable prior to, or after, a decision passed by the court. There have been countless incidents in recent years where the media has been on the wrong side of the law and has made judgements. The Supreme Court stated that the media and the judiciary are separate entities with separate functions that do not overlap. One is not bound and has no obligation on other to keep their promises. It was suggested that media might focus on journalism rather than acting as a special court. The study demonstrates how the biased essence of several media coverage makes freedom of expression an illegal obstacle to justice administration.

**KEYWORDS:** Media Trail, Journalism, Freedom, Administration, Justice

### **INTRODUCTION**

*One does not have the freedom to falsely shout 'fire' in a crowded theatre, one should not have the right to proclaim guilty, in arena of public opinion, trampling and fair trial right of the accused in the ensure stamped'.*

**Mark R. Stabile.**

The fourth pillar of democracy the media, in all of its force, presents full proof image of the government's working leaving an unforgettable imprint on the population. The media keeps this line of sight open by giving information, adopting its own point of view, and so acting as a catalyst for public debate. It acts as a constant line of communication and control between the people and their elected representatives in the

legislature and administration. The freedom of the press is implied in the freedoms of speech and expression, and it is granted on the press as a distinct entity from regular citizens. It is, as a result, safe. As the fourth pillar of Indian democracy, the media portrays a comprehensive picture of government operations, making an indelible impression on citizens. By disseminating information and adopting a point of view, the media keeps this line of sight open and so serves as a catalyst for public debate. It acts as a permanent communication and control channel between citizens and their elected representatives in parliament and the administration. The press has no particular rights, and its freedom is closely related to a citizen's right to free speech and expression. As a result, it's only natural to believe that the media is complicit as well.

### **HISTORICAL BACKGROUND OF MEDIA TRAIL**

Printing as we know it today did not exist in the ancient world, which was dominated primarily by kings and emperors. It was a time when education was scarce and communication and transportation systems were insufficient. News was passed down through word of mouth during the ancient period. The adventures of one man oral newspaper who delivered news to both heaven and earth are recorded in Hindu mythology. By modern criteria, he was "Narada" a Rishi, and he may be classified as a reporter. Later, apparatus was created to keep the monarch aware of the major currents in the people's lives. Such information was verbally communicated by messengers who reported orally, and it was reduced to paper at a later stage. The Manu, a significant historical record, has the oldest reference to an organisation for news in ancient India. The intelligence organisation was separated into two sections: external intelligence administration and internal intelligence administration. External accords that recognised gestures and expressions, internal intelligence were split into two categories. The administration was the first to break the news, followed by spies. Oral communication was the most significant channel of human contact for the wandering monk, who spread ideas, news, and messages. The auditory technique of communication effectively communicated any item of good, negative, or frightening news. Drumbeats and primitive bushfires were also utilised to convey messages or news. As man's needs grew more demanding, the methods used to communicate or receive information evolved in a variety of ways to meet the challenge of the time.

### **ANCIENT PERIOD**

#### **Rigvedic Period**

The king's autocracy was limited during the Rigveda period by Saba and Samiti which were popular bodies. Everyone was expected to attend smiti. One person was assigned to each sabha and samiti to monitor what was going on in the area. To keep an eye on the people's conduct the king used spies (spasa). The main duty of spasa's was to gather information and report it to the king.

#### **Press During The Epic Age**

The Ramayana and the Mahabharata were Aryans' great epics. The Ramayana belongs to the Trata Yuga, and the Mahabharata to the Dvapara Yuga, according to mainstream Hindu belief. Oral communication was used to transmit news and messages during both periods. Hanuman was chosen as an ambassador to Ravana's palace to give Shri Ram's message to return Sita, according to the Ramayana.

**Mauryan's Period**

According to Kautilya's Arthashastra, the Mauryan dynasty had a total of ten kings who ruled from 320 to 185 B.C. There were 18 administrative departments included in Kautilya's Arthashastra, one of which was intelligence. Agents and informants were used to maintain contact with the broader people. They announced the king's concept and delivered him a public opinion report. Secret agents communicated information to the broader public via writing hidden in musical instruments, sign, recitation, or song, or by banging drums.

**During Ashoka Period**

The grandson of Chandragupta Maurya, one of India's most powerful empires, established his own communication system. All imperial edicts were carved onto copper plates, rocks, and stone pillars during his reign. Daily news was published in the form of little drawings in ink or colour that could be readily erased on the walls of temples. The populace were also informed of the ruler's policy decisions by announcers who beat a drum in front of a large crowd to make these pronouncements.

**MEDIEVAL PERIOD****During Mahmud of Ghazni**

There was no dedicated news collection and dissemination network during Mahmud Ghazni's reign. There was just one special intelligence department. Intelligence gatherers were known as 'sarran,' while horse couriers were known as khailssarran. The major task of the 'sarran' was to gather news from the surrounding area and inform the king. 'Sarran' was the equivalent of the reporters

**During the Reign of Mohammad Ghori**

Secret service operatives were employed during this time period. These were more like news courier jobs. 'Dhawa' was the name given to secret service agents. Their major task was to gather information and then disseminate it.

**During the Reign of Allaudin Khilji**

The news reporter or (Munshi) stationed in each town was a new feature. He was supposed to report every day or by the third day, for which special horse couriers and runners had been prepared. Minister of State News was named at each koso. People were also kept updated about the ruler's well-being, thanks to the novel concept of two-way news transmissions. This regime's communication system is characterised by a system of newsletters and news writers. There were two ways to send news or messages to the king in order to maintain a regular and efficient communication system. Horse post and foot post were the first and second, respectively. With a jingling bell, the horses carried letters.

**During the Reign of Akbar**

During Akbar's reign, the Dawk-Chowki system was established to receive and transmit secret communications and news. Secret operatives were employed to collect information. Every item in the news was reviewed twice for accuracy. The Wagai Navis and Swani Nagar were like today's regional news correspondents in that they covered both local and district-level events for a news organisation. The Wagai Navis had a network of local informants in each district and pargana who kept them informed about

all of the latest developments chevalier. Every week, Wagai Navis gives his report, and every other week, Swani Nagar sends hers. The publishing began as a result of Akbar's Navis system.

### **During the Reign of Aurangzeb**

Aurangzeb set up a well-organized information system. News writers were assigned to various administrative units within their jurisdiction, with the responsibility of reporting to the administration's headquarters. Waquia Navis, the district's news writers, were in charge of keeping track of major happenings. They were sent to the capital (Delhi), where these news letters were frequently read in the presence of the king, indicating that he was aware of what was going on in his country. Spies were also required to submit weekly reports on other vital topics. The emperor's visit to mosques on all holy sites, hunting, excursion, specifics of the representation given to him, and news were all covered in these handwritten letters. Wherever possible, secret information was delivered with mainstream news.

In India, the growth and development of the press (print media) has a chequered past. Print media in India has long been a product of long-term fight against the British ruler's repressive actions. The history of the press in India can be traced back to European immigration. The printing press was introduced to India by the Portuguese. In the 15th and 16th centuries, Christian missionaries brought the first printing press to India. It was primarily focused on spreading Christianity among Hindus and converting Hindus to Christianity.

### **MODERN PERIOD**

The first printer in India was the Spanish Coadju Brother John de Bustamantee, also known as the Indian Gutenberg, who established a printing press in Goa in 1550. In 1557, the Jesuits of Goa produced their first book in India. Bombay established its first printing press in 1674. Even though the first printing press was put up in the third quarter of the 16th century, it took more than two centuries for a newspaper to be published. On Saturday, January 29, 1789, at Serampore, James Augustus Hicky, who is appropriately known as the "Father of Indian Journalism," published the first newspaper in India, titled "The Bengal Gazette." It was a two-sheet piece of paper that measured approximately 12" by 8" and included three columns of text. It included extracts from an English newspaper as well as letters from faraway writers. Benarda Messink launched the second journal, India Gazettes, in November of 1780. The third newspaper, the Calcutta Gazette, was published in February 1784, followed by the Bengal Journal in February 1785.

The turn of the eighteenth century marks the end of a period in journalism in more ways than one. The most notable feature of this time period was the lack of press rules, but the government took swift action against infringing newspapers. From 1799 to 1865, there was the first stage. Except for the English statute of sedition, there were no separate laws for the press until 1799. The government of Lord Wallesey adopted five rules in 1799 that created total censorship.

### **Regulation of 1799**

The British used many sorts of control and restrictions to keep the press under check. In 1799, the then-Governor-General established a decree mandating newspapers to print

the names of the printer, publisher, and editor, as well as submit any information published therein for pre-censorship by the government secretary.

Any violation of the rules resulted in India's expulsion. The editor of the Calcutta Journal, James Silk Buckingham, arrived in India in 1818. Under Buckingham's leadership, the Calcutta Journal was widely regarded as the best-produced newspaper in terms of both substance and presentation. As a famous social reformer, "Raja Ram Mohan Roy" was one of the first champions of press freedom after Buckingham.. In Calcutta, he formed SambadKaumudhi (the moon of intellect) in 1782 and Mirut -ui-Akhar (news mirror) in the following year.

### **Ordinance of 1823**

Following Lord Hasting's demise, the new Governor-General John Adam had little faith in a free press. He didn't appreciate the idea of newspapers passing judgement on government acts because they should be bringing public measures. As a result, in 1823, he passed an edict creating 'press licencing,' under which all contents printed in the press, except commercial matters, required a prior licence from the Government-General. An application detailing the names and other details of the press, such as the location of the press, the title of the newspaper, and the names of the printer, publisher, and so on, could be given such a licence. The magistrate might dispose of both unlicensed printing presses within the terms of the ordinance. In 1825 and 1827, Bombay enacted similar rules. Bengal was the birthplace of both Indian journalism and the press language. In Bengali, Dig Darshan was the first monthly in an Indian language. Jugal Kishore Shukla also founded the first Hindu newspaper, the Hindu UdaniMartand, a weekly, in Calcutta in May 1829.

### **The Press and Registration Of Book Act, 1867**

The "Press and Registration of Book Act," which was passed in 1867, was the previous serving statute primarily geared against the press. The Act's goal was not to put the government in charge of press freedom. It was a regulatory mechanism that allowed the government to regulate printing presses and newspapers through a registration system, as well as to preserve copies of books and other printed material in India. This is the oldest press law in existence. Following independence, it was revised a number of times. Part VA, which deals with newspaper registration and the establishment of a press registrar's office, was amended in 1955.

Section 1(i) interprets a newspaper as "any published monthly work providing public news or comments on public news." As a result, the term includes not only daily newspapers but also news magazines from all periodicities. The publication of a newspaper, however, begins only after a statement is made under Sec. (2). The press Registrar, however, can apply to the Magistrate for cancellation of the in respect of a newspaper under section. 8B (iv).

### **The Indian Press Act, 1935**

Press had a distinct stance after 1920, when the Gandhian era in Indian politics began. The Indian press covered three major topics- Social reforms, political reforms, and nationalisms. Until 1947, the Indian Press pursued these three objectives.

Gandhiji's entrance into politics in 1920 was a phenomenon rather than an event. There were no more harsh press rules after the repeal of the Acts of 1908 and 1910 in 1922, and newspapers thrived. The government responded by promulgating an ordinance to restrict the press, which was ultimately implemented as the Indian Press Act, 1931, when Gandhiji launched the civil disobedience movement in 1931. In 1935, the Act

became law. The press was required to provide security at the executive's request under the statute. The legislation also enabled a province government to order a printing press to publish any matter inciting or encouraging the commission of any cognizable offence involving violence, whether directly or indirectly, through any of the malicious acts listed in section.(4). Approval or administration of any crime, stirring discontent with the government, inciting feelings of hatred and animosity between various classes of subjects. As a result, the Press Objectionable Matter Act, of 1951 was abolished and replaced. It is clear that the Indian press, both English and vernacular, has played a significant role in the affairs of the country for over a century, and one can see the trials and tribulations that the press had to endure under British rule, as well as how arbitrary the government's actions toward the press were under the said act. As a result of the sacrifice of those great men of the past, we now have press freedom.

### **Electronic Media**

Information, entertainment, news, and advertising messages are all delivered through the media to an audience. Radio, television, cable television, and now the internet have brought about dramatic changes in society that have never been seen before. Electronic-based modern communication media have sparked a never-ending process of change that has had a constant impact on society's perspective and attitude. Electronic media, particularly television, appeal to both the visual and auditory senses, as well as to both literate and illiterate people. With the help of satellite technology, television as a mass medium has experienced exponential development in terms of reach, range of programmers, and number of channels. Because it is a credible media, television is a powerful medium. At the same time, one can hear and witness a news story unfolds. Things that people might not accept otherwise become realistic when they were displayed on television. As a result, it's practically the same as door-to-door salespeople who can swiftly deliver messages.

### **FREEDOM OF SPEECH VERSUS BROADCASTING REGULATIONS**

The worldwide media and entertainment sector is growing at a rapid pace, owing to the introduction of new distribution mediums and technological breakthrough. This global trend is also being followed by the Indian market, which has a lot of potential. In the last ten years, the Indian media and entertainment business has seen a paradigm shift in both volume and demand for diverse material, as well as the methods people use to access it. With the advancement of digital media and entertainment platforms, dubbed "over the top platforms," audiences of all ages have become more interested. Unlike traditional television boxes, these over-the-top systems have been successful in delivering a diverse choice of programming on a single platform. Furthermore, unlike films and television shows, internet content is not subject to censorship certifications. As a result, content makers have a lot of freedom. The breadth of this flexibility and the accessibility to a diverse range of content and over-the-top platforms However, due to tax regulation and the availability of uncensored content on over-the-top platforms, the issue about the need for censorship of information outside of films and television has resurfaced. The airwaves used by electronic media are public property. This is a significant distinction between print and electronic media. There could be no justification for exploiting the public welfare. The airwaves were limited and not available to everyone. As a result, the use of public property places significant limitations on broadcast freedom in the interest of listeners and viewers.

## CONSTITUTIONALITY OF MEDIA TRAILS

### Guarantee of Freedom of Expression

Article(19) (1): All Citizens shall have the right to (a) freedom of speech and expression; (2) Nothing in subclause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said-clause in the interest of India's sovereignty and integrity, the state's security, friendly relations with foreign states, public order, and national security.

Freedom of expression and speech is guaranteed by Article 19(1)(a). The term "speech and expression" encompasses a wide range of concepts. The term "expression" refers to the act of articulating or transmitting one's thoughts to another person. As a result, freedom of expression entails the ability to share, publish, and circulate ideas.

### Meaning and Concept of Freedom of Press

The right to freely express one's convictions and opinions by speech, writing, printing, photography, or any other means is referred to as freedom of speech and expression.

It refers to the act of openly expressing, communicating, or disseminating one's ideas and opinions."According to Lord Mansfield, "press liberty" entails "Without a prior authorization, printing is illegal and will be prosecuted.Individuals' freedom to express themselves through the press is referred to as press freedom. This means that press freedom is not better to individual freedom. Professor A.V. Dicey defines "press freedom" as "a person's liberty to publish whatever he wants in books or newspapers." In other terms, press freedom refers to the ability to print and publish anything that is not prohibited by law.

The ability to express oneself, receive and communicate information through the printed word without interference from any official authority, according to India's First Press Commission.

There are three fundamental aspects of press freedom:-

- (1) Freedom of publication;
- (2) Freedom of circulation; and
- (3) Freedom of access to all sources of information.

### Freedom of the Press follows from Article 19(1)(a)

In contrast to countries like the United States of America, our constitution contains no separate section safeguarding press freedom. The first Amendment of the United States of America includes a separate section that protects press freedom. "The Congress shall not adopt any measure abridging the freedom of expression or of the press," the relevant provision states.

In India, however, the Constitution makes no specific provision for journalistic freedom. Article 19(1) (a) guarantees freedom of expression and speech, which includes press freedom.

In *Ramesh Thapar v. State of Madras*(AIR 1950 SC124), the Supreme Court assumed that "freedom of speech and expression" meant, among other things, press freedom. *Sakal Paper v. Union of India*(AIR 1962 SC305),was a different case. According to the Supreme Court, press freedom is a species, and freedom of expression is the genus

Our Constitution's authors considered the term to be derogatory "The term "freedom of expression" has a broader definition, encompassing not only the freedom to propagate

one's point of view, but also any way of expressing one's thoughts, feelings, and convictions. Despite the fact that the question of including a separate provision for press freedom was debated numerous times in the Constituent Assembly, Dr. B.R. Ambedkar satisfied the members by saying "The press does not have any special rights that are not granted to or exercised by the citizen in his or her individual capacity. No special mention of press freedom is required because the editor or management of a press is just expressing his or her right to freedom of expression.

The right to know and impart information has been recognised within the right to freedom of speech and expression, according to the Supreme Court in *S.P. Gupta v. President of India* (AIR 1982 SC149). Article 19(1)(a) recognises the right to reply, i.e., the right to have one's response published in the same news media as something published against or in connection with a press, particularly when the news media is held by the State in the sense of Article 12.

### **Contempt of Court Act, 1971**

The Contempt of Courts Act of 1971 shields publications made during free trials from contempt actions. Contempt of court is defined as any publication that interferes with, obstructs, or threatens to obstruct any pending case, whether civil or criminal. It is considered contempt because some Acts revealed prior to the court's decision may mislead the public and jeopardise the accused's right to a fair trial. This type of publication could be tied to a previous conviction, a confession made in front of the cops, or just plain character assassination.

### **Law Commission 200<sup>th</sup> Report**

The following suggestions were given in this report in August 2006, under the chairmanship of Justice M. Jagannath a Rao:-

1. To prohibit the dissemination of anything that harms an accused person's reputation, as a result of the arrest mine.
2. The arrest of the accused should be the start of the criminal case, not the filing of the charge sheet. The goal of such an amendment is to avoid prejudicing the case.
3. To mitigate the detrimental effects of sensationalised media stories on the administration of justice.
4. In criminal cases, the High Court has the jurisdiction to order that a telecast or publication be postponed, as well as to prevent the media from restarting such a transmission or publication.

### **MEDIA TRAIL IN INDIAN CASE STUDIES**

There have been numerous cases tried by the media; a few of the more well-known ones are included below:

**Sanjay Dutt Case:** After getting threats through out the times of Mumbai riots, which were abide by the flattening of the Babri Masjid in December 1992, he claimed he kept the gun to protect his family. After his role in the 1993 Mumbai serial bombing, Sanjay Dutt was sentenced to five years in After getting threats through out the times of Mumbai riots, which were abide by the flattening of the Babri Masjid in December 1992, he claimed he kept the gun to protect his family. prison by the Supreme Court. Sanjay Dutt was arrested at an airport in 1994 and reported that Abu Sale, a Mafia Don, had visited his home in January 1993 with Hanif Kadawala and Samir Hingora, Magnum founders and suspected close allies of underworld don Dawood Ibrahim. In his

statement, Sanjay Dutt further revealed that these persons had three AK-56 rifles with them, as well as ammo, one of which he kept. Sanjay Dutt was able to win bail after serving 18 months in prison. After 11 years, the (TADA) court After getting warning during the Mumbai violence, which were adhered by the flattening of the Babri Masjid in December 1992, he kept the gun, according to him, to protect his family. Sanjay Dutt requested that his friend Yusuf Nulwalla erase the rifle after learning of his detention. Later, he changed his mind. He was then accused and apprehend under the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1987 for getting munitions from Abu Salem and his involvement in the blasts.

Sanjay Dutt has been cleared of all charges, claiming that he obtained guns for self-defense and that he is not a terrorist. The Supreme Court granted Sanjay Dutt bail after he was imprisoned to six years for violating the Arms Act. On July 31, 2007, he was imprisoned to the Yerawada jail near Pune. On March 21, 2013, the Supreme Court reduced his sentence to five years, which he served until February 27, 2016. Sanjay Dutt's case received a lot of attention because he is a well-known actor. The media portrayed him as a terrorist, despite the fact that he was never charged with those offences. As a outcome of this incident, he had to suffer with a lot of problems and outrage as an actor, and his fame was shattered.

**Sheena Bohra Murder Case:** Indrani Mukerjea was charged with the murder of Sheena Bora in 2012. In this case, the shocking revelation was that Sheena was the child not the sister, as Indrani Mukerjea claimed. The case was highly broadcast and even after her incarceration, Indrani refused to admit she had two daughters, insisting that Sheena was her sister. Indrani Mukerjea's and her husband Peter Mukerjea's questionable business dealings were also uncovered as a result of the murder. For three years, no charges were made against them. The media had peered into Indrani Mukerjea's private life, igniting a new controversy regarding the accused's murder trial. The media scrutinised every aspect of Indrani's nature and personal life, which includes the investigation into Sheena's murder. Journalistic norms have for another time become the cause of concern due to their intrusion in the personal affairs of the accused.

**The Delhi Rape Case (2017, 6 SCC 1):** A 23-year-old physiotherapy intern was raped, tormented, and ill-treated in a private bus on the night of December 16, 2012, while seated with a male acquaintance. Six males on the bus raped her and mistreated her friend, including the driver. She was sent to a Singapore hospital for an emergency after eleven days in the hospital, where she died two days later. Because the girl's identity cannot be released due to Indian press regulations, she has been called Nirbhaya, which means "fearless," and her fight against tragedy and death has become a symbol of global female resistance. This incident made headlines across the country and beyond the world. The incident drew widespread condemnation around the world. Following it, there were other marches around the country against the federal and state governments for failing to provide proper security for women. Several laws were modified as a result of the public outcry, including the Juvenile Justice Act, which reduced the age of criminal liability for serious offences from eighteen to sixteen.

### **INFLUENCE OF MEDIA ON JUDGES AND COURT**

Even judges face criticism, which may be aimed at their judicial or personal conduct. When criticism of judges is unjustified or ill-informed, however, it is reason for concern, as it has the potential to damage public trust in the court. Judges, like everyone else, are

exposed to media compulsion that can 'unwittingly' affect juries and judges, like everyone else, are susceptible to such influences, at least subconsciously or unknowingly.

### **CRITICISM OF MEDIA TRAIL**

The media is crucial in a democratic society. All of democracy's pillar should work independently of one another, without interfering with one another's role. The media trampled on the sanctity of the judiciary in high profile criminal case such as the Indrani Mukherjee case. Some of the accused have been released due to media involvement. A three judge panel led by Chief Justice of India R.M Lodha termed the case as "very serious " and announcement that court would consider a few proposals to balance the parties interests and rights .The rules that court observes are as follow:

1. The Supreme court look into the matters because it leads to public condemnation of the accused based on material provided by prosecution and police even if the trail in court of law has yet to commence.
2. The Court has taken seriously the report of the police and other investigative authorities informing the media. Nothing should be done to jeopardise or compromise the investigation's secrecy. They all require special safeguards since they fall under the scope of Article 21 of the constitutional law of India.
3. A parallel media trail should not be allowed when a court case is currently underway. The Supreme Court is expected to consider adopting restrictions for reports covering criminal cases and obtaining briefings from investigators.

### **CONCLUSION**

Individuals have differing perspectives on press or media independence. However, because the media's rights are not absolute, some constraints or boundaries must be placed on their freedom. With a few exceptions, the media has a more harmful than good impact. The media and its activities should be properly regulated by the court. In court procedures, the media should not be given too much leeway. The clash between free media and free trial has sparked a lot of intense scrutiny and conflicts.

To govern the media, those outlets that break the basic code of behaviour must be held accountable, as the media cannot be permitted to influence the outcome of the case. TRP ratings rivalry is becoming a ferocious and ruthless battle, resulting in hostile journalism. We are currently witnessing many roles of self-acquired media in the form of "trail -by-media." The government must act quickly to avoid citizens' rights from being eroded by media investigations. While strict government rules might harm the media and democracy, the media's persistent lack of responsibility can be even more harmful.

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