



# INADEQUATE LEGISLATION FOR PREVENTION OF MEDIA TRIAL

**Sree Lekshmi B** - Research Scholar, School of Law, Vels Institute of Science, Technology & Advanced Studies (VISTAS), Chennai.

**Dr. S. Ambika Kumari** - Research Guide, Professor and Dean, School of Law, Vels Institute of Science, Technology & Advanced Studies (VISTAS), Chennai

## ABSTRACT

*Media is the fourth pillar of democracy and a responsible medium for communication. During colonial rule media was completely regulated and didn't have freedom to circulate information which they want. As the time changes, media started to get recognised and its importance was seen after the coming of Indian Constitution and after landmark constitutional cases. Media got recognised and at the same time it got its right to freedom to circulate any information which they desire. Media was a responsible and informative one and propagates news which is good for the society. But recently we can see that lots of media has come up and so the competition arises and thus media circulates news in a sensational and misleading way only for increasing viewers and television rating point. Even though there are lots of legislations for media but still it is not sufficient to control and regulate media. We need an adequate and uniform legislation for regulating all kinds of media. It should be a legislation which has to make sure that media enjoys its freedom of speech and expression and at the same time it should make sure that media does not exceed its rights.*

## INTRODUCTION

Media known to be the watchdog of the nation has great significance from the colonial rule. During olden time it was a main medium used for circulating information to the public. Even though it is considered as the main source of information but still didn't have the freedom to circulate whatever it wants. It was controlled by the British people who decide what to circulate and what not to circulate to the public. There was huge restriction in the freedom of media. If they circulate any information by violating the rules of British people than their licence will be cancelled or will be fined. Even though there were lot of legislation for media at that time but still there didn't have the freedom to convey whatever they want.

It is after India getting freedom, media started to get its right to circulate whatever happens in the society. But it is after the coming of Indian Constitution media got its freedom recognised in Art 19(1) which states about freedom of speech and expression. Its freedom got completely executed through the landmark constitutional cases which held that freedom of speech is applicable to media also<sup>1</sup>. Now media can circulate any information happening in the society but subjected to the restrictions mentioned in Art 19(2). There are different Legislations drafted for regulating different types of media. For regulating print media there is Press Council Act. It doesn't have punitive power<sup>2</sup> and for regulating television there is Cable Television Act. There was imprisonment as well as fine for regulating cable

<sup>1</sup> Indian Express Newspaper Ltd v. Union of India, Romesh Thappar v. State of Madras, Brij Bhushan v State of Delhi.

<sup>4</sup> Legaleye, The Role of the Press Council of India Under Media Laws,

[https://legaleye.co.in/blog\\_news/the-role-of-the-press-council-of-india-under-media-laws/](https://legaleye.co.in/blog_news/the-role-of-the-press-council-of-india-under-media-laws/)

television content but recently they removed imprisonment and now only fine is there<sup>3</sup>. Information Technology Act is there for regulating online offences and there was separate section for regulating the content of published online under sec 66A but later it was held by the court as unconstitutional because it violated Article 19(1) of the Indian Constitution<sup>4</sup>.

The term media trial has been like a contagious disease spreading around the universe without any control or any such restriction. Years ago there was one such media which has been used as a tool for communicating whatever happening in daily scenario. It started to have its own legislations which are framing for regulating media during colonial rule. Though it has its own legislation but rules framed in it are extremely for regulating media about what to publish or what not to. It is after the colonial rule media started to get its freedom but that freedom became complete one after coming of Indian Constitution. It is through landmark cases media started to get back its power. There are lot of new legislation framed for regulating media but hasn't clearly discussed about media's liability if it interfere in the legal proceedings of the case. Only contempt of court Act has mentioned that media cannot publish anything about case details of the pending case.

### LEGISLATION DURING PRE INDEPENDENCE PERIOD

There were lot of legislation drafted during the time of colonial rule. Censorship of press Act 1799 was the first legislation brought by Lord Wellesley for regulating newspaper published in India. Before publishing newspaper, publisher should submit all content to the secretary of the government. If the publisher doesn't follow the rules than they are subject to punishment<sup>5</sup>. There was a regulation framed which is so called licensing regulation, 1823 . As per regulation, printer or publisher has to get the licence for starting a press. A fine of Rs 400 / - was imposed if they violate the regulation. As per the regulation, governor general is given the power to revoke the licence<sup>6</sup>.

A change in the regulation of media was brought out through the liberation of Indian press, 1835 after Charles Metclaf repealed the licensing regulation, 1823. There was an enormous growth of Indian newspaper till 1856. After 1856 there occurred sepoy mutiny, due to which government again brought regulation on press through licensing Act, 1857. Registration Act, 1867 was another Act which made it compulsory for registration of newspaper and press<sup>7</sup>.

Vernacular Press Act was brought into for regulating newspaper content. As per this Act, they should not publish anything against the British government. If any newspapers publish against the government than magistrate take action and it will be the final one and appeal cannot be filed against the decision of the magistrate. This Act was also known as gagging Act. It was repealed in 1882<sup>8</sup>. Like this another two Acts came which was Newspaper Act 1908 and another one Indian Press Act 1910 was framed for regulating media.

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<sup>3</sup>Decriminalization of Cable Television Networks Act

<https://www.gktoday.in/decriminalization-of-cable-television-networks-act/#:~:text=The%20decriminalization%20of%20Section%2016,Inclusion%20of%20an%20Appeal%20Mechanism>

<sup>4</sup>shreya Singhal vs U.O.I on 24 March, 2015

<sup>5</sup>Tribe of Editors': Censorship and the Indian Press, 1780–99,

<https://www.cambridge.org/core/books/abs/transoceanic-radical-william-duane/tribe-of-editors-censorship-and-the-indian-press-178099/90E5FC9852E71AD85301B5>

<sup>6</sup> Rupesh Kumar, History of Indian press and censorship,

<https://www.themultidisciplinaryjournal.com/assets/archives/2017/vol2issue6/3-4-41-250>

<sup>7</sup> Vajiram & Ram, Development of Press in India – Policies, Role in Indian National Movement,

<https://vajiramandravi.com/upsc-exam/development-of-press-in-india/>

<sup>8</sup> Vernacular Press Act, Background, Provisions, Impact., <https://vajiramandravi.com/upsc-exam/vernacular-press-act/#:~:text=The%20Vernacular%20Press%20Act%20of%201878%20was%20enacted%20to%2>

## LEGISLATION RELATING TO MEDIA DURING POST INDEPENDENCE PERIOD

Media started to get its freedom after the coming of Indian Constitution. Freedom of press is recognised as a fundamental right although Indian Constitution does not expressly mention about it under Article 19(1) of the constitution but freedom of media was recognised through landmark cases where court itself held that freedom of speech and expression includes freedom of media also. Media thus starting getting its recognition and acceptance from law. It started circulating information for the wellbeing of the people. They started depending on the media for any sort of things happening in the society. As a result, media became the fourth pillar of democracy.

Media became a strong source of information so there is a need for regulating media. For that different legislation for different types of media is needed. In order to regulate press, a press council of India was formulated as per Press Council Act, 1978. Main aim of press council of India is maintaining freedom of press and for improving the standard of newspaper. On the base of complaint of any person, council can warn or censure the newspaper. It has only advisory jurisdiction only but it doesn't have the power to punish anyone<sup>9</sup>.

In order to cover the aspect of broadcasting media and cable television, an Act was framed as Cable Television Regulation Act, 1995. As per this Act if anybody transmit any information through the channel without following programme code than they will be liable for punishment and fine. Later, there was an amendment made through Jan Vishwas (amendment of provision) Act 2023. As per this amendment, section 16 of Cable television regulation Act was re-examined and thus decriminalised by removing imprisonment as punishment under that section. Imprisonment was replaced with fine, advisory measures, warning and censure<sup>10</sup>. The sole purpose of such amendment is to make this Act business friendly.

In case of social media, there is one such law called Information Technology Act ,2000 for regulating social media platform. Section 66 A was formulated for regulating the content of the information posted in social media. But later court struck down this section and held it as unconstitutional. The reason for this decision is that this section is seen as violating the freedom of speech and expression as per article 19 (a) of the Indian Constitution<sup>11</sup>. An intermediary guidelines and digital media ethics code was framed. Rules under this code make social media platform and digital platform responsible for any details shared by social media users. In November, 2019 press information bureau has established a fact checking unit for the purpose of checking any fake news related to the government posted in social media. This will check only matters related to government<sup>12</sup>.

As of now there is no proper legislation to regulate print media, visual media and social media . Whatever legislation available for media doesn't have power to prevent media trial. It has power only to advise media.

## SENSATIONAL CASE LAWS AND MEDIA TRIAL

Impact of media trial has been seen in many sensational cases from time immemorial. Around the world , media interference is been seen especially in infamous case where public opinion has been greatly influenced. The term media trial is not defined in any law or in any law dictionary. The term media trial has been seen used first in an infamous case called Aaron Buror case that happened in United States. In that case accused reputation was affected

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<sup>9</sup> Press Council of India , <https://www.presscouncil.nic.in/WriteReadData/PDF/AnnualReport2023>.

<sup>10</sup> cable Television Networks (Regulation) Act, 1995 decriminalized, Government of India , Information Bureau [https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=1964677#:~:text=Ministry%20of%20Information%20&%20Broadcasting,of%20Provision\)%20Act%2C%202023](https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=1964677#:~:text=Ministry%20of%20Information%20&%20Broadcasting,of%20Provision)%20Act%2C%202023)

<sup>11</sup>Shreya Singhal v Union of India , Global Freedom of Expression, <https://globalfreedomofexpression.columbia.edu/cases/shreya-singhal-v-union-of-india/>

<sup>14</sup>. Government notifies PIB's Fact Check Unit under IT Rules 2021, ministry of information and broadcasting, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2015792>

by the media<sup>13</sup>. Another case was Roscoe fatty case that happened in 1921. In this case he and his family were affected due to media's interference. Accused's wife was shot dead by one of the public who got influenced by media news on this case. This shows negative influence of media on the lives of accused. His right to life and right to privacy are violated due to media influence<sup>14</sup>. Again in 1967, David Frost who is a journalist and a television channel host used the term media trial in a television channel. He asked questions which violates right to privacy.

### INDIA: MEDIA REGULATION AND MEDIA TRIAL CASES

In India during pre independence period media was completely regulated by the British people. There was stringent legislation for checking the content of media so they didn't have the freedom to circulate whatever information they want. During colonial time, Indians were tortured by the British people but media was not having the freedom to report whatever violation happening around them. But still the media reported about various protest happening against british people. Media reported about the protest done by Bhagat Singh against the British people. He participated in hunger strike against british people and this was highlighted by the media. Like this various protest were reported by the media. Lot of media people were arrested for this reporting. This cannot be said to be media trial but it is said to be role played by the media as a responsible citizen.

After getting independence media started to get all most freedom to publish or propagate any relevant information which is good for the public. Even judiciary has mentioned in various case laws about the freedom of media. One such case is Romesh Thappar v State of Madras where court has held that ban of circulation of journal amounts to violation of freedom of speech and expression. Another important case is Indian Express newspaper private Ltd v UOI in which court held that freedom of press is an important part of democratic country and it can be restricted only through Article 19(2) of Indian Constitution. Later in 2021, protection of rights of media was seen in a landmark case Vinod Dua v Union of India where a youtube journalist was charged for sedition and an FIR was framed against him. Later court quashed FIR and decided on favour of the journalist<sup>15</sup>. Like this there were lot of constitutional law cases in which court has clearly held that freedom of speech and expression is applicable to media also but subject to restrictions.

As time passes by we can see that there is an expansion of media including social media. Now all information is available at fingertip through advanced media. Due to the expansion of media, there arise a tight competition among different media platform. Now we can see that media is portraying and casting news in order to increase television rating point. This can be seen in various sensational cases where media itself interfered and framed a decision before court has given the decision.

One such popular case was the ISRO Spy Case where a scientist was falsely accused of being a spy in 1994. He was portrayed by the media as a spy and this in turn affected his name, reputation and career. However later in 2018 Supreme Court held that the scientist is innocent and was awarded compensation. There is a phrase called Delayed Justice is denied Justice and this is what we can see in this case. Media who has to do informative journalism has turned into investigative journalism. He was acquitted by proving innocent at last but what is the use of it as his good name, privacy and reputation all gone because of the interference of media in this sensational case. This is a best example of media trial happened long before in 1994<sup>16</sup>.

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<sup>13</sup> · Kathy Kellermann, Media Coverage of (In-)Famous & Celebrity Trial, <https://kkcomcon.com/doc/KUNLVfamoustrials>.

<sup>14</sup> PBS News, <https://www.pbs.org/newshour/health/the-sexual-assault-case-that-shocked-hollywood-almost-a-century-ago>

<sup>15</sup> Gauri Kashyap, SC Judgment review 2021 : Freedom of the press, [cobserver.in/journal/sc-judgment-review-2021-freedom-of-the-press-pegasus-manohar-lal-sharma-vinod-dua/#:~:text=Vinod%20Dua%20v%20Union%20of,2021%2C%20](https://www.cobserver.in/journal/sc-judgment-review-2021-freedom-of-the-press-pegasus-manohar-lal-sharma-vinod-dua/#:~:text=Vinod%20Dua%20v%20Union%20of,2021%2C%20)

<sup>16</sup> Nambi Narayanan v Siby Mathews and others (2018)

Famous media trial case Aarushi Talwar case was a sensational case where media questioned the character of the victim Aarushi and blamed her father portraying him having illegal relationship with another woman. Supreme Court interfered and told the media to be careful while propagating news. Even the father and mother of Aarushi was totally disturbed by all the media cameras around them which is in turn affects the arrested person's right to privacy. In all the channels and all Medias we can see that victims name and all her photographs was shown which is violating good name and reputation of the deceased victim. It is seen that a famous channel has conducted an interview with the victim's mother during the proceeding of the case. Media doesn't have any right to interfere in the ongoing case by cross examining said mother who is also suspected to be a part of the double murder<sup>17</sup>.

Another sensational case was Sheena Bohra Murder case which happened in 2015. In this case Indrani Mukerjea was accused of murdering Sheena Bohra. News was widely spreading stating that Sheena Bohra was the daughter of Indrani. Sheena Bohra is still denying the above statement. Whether Indrani Mukerjea only killed Sheena is to be decided by the court. But here it is seen that media through various news channels, they are portraying information in such a way that Indrani is so and so called accused. Media is meddling into the personal life of Sheena Bohra and negatively portraying her character and personal life in order to increase their television rating point. This in turn affects the rights of privacy of the accused<sup>18</sup>.

Another sensational media trial case is Sushant Rajput case which happened in 2020. Rhea Chakraborty was accused of suicide of Sushant Rajput. All the media channels were propagating Rhea Chakraborty as the one responsible for the suicide of Sushant Rajput, a prominent Bollywood actor. This resulted in affecting the image of her resulting in defaming her character. This news was circulated many times for months through different news channels. The highlighting fact was that Sushant Rajput case is still pending in the court at that time and court hasn't decided yet but still media is seen spreading news in such a way that the arrested person is the accused<sup>19</sup>.

There are lot of media trial cases which is happening in recent times also. One such recent case is Rujira Banerjee case which happened in 2023. A writ petition was filed by the wife of a politician stating that media is circulating misleading information regarding her husband who is undergoing an investigation conducted by central investigating agencies and thus defaming the reputation and violating the right of privacy of her husband<sup>20</sup>. Through all these cases we can see that media is interfering into the rights of the arrested person and the victim and thus affects the criminal justice administration in India.

## CONCLUSION

It is a high time to realise that we need an adequate legislation for regulating all kinds of media. We need a legislation which checks the content of media and to what extent it goes and to restrict media if it goes beyond its power by penalising them with imprisonment and fine. We have separate legislation for different kinds of media but the problem is that these legislations are not strong and sufficient for regulating media. In order to protect the right of fair trial and right to privacy of the accused and victim, we need proper and adequate legislation so that justice will be properly administered without any interference from the media. We cannot completely stop media as we know we need media to know whatever happening around us but the thing is media is misusing its freedom so it is high time we regulate media to some extent so that it doesn't interfere in the case proceedings.

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<sup>17</sup> Dr. Rajesh Talwar v State of UP (2014)

<sup>18</sup> Indrani Pratim Mukerjea v Central Bureau of Investigation and another(2015)

<sup>19</sup> Rhea Chakraborty v The state of Bihar (2020)

<sup>20</sup> Rujira Banerjee v Union of India ( 2023)