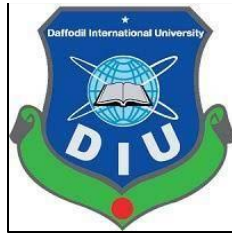


Effect of Trial by Media in Bangladesh: A Critical Analysis

A.F.M Khaled Saifullah Nokib

2023

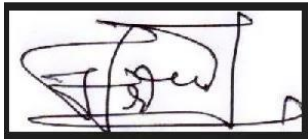


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Letter of Approval

This is to certify that the work entitled “Effect of media trial in Bangladesh: A critical analysis” is an original work by A.F.M Khaled Saifullah Nokib, ID: 221-38-032 (LL.M. Final), Department of Law, Daffodil International University, has completed under my supervision for fulfilment of requirement of award of the Master of Law from Daffodil International University.

I wish his success

A handwritten signature in black ink, enclosed in a rectangular border. The signature is stylized and appears to read 'Kudrat-E-Khuda Babu'.

Dr. Kudrat-E-Khuda Babu
Professor & Head
Department of Law
Daffodil International University.

Acknowledgment

My days of LL.M. At Daffodil International University are memorable with many experiences. For those great and precious experiences and knowledges I would like to express my heartiest thanks to my teacher, my supervisor Dr Kudrat-E-Khuda Babu. His support, guidelines and suggestions showed me the way to legal research. I want to thank my senior Advocate Md. Amir Hossain who shared much more knowledge, incidents and real sense which helped me to run the research work and reaching to a finding. I also thank my teacher Mr. Mohammad Badruzzaman. Sir advised me in my post graduate education and inspired me much with working with the challenges in our legal and state sectors.

Dedicated To
My Parents

Abstract

A popular notion goes that ‘whoever controls the media controls the mind’. Media is called the mirror of our society. Mass media is the only source to get credible and authentic information about worldwide events. So willingly or unwillingly, media is the controller of mass people’s minds and has a significant role in individual's decision-making. Recently, several incidents in Bangladesh have received extensive coverage on social and mainstream media. Most of these incidents are related to infernal murders or other heinous crimes prevalent in society. Everyone from the mass people to the elite classes was interested in the events and sharp eyewink on the prosecution. On this occasion, the media also created a lively atmosphere and started promoting those topics to a large extent. But the media is not a court and is not bound to be impartial regarding preaching their ideology and viewpoint. On the other hand, each topic is so sensitive that any biased information and public opinion can play a serious impact on the judicial process. This writing tries to critically analyze and find out the effect of trials on media and how it can influence a free and fair trial in Bangladesh.

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List of Abbreviations

NILS	Network for International Law Students
RSF	Reporters Without Borders (French:Reporters Sans Frontieres)
DSA	Digital Security Act
CR Case	Complaint Register Case
GR Case	General Register Case
FIR	First Information Report
GD	General Diary
PP	Public Prosecutor
BDR	Border Guard Bangladesh
DGFI	Directorate General of Forces intelligence
NSI	National Security Intelligence
CID	Crimnal Investigation Department
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil & Political Rights

Chapter I - Introduction

1.0 Introduction

After the legislative, executive and judicial branches of government come to the media as the fourth and last pillar of democracy. Thomas Carlyle is the one who first described the media as the fourth pillar.

Effective judicial administration is inextricably linked to the existence of a responsible press. The press does more than merely publish information on cases and trials; it also holds up to public scrutiny the entire hierarchy of the administration of justice (police, prosecutors, attorneys, judges, and courts), in addition to the judicial procedures. Reporting that is open to rigorous critique and public discussion also contributes to the public's knowledge of the rule of law as well as a greater understanding of the entirety of the judicial system. In addition to this, it helps enhance the quality of that system by exposing it to the purifying influence of public accountability and exposure, which both help promote transparency. Justice Brandeis is credited with saying that sunlight is the most effective disinfectant, but electric light is the most effective policeman.¹

The Indian Supreme Court provided a compact definition of 'media trial' as "the impact of the television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law".² Bangladesh is a democratic nation where freedom of expression is a constitutionally protected fundamental right. In particular, it guarantees freedom of the press. On the other hand, an accused individual has a fundamental right to a fair trial that cannot be limited in any manner. In several cases, it is asserted that aggressive media has

¹ Nariman, Fali S., Are Impediments to Free Expression in the Interest of Justice, CIJL Yearbook, Vol 4, 1995.

² Anand vs. Registrar [2009] 8 S.C.C. 106 (Del.) (India).

prejudged or affected the trial of the accused. Therefore, there appears to be a fierce conflict between these two sets of rights, particularly when the media publishes impending cases.

1.2 Review of Relevant Literature

The impact of media trials in Bangladesh has been discussed in several pieces of research. Haque, E. (2022, May 13). Declining trends of press freedom in Bangladesh discussed how the media has been facing the trends and their freedom at stake. Where the possibility of being impartial in many aspects may keep the media from using themselves for political and corporate purposes. Herzig, Bardo & Abmann, Sandra. (2014). How to Define Media in a Mediatized Society? A Media Pedagogical Proposal Inspired by Theoretical Ideas of Castells, Luhmann, and Peirce discussed media influence over society and how it has been acting for a long time as a key factor of authentic sources. So for the sake of gradual building to this research, it's important to show how media take over people's minds and influence or characterize any person going beyond a court verdict. A research note from the NILS Bangladesh website shows the Media Trial and its effect on judicial proceedings analyzing background history to concurrent scenarios from the Asian subcontinent. S., & King, G. (n.d.). *The Skinny on the Fatty Arbuckle Trial*. Smithsonian Magazine has provided a classic example of a media trail and impacts which began in the 20th century. The International Journal of Law Management and Humanities describes media trial and put an overview on its website which also provide a clear idea regarding the topic. The legal service of India on their website published an article regarding media trial and how it threatens the whole judiciary analyzing several case laws in this regard. Besides BBC and DW covered some series of articles focusing on the media trial, social media trends, and merits and demerits of it. Bari, M. (n.d.). LEGAL ASPECTS OF MEDIA TRIAL IN BANGLADESH: FREE PRESS VERSUS FAIR TRIAL DILEMMA, provided a clear portrayal of in which way our media losing credibility and

median trial happens. It also shows a constitutional analysis of media trials and aspects of freedom of the press in regard to a fair trial. But from all the literature one thing that misses is that they don't provide any detailed analysis and mechanism for balancing media and eradicating the media trail in a larger sense.

1.3 Methodology

This paper basically focuses to generate a review of existing literature where they talk about trial by media and its impact. I used most of the data from the web as there is only a little work done on book writing on this specific topic. On the web, there was also a lot of scarcity of related topics. Due to the lack of these internet resources, I believe there is currently no coordinated review work on my topic. Also, since I am not conducting a field study, I cannot conduct direct quantitative research. Where I can obtain fresh conclusions by analyzing new facts. Therefore, I paid special attention to the online articles. I have attentively studied them and discovered many features. I value-productive and aesthetic qualities in particular. And search for characteristics they overlooked.

Chapter II- Understanding Media

2.0 Understanding Media and Trial

Before understanding a trial by media from Bangladesh's perspective we need to know clearly what is media and how it functions. Along with that, we should also know how a court initiates a criminal case and eventually convicts the offender or acquits. That internal mechanism can help us have a brief idea to demonstrate the relation and impact of media over a trial or court procedure. The two primary components of my review are as follows: first, it did not stop at studying the genesis of the media and media trials but also sought to determine whether political or commercial issues were concealed behind it. In past studies, the focus has been mostly on media trials; however, in this study, I have attempted to identify the link between media trials and the court system and the role they may play in developing autonomous media and a fair justice system.

2.1 What media means

Media offers are sign-enabled patterns inscribed into technical devices or material, and/or presented, saved, arranged, copied, transmitted, or processed by technique.³

Communication processes are defined by offering and accepting selection offers, in other words, media offers, as well as by synthesis of information, utterance, and understanding.⁴ There are basically 3 steps of communication. After interpersonal communication and group communication, mass communication is the way of reaching most people at large. And media plays the role of a medium to transfer the message of communication from one world to another. Due to advancements, the influence of mass communication has expanded dramatically throughout

³ Herzig, Bardo & Aßmann, Sandra. (2014). How to Define Media in a Mediatized Society? A Media Pedagogical Proposal Inspired by Theoretical Ideas of Castells, Luhmann, and Peirce. *MedienPädagogik* 24. 18-29. 10.21240/moped/24/2014.07.18.X.

⁴ *ibid*

time. Therefore, it is essential to understand the following features of mass media: It may appeal to a broad audience and conveys a public message. There is a distance between a source of information and those who obtain it; Media can be transmitted through various channels, including television, the internet, radio, and newspapers; it has a diverse audience; and news or information communicated through television, radio, or print media cannot receive feedback. Not only is media vital to be familiar with these characteristics, but also with the many sorts of mass media. ⁵

2.2 Classification and Objective of Media

Numerous kinds of mass media include books, newspapers, radio, social media platforms, pamphlets, and streaming services. Nevertheless, we differentiate four primary forms of mass media. **Print medium.** It ranges from billboards to coupons and is one of the simplest and oldest methods of public communication. Initially, **print media** referred to newspapers, which served as the principal information sources. Additionally, this form of media extended to include journals, books, and periodicals. **Outdoor media-**Ambient marketing is a prime illustration of contemporary outdoor media. Unique locales and objects are utilized to market products. Let's take Folgers, for instance. Unique and eye-catching manhole covers were utilized to market this coffee brand in a novel and captivating manner. Therefore, bus stations, public transportation, and buildings may function as promotional locations for innovative firms. **Transmission medium** Audio and video material are disseminated to a dispersed audience with the use of an electronic **broadcasting medium.** Television, radio, video, and video games appeal to audiences of varying ages, backgrounds, perspectives, ambitions, and interests. **Digital media-** In 2021, there will be around 4.66 billion active internet users,

⁵ *What is Mass Media: Types, Functions, Examples - Definition.* (2022, October 28). SendPulse. <https://sendpulse.com/support/glossary/mass-media>

indicating that the world is dependent on digital media. Today, companies market their products and services via websites, YouTube, and others platforms. In addition, businesses frequently use Instagram marketing and Facebook advertising to promote their products.⁶

2.3 Media In Bangladesh

There are a total of 34 electronic media, including four state-owned and 30 private Television channels, 42 radio stations, including one state-owned Bangladesh Betar, 23 commercial FMs and 18 community radios, and 3165 print media, including one state-owned Dainik Barta.⁷ According to the RSF 2022 World Press Freedom Index According to the RSF 2022 World Press Freedom Index in 2022⁸. These figures clearly give an idea about the media and its position in Bangladesh. So free and independent journalism is still elusive in the context of Bangladesh. Political and commercial use of the media is common in countries where democracy, freedom of speech, and freedom of the press are generally limited.

2.4 Media and Press Freedom and Question of Independent Journalism

Freedom of the press in Bangladesh relates to the control and approval of public opinions, basic rights, freedom of speech, and human rights, specifically mass media such as the print, broadcast,

⁶ *ibid*

⁷ *Total number of media in country 3241: Minister.* (n.d.). Total Number of Media in Country 3241: Minister | theindependentbd.com. <https://www.theindependentbd.com/post/233106>

⁸ *Bangladesh 162nd out of 180 countries in Press Freedom Index, scores lowest in South Asia.* (2022, May 4). The Daily Star. Retrieved December 13, 2022, from <https://www.thedailystar.net/news/bangladesh/rights/news/bangladesh-162nd-out-180-countries-press-freedom-index-scores-lowest-south-asia-3016866>

and internet media, as specified or referenced in the Bangladeshi constitution. ⁹The Bangladeshi parliament's passage of the Digital Security Act (DSA) in October 2018 has become a potent instrument for stifling any perceived kind of criticism, including independent media that scrutinizes the actions of government officials. The legislation is one of the harshest in Bangladesh since it grants authorities broad authority to restrict or remove any digital media information judged disruptive to peace or public order or seen to foment communal hate.¹⁰According to the CGS, it is also problematic that the vast majority of DSA complaints were submitted by "often governing party volunteers on behalf of their leaders" rather than the purportedly injured individuals themselves. Numerous prosecutions were brought for insulting the prime minister and other political leaders.¹¹The majority of print and electronic media firms in this country are corporatized and related to dominant corporate houses and politicians, causing them to serve the commercial interests and political agendas of these entities.

The three primary ideals of equality, human dignity, and social justice were inscribed in Bangladesh's proclamation of independence on 10 April 1971. However, the government considers the media as villains if they go against it, but accepts favorable news with indifference.¹²

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⁹ <http://bdlaws.minlaw.gov.bd/act-367/section-24587.html>. (1972, November 4). The Constitution of the People's Republic of Bangladesh. Retrieved December 13, 2022, from <http://bdlaws.minlaw.gov.bd/act-367/section-24587.html>

¹⁰ I. A. (2021, December 7). *The state of media freedom in Bangladesh - International Press Institute*. International Press Institute. Retrieved December 14, 2022, from <https://ipi.media/the-state-of-media-freedom-in-bangladesh/>

¹¹ *ibid*

¹² Haque, E. (2022, May 13). *Declining trends of press freedom in Bangladesh*. Prothomalo. Retrieved December 14, 2022, from <https://en.prothomalo.com/opinion/declining-trends-of-press-freedom-in-bangladesh>

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Chapter III - Criminal Justice System in Bangladesh

3.0 Criminal Justice System in Bangladesh

Bangladesh follows the common law legal system where most of the criminal procedure is regulated under the code of criminal procedure 1898. In Bangladesh, the criminal procedure is largely adversarial or accusatory, meaning that the whole proceeding is a conflict between two parties. Regarding crime, these two parties are, on the one hand, the state and, on the other hand, the accused individual. The trial itself is not an inquiry into events or allegations, but rather a hearing to determine, according to a complicated system of criteria, whether the accused is proven guilty of the specific offenses for which he has been charged by the prosecution. Four agencies are engaged in the administration of criminal justice: the police, the prosecution, the courts, the jail, and the probation authority.

3.1 Stages of Criminal Cases and Trial Function in Bangladesh

Generally, a criminal case is started by filing a police report named as first information report or FIR on the cognizable cases.¹⁴ When a case is begun based on a Complainant, it is known as a Complaint Case, and because it is registered in the Complaint Register, it is also known as a Complaint Register Case (CR Case). Under Section 190 of the Code of Criminal Procedure, 1898, the Judicial Magistrate assumes jurisdiction in a CR case. On the basis of a report of a non-cognizable offense, the police station opens an investigation. In accordance with Section 155 of the Code of Criminal Procedure of 1898, it is referred to as a Non-FIR Case or (Non-GR Case) Non-FIR Case. This is also known as a police case since it must be submitted at the police station via GD (General Diary)/Information and is documented in the police station's Non-General

¹⁴ Sec. 154, The Code of Criminal Procedure 1898

Register. The officer in charge of the police station must then submit the information to the appropriate Judicial Magistrate for further action.¹⁵

3.2 How a Trial Proceeds

The trial phase will be discussed under two headings: trial in the magistrate court and trial in the session court.

3.2.1 Proceedings at the magistrate's court

First, Discharge prior to charge framing. (CRPC section 241A)-When the defendant appears or is brought before the court, the magistrate might first review the case file and hear the parties. Then, if he believes the accusation to be without merit, he might dismiss the accused.

Secondly, Formulation of Charges(CRPC Section 242)-The magistrate is of the opinion that the accused has a prima facie case. And because he is qualified to handle the case, he will formulate an appropriate charge. Noting that a formal trial begins with the filing of charges is essential.

Thirdly, Confession and conviction (section 243 of CRPC)- Once the accusation is formulated, the accused will be questioned if he acknowledges having committed the offense with which he is charged. If the defendant confesses culpability by pleading guilty to the accusation, the magistrate might convict him.

Fourthly, Utilizing evidence (section 244 of CRPC) -If the magistrate does not condemn the defendant on a plea or if the defendant does not make an admission, the magistrate will proceed to hear the case based on the concept of proof.

¹⁵ *All Courts in Bangladesh, Types of Criminal Case and Stages of - PATHLEGAL.* (n.d.). All Courts in Bangladesh, Types of Criminal Case and Stages Of. Retrieved December 15, 2022, from <https://www.pathlegal.in/All-Courts-in-Bangladesh,-Types-of-Criminal-Case-and-Stages-of-blog-2383547>

Fifthly, 342 steps -After the prosecution's witnesses have testified, the court may, without a prior warning, ask the defendant any question designed to illuminate any circumstances revealed by the evidence against him.

Sixthly, Judgment-If, after hearing evidence and examining the accused, the magistrate determines that the accused is innocent, he shall record a final verdict. Alternatively, if the magistrate deems the defendant guilty, he will impose the penalty.

Seventhly, Argument-Within the timeframe specified by law, the aggrieved party may file an appeal with the special District court in the field. At the conclusion of the hearing, the appeal court may sustain or vacate the trial court's ruling. If the appeal court overturns the trial court's decision, the accused will be freed from jail.

3.2.2 Trial before the district court

Compared to trials in the Court of a magistrate, those in Sessions Court are more formal and time-consuming. **First of all**, the introduction of the prosecution's case (section 265B of CRPC)-When the defendant appears or is brought before the court, the public prosecutor (PP) commences the case by outlining the accusation made against the defendant and detailing the evidence he will use to show the defendant's guilt.

Secondly, Discharge prior to charge formation.(CRPC section 265C)-If, after such a hearing and review of the case file, the judge concludes that there is insufficient evidence or no prima facie case for continuing against the accused, he should release the accused and record the reason for doing so.

Thirdly, Charge Framing (section 265D of CRPC)-If, on the other hand, the court determines that there is a prima facie case against the defendant, a modification shall be made.The trial begins with the formulation of charges.

Fourthly, guilty plea and conviction (section 265E of CRPC)-After the charge has been drafted, it shall be read and explained to the accused, who shall then be asked whether he pleads guilty to the offense charged or requests to be tried. If the defendant enters a guilty plea, the court must record the plea and condemn him accordingly.

Fifthly, Prosecution Evidence: (section 265F and 265G of CRPC)-If the defendant refuses to enter a plea or the judge rejects his plea, the court will set a date for the examination of witnesses. The prosecutor may first interview all prosecution witnesses, followed by cross-examination and re-examination by the defendant.

Sixthly, Acquittal is based on the prosecution's proof (section 265H of CRPC).-The court shall enter an order of acquittal if, after reviewing the prosecution's and the defense's evidence and arguments, it determines that there is no evidence that the defendant committed the crime.

Seventhly, Defense evidence (section 265I of CRPC)-If the defendant is not acquitted, he will be required to present his defense and any evidence in his favor. All defense witnesses may be examined by the defense attorney.

Thereafter, Arguments. -As soon as the prosecution and defense have presented their evidence, the hearing will end. therefore, the defense attorney typically delivers his closing argument first.

Eventually, judgment-After hearing arguments and summation, the judge will often set a date for judgment rather than delivering it immediately. A sentence can also take other forms, including imprisonment, a fine, probation, or the death penalty.

In the end, Argument-Within the timeframe specified by legislation, the aggrieved party may file an appeal with the particular high court in the field-At the conclusion of the hearing, and the appeal court may sustain or vacate the trial court's ruling. If the appeal court overturns the trial court's decision, the accused will be freed from jail.

3.2.3 Post-trial period

A criminal judgment may result in either an acquittal or a conviction. If the verdict is an acquittal and the defendant is incarcerated, a copy of the judgment will be sent to the jail authorities, which will release the acquitted criminal following the verdict.

If it is a death sentence, the procedures must be filed to the court Division, and the sentence will not be carried out until the court Division confirms it.

Chapter IV - Media Trail and Characteristics

4.0 Background of trial by media

In the late twentieth and early twenty-first century, the phrase media trial or trial by media was becoming prevalent to describe the media's influence in running a specific instance or trial by broadcasting vulnerable factual information or substances of any case and daily paper reportage on an individual by creating a popular notion of guilt or innocence prior to or following a court's verdict.

Media plays a crucial function in democratic nations, yet media's overreach into the legal sector has a negative impact on the judicial system. When a sensitive issue is emphasized in the media such as television, newspapers, and social media, it usually has a detrimental impact on ongoing cases and presents barriers to the entire process.¹⁶

To examine the history of media trial, we must go to the twentieth century. In 1921, media trials emerged and had their initial influence. American comedian and film actor Roscoe Arbuckle was the first victim of a media trial. In 1921, Roscoe Arbuckle was charged with murder and assault for allegedly killing and assaulting Virginia Rappe. As newspapers were prejudiced at the time, they published news against Roscoe as if he had already committed the crime, even though he had not. The event damaged his whole acting career, which was founded on his social standing. During the trial, individuals exerted pressure on the judge to deny him bail. 12 April 1922, however, following the third trial, empirical advocates were able to show his innocence. The jury exonerated Arbuckle of manslaughter and issued the following statement:

¹⁶ *Media Trial and its effect over Judicial Proceedings - NILS Bangladesh*. (2021, January 26). NILS Bangladesh. Retrieved December 17, 2022, from <https://nilsbangladesh.org/media-trial-and-its-effect-over-judicial-proceedings/>

"The acquittal of Roscoe Amber Cole is insufficient, and we believe he has been treated unjustly. There was not even the tiniest evidence connecting him to the commission of a crime. We wish him well and hope the American people will accept the verdict of 14 men that Roscoe Arbuckle is completely innocent."¹⁷ In truth, the media was intended as a mechanism for the general populace to combat basic abuse. In Europe, they played a significant role in transforming a medieval civilization into a modern one. Everyone is aware of the role the print media had in preparing the public for and during the American, French, and British rebellions.¹⁸

4.1 Elements and Nature of Trial by Media

Trial by media affects Judicial Operation from many aspects. The functioning of the judiciary can be adversely affected by coordinated attacks against judges, notably on social media, as well as by trials conducted in the media. The administration of justice is being hampered by arguments in the media on pending legal problems that are poorly informed, prejudiced, and driven by agendas. Due to a trial by media, a court can be incapable of differentiating genuine from false facts. Although new media technologies have great amplification potential, it would appear that they are unable to differentiate between what is right and what is wrong, what is good and what is terrible, as well as what is real and what is fake. Trials conducted in the media cannot serve as a basis for decisions on cases. Media trial risks the process into an inaccurate portrayal. The media has been successful in depicting events that must be kept a secret. The trials covered by the media have led to an inaccurate portrayal of those who have been accused of wrongdoing and have played a role in aiding the destruction of their careers for no other reason than the fact that they were accused,

¹⁷ Magazine, S., & King, G. (n.d.). *The Skinny on the Fatty Arbuckle Trial*. Smithsonian Magazine. Retrieved December 16, 2022, from <https://www.smithsonianmag.com/history/the-skinny-on-the-fatty-arbuckle-trial-131228859/>

¹⁸ M. (n.d.). *Articles - Manupatra*. Articles - Manupatra. Retrieved December 18, 2022, from <https://articles.manupatra.com/article-details/Trial-by-Media>

despite the fact that they have not yet been found guilty by a legal system. The media has broken its obligation, which has resulted in democracy moving two steps backward. This has both an effect on the people and a negative impact on the system. Print media maintains some kind of responsibility, but electronic media has no accountability whatsoever for the content that it displays, and this content just dissipates into thin air. Manipulate Public Perception and Incite Hatred and Violence Both paid news and false news have the potential to manipulate public perception and increase the likelihood of instances of hatred, violence, and discord occurring amongst the many communities that make up society. The lack of impartial journalism in a society leads to a distorted portrayal of the facts, which in turn influences people's ideas and perceptions of the world around them.

4.2 Laws governing media in Bangladesh

Bangladesh Constitution

Bangladesh's ultimate laws assert sovereignty and establish a legal framework with core political foundations. On November 4, 1972, the national constituent assembly approved it. Constitution regulates media movement. Article 39(1) of the Constitution promotes speech and opinion. Contrarily, Article 39(2) converges these freedom rights and narrows them so they don't threaten national security. The government often disrupts or controls information flow, affecting media. The government blocks information that might threaten national security because constitutional laws are impregnable. For example, the BDR mutiny was kept secret for a long period to protect national security and prevent civilians and another military/Para-military personnel from reacting negatively. Officials prevented the media from reporting the inner narrative, which was every citizen's right. However, illegally implementing such constitutional provisions might allow the

government to postpone information symmetry and keep individuals from learning the truth about such tragedies.

The Special Power Act, 1974

This statute was created to prevent prejudiced efforts to help trial and punishment for serious crimes. This rule prevented persons, primarily journalists and the media, from discussing, publishing, or printing reporting on prejudicial occurrences to prevent citizens from forming conclusions or misleading directions before the trial. Journalists might be arrested, tried, and imprisoned instantly. In 1991, this rule was slightly weakened by giving journalists bail, although printing or publishing unfavorable findings might result in five years in prison and a fine. Journalists were also required to identify all sources of information, and authorities had broad rights to seize and restrict newspapers and records. The Code of Criminal Procedure rendered any written materials disparaging the President or Prime Minister a crime punishable by 2-7 years in jail. In 1975, the government banned 20 foreign periodicals and political papers that were not government-owned. All of this shows how much the media may be constrained by the government's capacity to enforce specific laws, revealing civilian ignorance of various events in the country. This scenario resembles the BDR uprising since citizens aren't informed about the culprits' trials.

1923 Official Secrets Act

This legislation integrates and improves Bangladeshi government secrecy and confidentiality laws. This legislation governs the transmission of any official model, drawing, plan, or information. Section 5 of this legislation states that any person owning or managing secret classified material (drawing, plan, article, etc.) under any official authority or government authority cannot

communicate or distribute it to others, including the media. An offender might be imprisoned for two years. Official secrecy and constraints prohibit the media from acquiring much information.

Bangladesh Television Ain, 2001

In 2001, 21 sections added the power to oversee, monitor, and govern Bangladesh's television sector. This comprises Bangladesh's television media's functioning, regulating information flow, power in information sharing, control over transactions and monetary policies, and other activities and authorities. The television authority gained control over broadcast media programs due to this.

1974 Press Council Act

This legislation establishes a Press Council to monitor the Bangladeshi press and promote press freedom and newspaper standards. This provides this council with limitless jurisdiction to keep and dispose of information and newspaper-related aspects via the government. The council will also create a code of conduct for newspapers and news organizations to help them follow professional standards. Sections 12–13 of the Act outline the council's role over news agencies to maintain standards and promote freedom. These solely resolve government disputes. The council cannot challenge the administration when it interferes with press freedom.

1885 Telegraph Act and 1933 Wireless Telegraph Act

These acts alter Bangladesh's telegraph and wireless telegraph legislation (governing telecommunication and associated media). These statutes provide the government the sole right to grant licenses, manage information flow, own infrastructure, and set communications laws. These laws mostly concern telecommunications. The government holds the right to limit admission and

departure of telecommunication businesses and companies are subject to different restrictions like sharing of information through text messaging or modifying their pricing etc.

1963 Film Censorship Act

This statute censors and certifies movies for public viewing. A board would review and recommend film alterations. This board would also evaluate the film's promotions, including photos, posters, drawings, and any necessary translations for overseas films or foreign film screenings. If any other law (the official act, special powers act, or constitutional acts) is violated or the film depicts incidents that stimulate religious sentiments, abuse political views, disrupt law and order and security of the nation, or contain plagiarism, the government may impose restrictions under this act on special cases. However, film media is only penalized or restricted when it portrays political beliefs that conflict with Bangladesh's independence past.

1973 Printing Press and Publication Act

This legislation regulates Bangladesh's printing press and book publishing, ensuring quality, censorship, and trademark protection. This covers edition, paper quality, printing style, requirements, editors' and writers' participation, and more. The Ministry of Information and Broadcasting reviews all books and publications before public release.

2009's The Right to Information Act

The right to information legislation guarantees free information sharing. The Bangladeshi Constitution guarantees freedom of opinion, speech, and information. In a democracy, the people have all the power, and the ability to share knowledge openly strengthens them. Information freedom will improve openness, accountability, and clarity in public and private institutions. It

will reduce corruption and improve authorized control in this country. DGFI, NSI, CID, and others are exempt from this statute and sought information may not be delivered if it violates other laws such as the Special Powers Act or Official Secrets Act.

2003 Draft Broadcasting Act

This legislation creates an independent broadcasting body to oversee terrestrial, satellite, and cable TV with the goal of enhancing media performance. This authority would issue licenses and encourage media freedom and regulation in Bangladesh.

Chapter V- Trial by Media and Bangladesh

5.1 Trial by Media in Bangladesh Context

In the rape case of a student at Dhaka University, for instance, the suspect (Majnu) was hauled before the media following his arrest, and the media conducted a trial to prove that Majnu was the genuine offender. After a few days, the media conducted a second investigation and stated that the material presented against the suspect was not legitimate, resulting in widespread public unrest during the trial. People were divided into classes, with one side advocating for his execution and the other for his acquittal based on the assumption of innocence, resulting in pandemonium and public disturbance.

Trial by media, which disrupts public order, can be an impediment to a fair court procedure. Contempt of court is a charge leveled against any person or authority whose actions interfere with judicial proceedings. Section 2 (8) (a), (b) of the "Contempt of Court Act of 2013" defines the idea of contempt of court (c). Particularly, Article 2 (8) (b) & (c) states that any act, symbol, or sound, whether written or spoken, that manifestly or likely interferes with or impedes judicial procedures constitutes contempt of court.

Globally, trial by media and the public appears to be an upsetting issue. In the most recent example, Sushanta's murder is still a mystery and under police investigation, although the media has reported on his girlfriend's possible participation in his death. The story has stoked public outrage toward his girlfriend, who is now being held accountable for his death.

Article 21 of the Indian constitution guarantees the right to an impartial trial. The right to freedom of conscience and expression is included in Articles 19 and 25, although it is restricted in the interest of public and national security. Article 21 interference is a violation of the Constitution. In India, the Contempt of Court Act of 1971 established the penalties for obstructing the court's fair processes. In accordance with the Penal Code of 1860, it is a crime to brand someone without a valid explanation if it damages their reputation.

1995's infamous O. J. Simpson trial was another case that was heavily impacted by the media. Simpson was found not guilty of murdering his ex-wife Nicole Brown and her friend Ronald Goldman. At the conclusion of the trial, Simpson was found not guilty. During the duration of this case, the media diverted the minds of the general public along racial lines, so that blacks began to accept Simpson's innocence and whites began to believe his guilt. Even though he was cleared of the allegation in October, the white netizen vehemently disputed the ruling, and a societal collapse followed.

Regardless of these external factors, court personnel is required by oath to behave reasonably and forward the procedures in a fair manner. Justice A.B.M. Khairul Hoque once remarked, "We judges have the duty to protect the constitution, and we are sworn to do so regardless of who is harmed. It is preferable to harm a few individuals rather than the entire nation. In all circumstances, only the truth must prevail." Again, in 1807, Marshal C.J. said, "As soon as a judge enters the court, his mind must be open to the evidence presented in the trial before him. He should not allow an impression to restrict his ability to concentrate on the testimony. However, it has already been established that media coverage in the modern period plays a crucial part in shaping the human mind. Since judicial personnel are likewise human, there is a high likelihood that their judgments will not be made fairly.

Exuberant media is vital for uncovering the truth, but when it goes too far, it becomes a headache. People in this subcontinent, particularly Bangladesh, are so inquisitive about a subject that they lose their temper in the heat of the moment. Without any justification of the source, they conduct their own trial and label one as "guilty." In addition to social media, news media cannot be deemed innocent. Occasionally, the manner in which they report the news serves no purpose other than to portray a person as a culprit defaming his character in public view. First, we must be vigilant when utilizing social media. We cannot find someone guilty only on a hypothetical basis without a judicial trial. Second, the press media should be rigorously regulated, particularly throughout the trial process. Also in violation of section 57 of the 2013 ICT Act is trial by media. In our nation, charges of contempt of court, and violation of Article 39 and Article 57 of the ICT Act are rarely pursued in cases involving a public or media trial.

5.2 Freedom of Press and Question of Free trial

John Stuart Mill (1806–1873) is the originator of the classical liberal defense of free speech. Mill argued that free speech is essential for discerning the truth.

This contributes to societal advancement. Mill, however, modified this viewpoint by formulating the so-called "harm principle." Mill's ideas were crucial in the evolution of constitutional free-speech doctrine in common-law nations, including Bangladesh. The 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR) expressly acknowledged this right. In addition, Article 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) of 1950 expressly recognized this freedom.¹⁹ It is one of the cardinal principles of criminal jurisprudence that anyone charged with a criminal

¹⁹ ECHR, Article 8.

offense is entitled to a fair trial and has the right to be presumed innocent until proven guilty in a court of law. Following the ratification of a constitutional amendment, nations in the United States now enjoy more freedom of expression and freedom of the press.²⁰ The Bangladeshi Constitution also guarantees all people the right to freedom of speech and expression. Freedom of the press entails the freedom to publish not just the opinions of newspapers, but also those of its correspondents and others.²¹

Subject to reasonable limits on particular reasons, the press is free to publish or refrain from publishing anything it chooses, and the government cannot intervene. The right to publish information on pending court proceedings is a component of press freedom. However, the press occasionally conflicts with the right to a fair trial, which also falls under the category of basic rights. Furthermore, it should be noted that the press is not exempt from the general regulations that apply equally to all businessmen. The shield of journalistic freedom cannot be lifted in the face of wrongdoing.

Article 39 will not apply if a newspaper publishes maliciously misleading or unlawful information or abuses its freedom. Media trial is characterized by the rapid distribution of the accused's guilt (or innocence) by the media prior to the completion of the trial. The Indian Supreme Judicial described it as "the influence of television and newspaper coverage on a person's reputation by generating a broad perception of guilt, irrespective of any court judgment."²² This is the precise right that the "media trial" violates. In many instances of pending trials, newspapers or television stations publish or broadcast incendiary news stories that incite mob hysteria, which not only tends to affect the fairness of the trial but also suggest that the accused will be under a constant public

²⁰ 1st (US) Constitution Amendment 1791.

²¹ Article 39 of Bangladesh Constitution,

²² Anand v. Registrar [2009] 8 S.C.C. 106 (Del.) (India).

eye for the rest of his or her life. As Lord Diplock commented, "trial by a newspaper or, as should be the case"²³

5.3 Mechanism of Creating a balance between media and court

Some media coverage of the trial creates problems for a fair trial. A Fair Trial is the cornerstone of criminal law and, in a sense, an essential element of a democratic society ruled by the Rule of Law. Denial of a fair trial constitutes a violation of human rights. It is inherent to the idea of obligation and legal due process.²⁴

The media court is referred to as "Janatar Adalat," and the general public is meddling with court procedures. According to our principles of presumption of innocence until guilt is established and proof of guilt beyond a reasonable doubt In media trials, there is no particular procedure for trial; rather, the media conducts a separate investigation and creates public opinion against the accused before the court takes notice of the offense and issues a final decision declaring the accused guilty. By doing so, they are interfering with the administration of justice.

A fair trial is a legal proceeding conducted by an unbiased, free, and pressure-free tribunal. With the expansion of Cable Television and Channels, Local Radio, New Papers, and Magazines Networks, and the Internet during the end of the 20th century and the beginning of the 21st century, the media's influence on the legal system has become well-known. However, this right to a fair trial may be violated if the media, in the course of covering a story, employs language that has the potential to affect the judge's mind and control the judicial process. There are countless instances in which the media has covered a trial both before and after the verdict has been rendered. Frequently, the verdicts of the media are contrary to the orders of the courts; as a result, judges

²³ Bari, M. (n.d.). LEGAL ASPECTS OF MEDIA TRIAL IN BANGLADESH: FREE PRESS VERSUS FAIR TRIAL DILEMMA. *Bangladesh Institute of Law and International Affairs*, 89–91. <https://www.biliabd.org/>

²⁴ Rattiram Vs. State of M.P. through Inspector of Police, AIR 2012 SC 1485

may also come under public scrutiny and be attacked. The presumption of innocence is the foundation of criminal law and a fundamental component of the judicial system. In recent years, however, the media have raised their commercial value and Television Rate Policy (T.R.P.), solely to enhance naming and accusing the suspect and the guilty.

In *Saibal Kumar vs. B.K. Sen*,²⁵ the Supreme Court stated, Without a question, it would be malicious for a newspaper to conduct a thorough, impartial investigation into a crime for which a man has been arrested and then publish the results of that investigation. This is because a trial by the press must be prohibited when one of the country's normal courts is conducting a trial. This approach is based on the notion that such activity by a newspaper tends to interfere with the administration of justice, regardless of whether the inquiry attempts to bias the accused or the prosecution.²⁶ Looking at these issues, we see that it is important that both the media and the courts give their place. Rather than presenting each other as opposites, the need of the hour is to present each other as partners. Besides, it is important to coordinate various messy issues rather than resorting to strictness in establishing justice. If coordination is possible, the media and the courts can act as complements to each other.

²⁵ (1961) 3 SCR 460

²⁶ Jour Managt Socio Human, I. R. (n.d.). *Impact of Media Trial in Fair Trial*. (PDF) Impact of Media Trial in Fair Trial | International Res Jour Managt Socio Human - Academia.edu. Retrieved December 15, 2022, from https://www.academia.edu/36821011/Impact_of_Media_Trial_in_Fair_Trial

Chapter- VI Findings and Ending Remarks

6.1 Findings

This research finds some distinguished features relating to trial by media and its impact on a judicial system, especially on fair trial. Where it evidently argues that instead of creating rivalry media should go hand in hand with the judiciary. There should also be a balance between the media and the court to deal with sensitive cases so that one cannot turn into a pocket court or a yellow journalism platform. Attempting to gradually overcome the constraints of the court and media is also among the tasks to be completed. Where all state resources can play a significant influence. Moreover, today's social media-based hate crimes and organized bullying can occasionally impair the administration of justice. Awareness and mutual support can therefore play an essential role.

6.2 Conclusion

Mainstream media, is often following social media now after being discussed on social media, the mainstream media is giving importance to it. There are complex aspects of media trials that cannot simply be dismissed as bad. But we must always remember that for an independent, fair trial, the court must discharge its duty-free from outside influence. This requires the will of all stakeholders. If the courts, the media, and the administration work in a balanced position, we can keep the courts and justice free from the bad effects of media trials.

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