

LEGAL ASPECTS OF MEDIA TRIAL IN BANGLADESH: FREE PRESS VERSUS FAIR TRIAL DILEMMA

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ABSTRACT

Both the freedom of press and right to fair trial are fundamental rights guaranteed in Bangladesh constitution. Amidst the heated tension between these two sets of rights, police directed media trial, too assumed intriguing dimensions in Bangladesh. Based on constitutional law, international human rights law, criminal jurisprudence and precedents from home and abroad, this study basically seeks to explore the legality of such trial- by- media or police directed media trial and how it is transgressing legal norms applicable in Bangladesh. The article wraps up with the finding that there should be clear distinction between media activism and media trial. Further, media and judiciary should not be at loggerhead; rather they complement each other for greater benefit of the people.

Key words: Bangladesh, freedom of press, fair trial, media trial, police directed media trial.

INTRODUCTION

Bangladesh is a democratic state where freedom of expression is a core fundamental right having constitutional mandate. It also provides for freedom of press specifically. The media is committed to people's right to know as to what is happening in the society. However, reasonable restrictions can be imposed on media freedom. On the other hand, an accused is constitutionally endowed with the right to fair trial which can in no way be fettered. Following free market economy, there appears a boom of private media industry along with state owned television and radio. Though the investigating journalism is essentially attributed for unearthing the issues leading to fair trial, the aggressive journalism in many instances is alleged to have prejudged or prejudiced the trial of the accused. Consequently, there appears a heated tension between these two sets of rights, especially when the media reports on pending cases. In common law countries like US and UK there are numerous examples of acquittal, release or re-trial of those accused who faced unfair media reports. Though media activism has supporting role to play to spearhead fair trial, at

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times biased and unregulated media interference to the pending cases may create substantial risk to the proper administration of justice.

Further, the members of the law enforcing agencies often resort to exposing the accused before the media. In most cases, the police are alleged to have forcibly produced the arrested person before the media personnel to make confessional statement. Some may argue that such media publicity is done to convince the public that the law enforcing agencies are vigilant in nabbing criminals. At the same time, the media is dedicated to keep the viewers abreast of current affairs of home and abroad. In many cases the police or the media appears to have created a widespread perception of the guilt of the person arrested. Such treatment by the police and journalist denies few core rights of the accused as guaranteed in the constitution. A pertinent question may arise whether the members of the law enforcing agency and/ or the media are inadvertently likely to interfere with the administration of justice in this way. Based on constitutional law, international human rights law, criminal jurisprudence and precedents, the study basically seeks to explore how such trial- by- media or police directed media trial is transgressing legal norms applicable in Bangladesh.

This paper contains four sections. Following this short introductory notes, firstly it discusses the concept of free-speech, freedom of media and fair trial. Secondly, it outlines US, UK and Indian development and experience of free press and fair trial dilemma. Third section is divided into two parts. Trends and concerns of media trial in Bangladesh are set out in the first part. In the second part, the legality of police directed media trial is assessed in greater detail with particular reference to local regime and international human rights law. Finally, an overall evaluation along with a subtle conclusion wraps up the discussion.

CONTEXT OF FREEDOM OF PRESS, MEDIA TRIAL AND FAIR TRIAL

(i) **Freedom of Expression and Free Press:** John Stuart Mill (1806 – 1873) is the pioneer in advancing the classical liberal justification for freedom of speech. Mill advocated that free speech is indispensable for sifting truth, which leads to societal development. Mill, however, qualified this view by framing what is known as 'the harm principle'. Mill's philosophy has played an important role in the development of constitutional free-speech jurisprudence in common law countries including Bangladesh. Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Civil and Political Rights (ICCPR), 1966 recognized this right in unequivocal term.¹ European Convention of Human Rights and Fundamental Freedoms (ECHR) 1950 also specifically declared this freedom.² It may be mentioned here that US nations

¹ UDHR, Article 19; ICCPR, Article 19.

² ECHR, Article 8.

enjoy wider freedom of expression and freedom of press following the passing of an amendment to the constitution.³ The Constitution of Bangladesh also gives all citizens the fundamental right to 'freedom of speech and expression'.⁴ Article 39 also permits the state to make laws imposing certain 'reasonable restrictions' on this right. Though freedom of the press is implicit in freedom of expression as enshrined Article 39, our constitution specifically mentioned it⁵ 'considering its very high value.'⁶ Freedom of press consists of the right to publish views of the newspapers, but also of its correspondences and others. Subject to reasonable restrictions on specific grounds, the press has the freedom to publish or not to print any matter it looks and government cannot interfere. The freedom of the press includes the right to publish information about pending cases in courts. However, the press at times comes into conflict with the right to fair trial which is also included in the category of fundamental rights. It should be also pointed out that the press is not immune from the application of the general laws that reach equally to all businessmen. The protective cover of press freedom cannot be thrown open for wrong doings. Article 39 will not be attracted if a newspaper publishes what is mischievously false or illegal or abuses its liberty.

(ii) **Media Trial:** Media trial is indicative of a wild dissemination of impression of guilt (or innocence) of the accused, by media before the conclusion of the trial in court. The Indian Supreme Court defined it 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.'⁷ It is one of the cardinal principles of criminal jurisprudence that anyone charged with a criminal offence is entitled to a fair trial and has the right to be presumed innocent until proved guilty in a court of law.⁸ This is exactly the right that the 'media trial' encroaches. In many instances of pending trials, the newspapers or the televisions often run inflammatory news items making provocative mob craze which not only tends to affect the fair trial but also indicates that the huge public watch may follow the accused for the rest of his/her life. As Lord Diplock remarked: "Trial by newspaper or, as it should be

³ First (US) Constitution Amendment 1791.

⁴ Constitution, Article 39.

⁵ Ibid, Article 39 (2); Indian constitution does not mention the freedom of press specifically which is implicit in freedom of speech as enshrined in Article 19.

⁶ Islam, M., *Constitutional Law of Bangladesh*, Dhaka: Mollick Brothers, 2012, at p. 354.

⁷ *Anand v. Registrar [2009] 8 S.C.C. 106 (Del.) (India)*.

⁸ UDHR, Article 14. For details see Haque, M. H., *Trial of Civil Suits and Criminal Cases*, Dhaka: Universal Book House, at pp. 251-256.