

MEDIA TRIALS- SIGNIFICANCE OF MEDIA IN ADMINISTRATING JUSTICE

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ABSTRACT

Media plays an essential role in the dispensing of powers by the authorities by keeping an eye on them, however, it becomes an issue when they try to out-power those rights conferred upon them to the point of exploitation of freedom of speech and expression. In the process, there were open comments made on the judicial system of the country and claiming to serve justice better. However, what is the impact of such reporting on the minds of the people? Does it undermine the gravity of the courts in such situations? Does it make the people lose confidence in the judicial system of the country? Is it violative of the rights of the deceased person?

KEYWORDS- media, trial, freedom, judiciary, justice

SCOPE-

This paper would be focussing on the concept of media trials, more specifically on its impact on the administration of justice and how it evolved, its status in the present era along the judicial decisions that have been developing and building the understanding of the same.

OBJECTIVES-

The objectives of this paper would be 2-fold

1. To understand media trials and their constitutionality.
2. To understand how media trials hinder the administration of justice.

RESEARCH PROBLEM-

The main area of research for this paper would be the practical implications of media trials on the nation. Media trials have often been supported by the people for the belief that has been created that media houses tend to serve justice. However, most of the time it results in people losing confidence in the authorities and ends up hindering the administration of justice.

Another aspect of this paper would be to analyse the rights of the parties involved as the media houses don't hesitate for a moment to broadcast everything, they get their hands on thus creating a serious breach of privacy.

RESEARCH QUESTIONS-

1. Whether media trials are constitutional?
2. Whether media trials are contempt of courts?
3. Whether media trials breach the right to privacy?

HYPOTHESIS-

Media trials are a contempt of court and hinder the process of administrating justice.

CHAPTER 1-INTRODUCTION

The demi-world of journalism is like the funhouse of mirrors that one finds in carnivals. In one reflection you are too fat; in another, you are absurdly thin; in another reflection, you appear to have an elongated neck; in another, a flat head, - in still another you have next to nobody. Yet there you are, standing in front of these bizarre reflections, fully formed and hearing little resemblance to any of the images before you. The difference is, however, that unlike the fun house of mirrors, the distortions of the media are rarely a joke.¹ The case of Sheena Bora's murder² has pierced the personal life of the main accused, Indrani Mukherjee, igniting a new debate on the subject of the media trial of the accused. The media is scrutinizing any part of her personal life and character that has little to do with the murder investigation. The ethics of journalism have been again in a controversial area due to their prying eyes on the accused.

The effect of television and newspaper reports on a person's credibility by generating a common presumption of guilt, regardless of any court of law decision, is referred to as a "media trial." While the term "Media trials" was coined recently, the phrase derived its meaning from the case of Roscoe "Fatty" Arbuckle (1921)³, who was discharged by a court of law but lost much of his credibility and dignity, as well as his career, after the media pronounced him "guilty."

When the media, on the other hand, makes a direct or indirect judgment on the merits of a case before a court (often referred to as the sub judice rule), it enters the jurisdiction of the courts. If the media declares or builds public sentiment on the guilt or innocence of a

¹TRIAL BY MEDIA AND TRIAL OF MEDIA (<http://www.rtrd.nic.in/MassMediaIndia2009.pdf>)

²Pratim Alias Peter Mukherjea vs Union Of India And Anr, 4400 OF 2017.

³1921

defendant in a criminal trial, the presumption of innocence, which is as fundamental as free expression, is jeopardized. As a result, the media is conducting a "trial."

Trial by Media is a phrase used when the Media takes a particular interest in an ongoing case. There could be many reasons for the same one being the crime in itself was sensational or involving a celebrity or a high-profile personality as accused or the victim.

However, there have been instances wherein had the media not stepped in many crimes would have gone unpunished like that of Jessica Lal's murder case⁴ or Nitish Katara murder case⁵. But the question arises, just because few victories have been achieved by media trials, does it mean it is a healthy way of providing information to people of the biggest democratic country in the world? Just because a few cases were solved, should the media be given the liberty of holding trials on their channels? Is it a law-abiding act?

Trial by media is NOT legal. No legal system across the globe has given this liberty to the media houses. The major media houses are behaving recklessly by breaching the code of conduct for covering specific news in the never-ending race to be the first to report it. It can also get to the point that media outlets are completely unconcerned about the feelings of the people affected by a specific piece of news.

For instance, when the case of the suicide of Sushant Singh Rajput came to light, the race between various media houses was evident from the way his alleged suicide was abetted by his then-girlfriend Rhea Chakrobarty. The media instead of imparting awareness amongst people and providing them with real information started framing his then-girlfriend.

Dr. Soumitra Pathare, the director of the Centre for Mental Health Law and Policy at the Indian Law Society, said, "Media needs to improve its reporting of suicides and attempted suicides in India.

We have seen that the media fails to adhere to both the international guidelines for suicide reporting (WHO guidelines) as well as national guidelines from the Press Council of India. Research has shown that responsible media reporting of suicides can reduce suicides by 1-2%. That would mean saving 2,500-5,000 lives each year.⁶ The media needs to use the opportunity to raise awareness about suicide prevention, rather than focus on sensationalizing suicide deaths.⁷

⁴ Dr. Rajesh Talwar And Another Vs. C.B.I, 2013 (82) ACC 303

⁵ Vikas Yadav V. State of UP, 2016 (9) SCC 541

⁶Dr Soumitra Pathare, the director of the Centre for Mental Health Law and Policy at the Indian Law Society

⁷Prerna Lidhoo, Arushi Talwar to Rhea Chakrobarty: A tale of 2 media trials and zero lessons learned, The Wire, 1st September 2020, <<https://thewire.in/media/rhea-chakrobarty-sushant-singh-rajput-aarushi-talwar-media-trial>> (accessed on 20/04/21, 21:05)

CHAPTER 2- CONSTITUTIONALITY OF MEDIA TRIALS

Initially, through extensive parliamentary debate, freedom of the press was an integral part of freedom of speech and expression. Then-Prime Minister, Pandit Jawaharlal Nehru said in his own words, "I should rather have a completely free press, with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press."

*The judgment of the Full Bench of Bombay High Court in **Anand Chintamani v. State of Maharashtra**⁸ is illustrative of how the courts have recognized the right to freely express one's opinion on even most controversial matters as an integral part of the freedom of speech and expression. However, just like a coin has two faces so does practically everything. This freedom started costing the Indian Judiciary. A glaring incident of trial by media is the Parliament Attack case⁹, wherein the police called a press conference just one week after the attack during which, accused Mohd. Afzal incriminated himself in front of the national media. The media played an excessive and negative role in shaping the public conscience before Afzal was even tried.¹⁰*

The Speaker of the Lok Sabha, Shri Somnath Chatterjee made a noticeable observation in the context of freedom of the press. He said: "Freedom of the press, a cherished fundamental right in the country, is subject to reasonable restrictions as contemplated by the Constitution itself. It cannot and does not comprise deliberately, tendentious and motivated attacks on the great institutions of this Republic, and their officers and functionaries. Freedom of the press does not also contemplate making reckless allegations, devoid of the truth and lacking in bone fides. In the name of exercising freedom of the press, there cannot be a trial by the press in which it plays the role of both the accuser and judge. Freedom of the press also encompasses the fundamental duties of the press. These call for showing respect for others and responsible behaviour, and cannot permit denigration of constitutional bodies and institutions and their important segments."¹¹

The right under Art 19(1) (a) includes "the right to information and the right to disseminate through all types of media, whether print, electronic or audio-visual means".¹² It was further stated in **Hamdard Dawakhana v. Union of India**, "that the right includes the right to acquire and impart ideas and information about matters of common interest."¹³ However, in **Re: Harijai Singh and Anr. v. In Re: Vijay Kumar**¹⁴ The Supreme Court stated the scope of freedom of the press as "an essential prerequisite of a democratic form of government" and

⁸ (2002) 2 Mah LJ 14.

⁹ State v. Mohd. Afzal and Others, 107 (2003) DLT 385

¹⁰ Trial by Media at www.hrhc.net

¹¹ Hon'ble Mr. Justice G. S. Singhvi, TRIAL BY MEDIA: A NEED TO REGULATE FREEDOM OF PRESS, Abstract of the speech delivered by Hon'ble Mr. Justice G. S. Singhvi, Judge, Supreme Court of India at Bharati Vidyapeeth Deemed University, New Law College, Pune, <http://docs.manupatra.in/newsline/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf> (accessed on 22/04/21, 15:30)

¹² Romesh Thapar v. State of Madras 1950 SCR 594

¹³ Hamdard Dawakhana v. Union of India 1960 (2) SCR 671

¹⁴ Re: Harijai Singh and Anr. v. In Re: Vijay Kumar, (1996) 6 SCC 466

regarded it as “the mother of all other liberties in a democratic society”.¹⁵ In *Anukul Chandra Pradhan v. Union of India*¹⁶, the Supreme Court observed that “No occasion should arise for an impression that the publicity attached to these matters (the hawala transactions) has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial”.¹⁷

The SC in one of its renowned cases held, “The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country’s political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion”.¹⁸

Thus, the freedom of the press was promulgated for providing the masses with genuine and correct news along with their right to be informed about their government and for them to act on it. The freedom of press plays an important role in various aspects of governance, one being the reporting of judicial proceedings. Thus, had there been no freedom to the press, no one would exactly know what is happening in the judiciary. People would be lost concerning the judicial happenings of the country.

Supreme Court has stated that trial by press, electronic media or trial by way of a public agitation are instances that can at best be described as the anti-thesis of rule of law as they can lead to miscarriage of justice. In the opinion of the honorable court, a Judge has to guard himself against such pressure.¹⁹ The bigger picture to be noted here is that judges and judicial officers are also humans like others and they are prone to mistakes. The mere fact that an individual is residing on a judge’s chair doesn’t make him a superhuman. They are still prone to getting influenced subconsciously by these episodes of media trial.

Thus, it could be said that media trials are not constitutionally valid concerning the freedom of press. Freedom of press is just another interpretation of freedom of speech and expression, Article 19(1)(a) which was described beautifully by Dr. BR Ambedkar²⁰ “*The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression; and in my judgment therefore no special mention is necessary of the freedom of the press at all*”

¹⁵*Ibid* (11)

¹⁶*Anukul Chandra Pradhan v. Union of India*, 1996 (6) SCC 354

¹⁷<http://www.civilservicestimes.co.in/editorial/current-national-issues/416-trial-by-media-looking-beyond-the-pale-of-legality-.html> (accessed on 23/04/21, 15:45)

¹⁸*Supra* 11

¹⁹*State of Maharashtra v. Rajendra Jawanmal Gandhi*, 1997 (8) SCC 386.

²⁰In his draft of the Indian constitution

CHAPTER 3- ISSUES PERTAINING TO MEDIA TRIAL

The right to a fair trial is recognized as a fundamental human right in a number of regional and international documents:

- United Declaration of Human Rights of (1948), (UDHR) Art.10, ICCPR Art.14; ECHR Art.6 para.1;
- African Charter on Human and People's Rights (1981)(also: Banjul Charter) Art.7;
- Charter of Fundamental Rights of the European Union (2009) (EU CFR) Art. 47;
- American Convention on Human Rights (1969) (ACHR) Art.8 Para. 1 proclaiming the right to a fair trial in both criminal and civil cases.

Accordingly, in most jurisdictions, the constitutional right to a fair trial refers to both criminal (fair trial, right to, criminal law cases) and civil cases, or at least no prima facie distinction is made with regard to the nature of proceedings.

Whenever there is a case of media trial in the picture there is certain right infringed concerning the parties involved are denial to fair Trial, breach of Right to Privacy, mental trauma and Bias along many.

Wherein, the biggest issue arises between fair press and delivery of justice.

Fair trial-The right of the people in a democracy to be interested in current events that concern them is the source of press freedom. This is why investigative and campaign journalism is important. "Right to Fair Trial"²¹, i.e., a trial uninfluenced by extraneous pressures is one of the most essential elements of justice. Provisions for safeguarding this right are contained under the Contempt of Courts Act, 1971 and under Articles 129 and 215 of the Constitution of India.

It is a violation of an individual's rights under Indian Constitution articles 14, 20, 21, and 22 when he is denied a fair trial within the country's borders. It is crucial since it is an absolute right as interpreted by article 21 in conjunction with article 14. The fundamental right to freedom of speech and expression is guaranteed by Article 19(1)(a) of the Indian Constitution. According to Article 19(2), this right may only be limited by law in the "interests of India's sovereignty and dignity, the State's protection, friendly ties with foreign states, public order, decency or morality, or in relation to contempt of court, slander, or incitement to an offence."

Whenever a particular matter gets in the clutches of big media houses that might gain them TRP, the common practice has become to broadcast about the same probably 24/7. The fact that whenever a normal man is subjected to such repetitions about a certain individual over and over again leads to the creation of perception which is most aligned with what the media houses show. For instance, in the case of Arushi Talwar- Hemraj murder case²² which shook the whole country, media houses portrayed it to be a case of honour killing by the parents of Arushi Talwar because of an alleged affair with their domestic help, Hemraj. The media houses

²¹ Guaranteed under s.304 of Crpc

²² Dr. Raajesh Talwar & Ors V. C.B.12013 (82)ACC 303

broadcasted every small detail non-stop which thus created a perception in the minds of the people that the Talwar couple actually are the accused. They were shamed nationwide for not shedding enough tears for their daughter. However, it later turned out the courts had convicted them based on circumstantial evidence.

There is a popular maxim, “*ei incumbit probatio qui dicit, non qui negat*” (the burden of proof is on the one who declares, not on one who denies). This golden rule was laid out in the famous case of *Woolington v. Director of Public Prosecutions*.²³ Under domestic laws, *K. Veeraswamy v. Union of India and others*²⁴ It was held that no matter what the charges and where the trial is held, the principle, the prosecution must prove the guilt of the individual charged is an essential element of English law and nothing can shake it down. In another case of *V.D. Jhingam v. State of Uttar Pradesh*²⁵, “The cardinal rule of our criminal jurisprudence that the burden to prove the guilt of the accused would always lie upon the prosecution to prove all the facts constituting the offence beyond a reasonable doubt. If there is a reasonable doubt, the accused is entitled to the benefit of reasonable doubt.”²⁶

Bias- Another issue about media trials is that these non stop broadcasting of news might collude with the judgment of the judge subconsciously. The media houses might end up creating bias in the minds of the judges as they are also humans and to err is human. Subconscious bias in judicial decision-making, also known as unconscious bias, occurs when our beliefs or prejudices influence our decision-making and behaviour without our knowledge.

Implicit bias can operate automatically, even in ways that the person who holds the bias would not support if they were aware of it. The judicial code of ethics specifically allows judges to make decisions fairly and impartially. Even though judges take their oath seriously, they have the same unconscious prejudices as the rest of the population.

Furthermore, the judges are usually overconfident in their ability to regulate their prejudices. The judges must be made aware of their prejudices, both latent and explicit.

Right to privacy- in the *Jessica Lal murder case*²⁷The media took great pride in helping to bring justice to the people. Even though the accused had been convicted by the Trial Court, the media in the case stirred up public opinion against him and held him guilty. Via

²³ (1935 AC 462)

²⁴ (1991)3 SCC 655

²⁵ AIR 1966 SC 1762.

²⁶ J Kumar, Right to Fair Trial, <http://www.nja.nic.in/Concluded_Programmes/2019-20/P-1163_PPTs/1.Right%20to%20Fair%20Trial_Handout.pdf> (accessed on 23/04/21, 19:05)

²⁷Sidhartha Vashisht, Manu Sharma v. State (NCT of Delhi), Indian Kanoon<<http://www.indiankanoon.org/doc/1515299/>> (accessed on 23/04/21, 19:30)

candlelight vigils and opinion polling, the media took on the role of enforcing justice and ensuring that the accused were punished. The accuser's past experience was dug up.

Hon'ble Justice D. M. Dharmadhikari, Chairman, M. P. Human Rights Commission also asserted that there's always a risk that judges will be swayed by the flurry of comments made about a specific issue. The media portrays the case to the public in such a way that if a judge overturns the "media decision," he or she is branded as unethical or biased.

In *Saibal Kumar v. B.K. Sen*²⁸, the Supreme Court tried to discourage the tendency of media trial and remarked,

*“No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of the investigation. This is because trials by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.”*²⁹



²⁸(1961) 3 SCR 460

²⁹Supra 25.

CHAPTER 4- DOES MEDIA TRIAL AMOUNT TO CONTEMPT OF COURT?

The Contempt of Court Act defines contempt by identifying it as civil³⁰ and criminal³¹. Criminal contempt has further been divided into three types:

1. Scandalizing
2. Prejudicing trial, and
3. Hindering the administration of justice.

Chief Justice Gopal Rao Ekkbote of Andhra Pradesh High Court beautifully noted in the case of *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr*³², wherein it was observed by the learned judge that:

“ When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings. To this general rule of fair trial, one may add a further rule and that is that none shall, by misrepresentation or otherwise, bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint or defence. It is always regarded as of the first importance that the law which we have just stated should be maintained in its full integrity. But in so stating the law we must bear in mind that there must appear to be ‘a real and substantial danger of prejudice.’”

*In re P.C.Sen*³³ Justice Shah who spoke for the court succinctly put the law as follows:

“The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court

In case of Saibal *Kumar Gupta and Ors. v. B.K. Sen and Anr*,³⁴ the Supreme Court held that:

“No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trials by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution.

³⁰ Sub section 2(b)

³¹Section 2 (a)

³²AIR1975 AP 30

³³AIR 1970 SC 1821

³⁴AIR 1961 SC 633

There is no comparison between a trial by a newspaper and what has happened in this case.”

CHAPTER 4- CONCLUSIONS

After going through various facets of media trials, it could easily be comprehended that despite being the fourth pillar of democracy and acting as a watchdog for the regulatory bodies, sometimes media outdoes itself. In the race to have the maximum TRP, the media houses, though unintentionally, malign the process of administering justice.

By critical evaluation of various instances, it could be established that the practice of media trials is not only unconstitutional but also violative of rights granted to each citizen of this country. It is mentally draining for an individual to be presented as a culprit when he is innocent until proven guilty in the eyes of law. The trials conducted with the four walls of media houses are based on the information that has been tipped off to them by the various authorities involved in the investigation, that is to say, they don't even have access to documentation and reports. Character assassinating and portraying an individual as a convict on national television just based on hearsay evidence is the biggest blunder these media houses can come up with.

When a sub judice case or matter is dragged onto national television various factors come into play simultaneously giving it a form of aggressive journalism. The judiciary has been critical of the overactive and prejudicial reporting by the media.

In the Labour Liberation Front case³⁵, Justice L. Narasimha Reddy lamented the “*abysmal alevels to which the norms of journalism have drifted.*” In *M.P. Lohia v. State of West Bengal*³⁶, the Supreme Court cautioned the publisher, editor and journalist of a magazine that had reported the facts of a sub-judice case, thus “interfering with the administration of justice.”³⁷

The Indian Law Commission's recent report entitled Trial by Media: **Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)** has made recommendations to address the damaging effect of sensationalised news reports on the administration of justice. While the report has yet to be made public, news reports indicate that the Commission has recommended prohibiting publication of anything prejudicial towards the accused — a restriction that shall operate from the time of the arrest. It also reportedly recommends that the High Court be empowered to direct postponement of publication or telecast in criminal cases.³⁸

³⁵ **P.N. Swamy, Labour Liberation ... vs Station House Officer, Hyderabad , 1998 (2) ALT Cri 411**

³⁶ AIR 2005 SC 790

³⁷ Supra 2

³⁸ Ibid



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