

MEDIA TRIALS IN INDIA

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ABSTRACT

Media enjoys the special freedom of expression only granted to the press under Article 19(1)(a) of the Indian Constitution. It ensures freedom of language and speech, and allows the press to continue to report the news and publish articles on matters that are awaiting subjugation before the courts of law. Unfortunately, through such freedom the media tends to prejudice witnesses and other parties. In high-profile cases, despite the intervention of the media, the Court must be fair and only rule in light of the facts and evidence provided to it. The media can cause hype of sub judice issues which can cause bias, and impact the administration of justice, and/or lead to malfeasance.

This article is an effort to examine the effect of the media trials and how they continue excessive intervention in the administration of justice in the name of freedom of speech and expression. It analyzes the impact of the media trial on anonymity, credibility, law, and the right to a fair trial.

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INTRODUCTION

The criminal law in India is based on the principle that an accused has the right to a fair trial and that he is innocent until proven guilty beyond reasonable doubt. Coverage by media and interviews of witnesses, relatives of victims, legal professionals, etc., may prejudice the prosecution and the judiciary. This also affects public opinion. We have seen a rapid rise in media influence on various cases involving corruption, abuses, shootings, sexual abuse, terrorist attacks, etc. over the last decade.

Media advocacy places an indirect burden on the judicial authorities to offer justice to victims. This interferes with the trial proceedings and may deprive the accused his/her right to be proven innocent. When the media concentrates only on one-sided allegations and pursues to fuel public indignation without trying to expose a truth, its results can be extremely detrimental.

Despite the fair limitations on freedom of speech and expression, one can see how the media, in the name of their own trials, misuses that freedom to intervene with the justice system. Media trials are punishable under Section 12 of the Contempt of Courts Act, 1971. Publications that intervene or appear to intervene with the administration of justice are thus regarded as criminal offences under the Contempt of Court Act, where the provisions enforce fair limits on the freedom of expression in order to exclude such interference. When reporting news and pending cases in court (“matters subjudice”), the media must take utmost care as it contributes to a media trial. The investigative position of the media has proven useful for correcting government maladministration, exposing crimes and criminal activities, and disseminating public interest knowledge. But there is no defined connotation of the term public interest.¹

HISTORICAL BACKGROUND OF FREEDOM OF SPEECH AND EXPRESSION

"Every citizen may express his thoughts in words or written documents and publish them on paper, without liability for the censure, but shall be liable for abuses which they may perpetrate in the

¹ Apoorva Sinha, Media Trial from the Lens of Indian Constitution and Judiciary, Legal Desire, March 14, 2018.

exercise of the Constitution of India²," which had been seen as the first articulated constitutional vision by India and which included the present provision of the 'freedom of expression and speech'³.

Constituent Assembly Debates were held until the Constitution contained this right. Nearly all supported its inclusion as a right, but there have been reservations about the limits to be placed on it. Lastly, the 1950 Indian Constitution contained, with its allowable limitations, the right to freedom of expression and of speech.

The freedom of speech and expression is not an absolute right and that's why our constitution makers put restrictions under article 19 (2). In one case, supreme court held that restrictions must be just and reasonable and the question of reasonableness must be decided by the court⁴. The grounds under article 19(2) includes the sovereignty and integrity of India, the Security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence⁵. These grounds are exhaustive in nature. If any restriction does not fall under the given grounds, then it is not permissible and it would be struck down by the court on the ground that it is a violation of article 19(1)(a)⁶.

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MEDIA AND FREEDOM OF SPEECH AND EXPRESSION

The freedom of the media is not expressly stated in Part III of the Indian Constitution. Article 19(1)(a) of the Constitution provides for the freedom of speech under which the special right for the press is guaranteed. Although this freedom is not stated so clearly, it has been recognised by the Indian courts through various cases, in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*⁷, Justice Venkataramiah has quoted on freedom of press is that, "freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing

² The Constitution of India Bill, 1895

³ Article 19(1)(a), The Constitution of India.

⁴ *Babulal Parate v. State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423.

⁵ The Constitution of India, 1950

⁶ *Express Newspaper (P) Ltd. V. Union of India*, AIR 1958 SC 578: 1959 SCR 12

⁷ (1985) 1 SCC 641 & 664.

world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgements. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities”⁸

In *Printers (Mysore) Ltd v. CTO*⁹, Supreme Court said that press freedom is implicit in the freedom of speech and expression but not guaranteed as a fundamental right. Still many democratic countries are devoted to this right because it is a fourth pillar of democracy

There is no license in free press for publishing and dissemination without constraint. The media has a responsibility to ensure that the information obtained by the general public is correct and in no way affects other people's rights. In *Vijay Singhal and Ors. V. Govt. of NCT of Delhi and Anr*¹⁰, the Supreme Court held that, “the object of a trial is to meet the ends of justice, and if, in order to achieve that end there is a competition, in a manner of speaking, between the right to a free trial as against the right to freedom of expression, the former would trump the latter”.

Nowadays, it is normal to see that a defendant is tried and sentenced by the media, without being allowed a chance to be heard, which is unambiguously harming the ideals of natural justice. The reputation of the accused as well as their family struggle along the way. Therefore, even after their acquittal, their former reputation can hardly be restored in the minds of the public. The 'internet trial' and 'media verdict' clearly show the violation of the freedom of expression. The rivalry between journalists, which has placed a great deal of pressure on journalism, has increased following the implementation of the target rating point (TRP)¹¹. Journalists were operating with courage, honesty, and impartiality before TRP was implemented. However, the media battle has become ruthless with the need for increased TRP sizes.

⁸ Ibid

⁹ (1994) 2 SCC 632.

¹⁰ MANU/DE/0746/2013.

¹¹ Nimisha Jha, ‘Constitutionality of Media Trials in India: A Detailed Analysis’, Academike, November 13, 2015.

It is the general duty of the media to ensure that the information which furnishes to the public is accurate and necessarily does not infringe the rights of other persons¹². Every person has a liberty of freedom of speech and expression but also laid down the limitations upon article 19 (2) of the Indian Constitution. The limitations are in the following three ways:

- i. The Right to Reputation;
- ii. The Right to Privacy;
- iii. The Law of Contempt of Court.

Recently, in the garb of freedom of speech and expression, the media misused their freedom many a times as is elaborated in the following segments.

MEDIA TRIAL AND ITS IMPACTS IN CONTEMPORARY PERIOD

The media engages in communication via, *intern aila*, publishing (newspapers and magazines), broadcasting (news television channels and radio), and the Internet. In modern times, the media has evolved a lot and made it easier to disseminate information. Now, more than ever, the media requires to be neutral and impartial. It is the key obligation of the media not to presume but to present the facts as they are. The ability of the media to influence the public is why they must recognize and interpret their immense duty and, in no way, abuse it.

Over the years, the media has been changing and is becoming very involved in all facets of life. It has a far-reaching influence in today's world, where its need cannot be undermined. But independence and unbiasedness of the media is important for the positive changes in society.

"Trial" in an ordinary sense means "any hearing before the court at which evidence is taken"¹³. The media, sometimes, distorts reality and sensationalizes the news stories to catch the public's interest and keep up with the highly competitive market. It is also found to be publishing skewed views in the name of reporting to perpetuate prejudice.

¹² Live Law.in "Trial by Media", by Justice V Ramkumar

¹³ The Banker's Books Evidence Act, [1891], Section 2(7).

The Delhi High Court in *Mother Dairy Foods & Processing Ltd v. Zee Telefilms*¹⁴ quoted the observations made by Mr. Andrew Belsey in his article 'Journalism and Ethics, can they co-exist'¹⁵, explains the state of contemporary media. It notes that Journalists provide a vital service in the democratic set up. They act as distinctive facilitators for the democratic process to function without hindrance. Virtues associated with ethical journalism namely accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect for autonomy of ordinary people are part of and required in the democratic process. Practical considerations, namely, pursuit of successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying Media Managers by meeting growth targets, are recognized as factors for the temptation to print trivial stories salaciously presented. In the temptation to sell stories, what is presented is what "the public is interested in" rather than "what is in public interest".

TRIAL BY MEDIA AND ITS ILL EFFECTS

In a democracy, the media is known as the "fourth pillar". It allows the masses to collect all possible information on socio-economic, political, and international problems, among others. Media has become a symbol of change and not merely a way to transmit news, which has caused a great deal of caution to the media while disseminating information.¹⁶ There are cases like *S.P.S. Rathore v. CBI New Delhi*¹⁷, *Surendra Koli v. State of UP*¹⁸, *Sushil Ansal v. State through CBI*¹⁹ where the media has played a critical role in bringing to justice those accused of odious crimes, but the question arises that this "free expression" concept may be to what degree.

With the number of electronic-parallel media trials of sub judice matters have reached new highlights. The theme that media trials have brought into this contemporary environment is: "public interest" does not matter, but "what excites the public" is more relevant. The concurrent trial of sub judice affairs hinders a judge's ability to determine an issue on its merits. If any judge's ruling goes against the "media decision", it is called biased or unethical by the media. When a

¹⁴ IA 8185/2003 Suit No. 1543/2003 dated 24.1.2005

¹⁵ Andrew Belsey, 'Journalism and Ethics, can they co-exist', *Media Ethics: A Philosophical Approach*, edited by Mathew Kieran

¹⁶ Madhavi Goradia Divan, 'Facets of Media Law', 2nd Edition, 2018, pg. 1

¹⁷ 23rd September, AIR 2016 SC.

¹⁸ AIR 2011 SC 970.

¹⁹ Manupatra, (2014) 6 SCC 173.

clouded environment is created where the problems are continuously updated and screened, it puts the case at risk.

The Supreme Court of India in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*,²⁰ has stated:

“Freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”



AN ANALYSIS OF THE EFFECT OF MEDIA TRIAL ON SOME PROMINENT CASES AND DEVELOPMENTS IN RECENT TIMES

In the *Nupur Talwar v Central Investigation Bureau*,²¹ the media section, in their scurrilous coverages of the investigation, demonstrated a blatant lack of respect for the law. The murder of a 14-year-old school-girl at her own home became prey to involved tabloid journalism. The matter posed grave legal problems requiring remedies apart from media proceedings, privacy abuses, confidentiality breaches, and defamation of both both—the dead and the living persons. The media prided was of the opinion that Aarushi’s and his parents in their own lives who published Aarushi's and Aarushi's father's personal correspondence were described as were the murderers and released their personal correspondence without consent. The parents of the deceased were sentenced to the murder, of their daughter before the court proved it. Because of the interference of the media which affected the intelligence of the magistrates, the victims' parents were sentenced to life imprisonment, and the victim's family. They appealed the conviction and the court acquitted the

²⁰ (1985) 1 SCC 641, 664

²¹ AIR 2012 SC 1921

parents of Arushi Talwar after hearing the appeal. In the case of Arushi Talwar, the media has obtained a negative outcome by putting the victims' parents before the Court verdict for murder.

ARUSHI TALWAR CASE

In *Nupur Talwar v Central Investigation Bureau*,²² The media section, in their scurrilous coverages of the investigation, demonstrated a blatant lack of respect for the law. The murder of a 14-year-old school-girl at her own home became prey to tabloid journalism. The matter posed grave legal problems requiring remedies apart from media proceedings, privacy abuses, confidentiality breaches, and defamation of both—the dead and the living persons. The media was of the opinion that Aarushi's parents were the murderers and released their personal correspondence without consent. The parents of the deceased were sentenced, because of the interference of the media which affected the intelligence of the magistrates, to life imprisonment. They appealed the conviction and the Court acquitted the parents. In the case of Arushi Talwar, the media has obtained a negative outcome by putting the victims' parents before the Court verdict for murder.

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SUNANDA PUSHKAR CASE²³

On January 17, 2014, a hotel in Delhi discovered the corpse of Sunanda Pushkar, the wife of politician Shashi Tharoor. Initial reports suggested that she had committed suicide but later, they indicated that the death was in fact a murder. The medical team that investigated the death of Pushkar found that the death was due to poisoning only in October 2014. The police subsequently filed a FIR in January 2015 and the murder case against an unknown person was reported. On the same day as death, the media arrived on the scene without hesitation and accused Shashi Tharoor to be the murderer. Later Shashi Tharoor filed a defamation suit against Arnab Goswami, where Delhi HC asked Arnab Goswami to show restraint, stop running media trials.

JESSICA LAL MURDER CASE

²² AIR 2012 SC 1921

²³ Dr. Shashi Tharoor vs Arnab Goswami And Anr CS(OS) 253/2017

The *Manu Sharma v Delhi* case²⁴ is also known as the Jessica Lal Murder case. It concerns the cold-blooded assassination of a young woman in 1999 in Delhi, where she was a bartender. The prime accused was Manu Sharma, the son of a strong politician. In 2006, all nine accused were discharged by the Delhi Trial Court. With respect to the acquittal, there was considerable public disappointment. The media conducted a flash-war against the corruption of the trial because of the political connections of the accused and the way in which the witness turned hostile. Reactions from the public to the farcical lack of justice were published by the media. The Delhi High Court then ordered a *suo moto* re-examination of the case without expecting the State's appeal against the acquittal of the accused.

CONCLUSION AND SUGGESTIONS

Media in India, by conducting investigations, collecting evidence, and passing judgements, has assumed itself in the role of the police and judges. Media activism imposes indirect pressure on the adjudicating authorities to deliver justice to the victims which may interfere with the trial proceedings and may cause prejudice to the accused and a chance of proving his innocence. Media trial during the investigation stage, contempt of court, irresponsible reporting, and hype on the sub judice matters has now led to overstepping of boundaries by the media, as per the author. The situation raises two important legal issues: first, the accused's right to fair trial and second, the victim's right.

Trial by media influences the witnesses as well. The witnesses may modify their depositions in tune with media reports. The concept of fair trial which is again an important principle of the justice system, gets undervalued due to media trial. This practice of vibrant media has been opposed by various groups as being against the interest of the accused and the principle of the criminal justice system.

In the Indian criminal justice system, the underlying assumption is that anyone brought before the court, as a defendant, is innocent until proven guilty. However, this principle is not practiced during media trials and tends to affect the criminal justice system. Certain procedures for the

²⁴ AIR 2010 SC 2352

conduct of court proceedings are defined by statutes, but no such requirements are followed in the media proceedings.

Following are some of the suggestions which may help in reducing the danger of trial by media.

Firstly, most of the media houses are owned by private investors or powerful businessmen, so their primary motive will be profit making. If the media corporations are publicly owned, the exaggeration of news can be curtailed, one such example is DD News channel.

Secondly, the Indian Press Council, which seeks to develop and preserve print media standards, should have higher authority. Presently, The Press Council of India Act, 1978 has very limited authority—a simple warning is not enough, but some form of punishment for the damage it causes should be levied on media houses.

Third, only print media is covered under the Law of the Press Council of 1978 and it is, therefore, important to include electronic media in its scope. The solution to the issue of the media trial cannot be self-regulation of broadcasting media.

Fourth, the minimum qualification to join the media profession should be recommended. Media individuals should also be made aware of the media laws and media limitations.