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An Analysis on Trial by Media

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ABSTRACT

Trial by media is a term that has gained popularity in recent decades to describe the impact of television and print media coverage on a case by an attempt made by the media, to hold the accused guilty even before his trial and regardless of any verdict in a court of law. In the past few years, we have seen a sharp increase in media influence on the process of access to justice in a wide range of instances involving corruption, rape, murder, sexual harassment, and terrorist operations, among other things. Media activism places a covert pressure on the courts to provide justice to victims who might interfere with the trial proceedings, bias the accused, and the accused's ability to prove his innocence. To find the truth, maintain democratic values, and address social, political, and economic issues are all tasks shared by the judiciary and media. This paper is a modest attempt to examine the necessity for media engagement and the critical role it plays in promoting justice in society.

Keywords: *Media trial, fourth pillar, Indian judiciary, Freedom of speech, Indian media.*

I. INTRODUCTION

The most important fundamental right guaranteed to the citizens by the Constitution of the biggest democracy in the world is the freedom of speech and expression. The media is seen as the fourth pillar of the democracy and is crucial to the social, economic, political and foreign affairs of a nation. Therefore, it should go without saying that a free press is necessary for a democracy to exist, flourish, and maintain the values of a good and transparent governance. The nation as a whole is affected by the media. It has a significant impact on how we see the world. Since a few years ago, media has been presented in a variety of ways, which gives it more influence over the mind of viewers. The media plays a variety of roles in the society. The media is incredibly influential in shaping societal perceptions and has the power to alter the entire lens through which individuals view different events. The media deserves praise for establishing a trend in which it actively aids in exposing the accused. However, they must exercise extreme caution while reporting on matters that are still pending in court since doing so could result in a media trial.

Unfortunately, Indian media has strayed from reporting the truth and has started to gradually pretend that a newsroom is a courtroom. Media coverage of instances that attract a lot of public

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attention tends to be more frequent in this regard. Instead of helping people comprehend the legal system and the case, the Indian media's coverage is meant to boost ratings and viewers. In order to succeed in the current cutthroat rivalry in society, it frequently adds an emotional dimension to attract viewers and TRP. Prolonged discussions and debates that are solely based on supposition, undermine the interests of the accused as well as the witnesses.

II. FREEDOM OF PRESS

The phrase "freedom of press" refers to the minimal government interference with any form of press coverage, including print (like, newspapers, journals, reports, magazines), video (OTT platforms, news channels), and audio and other electronic platforms like social media, etc.

In India, the freedom of press is not expressly stated anywhere in the Constitution, but it was implicit under Article 19 of the Indian Constitution which states the freedom of speech and expression. There was a discussion about this in the constituent assembly as the constitution was being drafted, and Dr. B.R Ambedkar, the chairman of the drafting committee made it clear that no special mention of freedom of press was required at all because the press and individual or citizen were the same in terms of their right to expression.

Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression as a fundamental right. Although the Supreme Court of India has acknowledged that press freedom falls under the umbrella of freedom of speech and expression, unlike the United States, it is not expressly mentioned. As a result, the freedom of speech and expression has not been explicitly granted to the media because it was thought that since every citizen has the right of free speech, it follows that the press, which is made up of the citizens, also has that right.

The Hon'ble Supreme Court has held that the freedom of speech and expression include the freedom of press through many case laws. In *Romesh Thapar v. State of Madras*,² the Hon'ble court held that 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 audiovisual means.

In *Indian Express Newspaper Ltd. V. Union of India*,³ it was held that the freedom of press is essential for the proper functioning of a democracy. In *LIC v. Manubhai Shah*,⁴ the Supreme Court reiterated that the freedom of speech and expression must be broadly construed to include the freedom to circulate one's view by word of mouth, or in writing, or through audio visual media.

² Romesh Thapar v. State of Madras 1950 SCR 594

³ Indian Express Newspaper Ltd v. Union of India AIR 1986 SC 515

⁴ LIC v. Manubhai Shah (1992) 3 SCC 637

In *Re: Harijai Singh and Anr. V. In Re: Vijay Kumar*,⁵ the Supreme court stated on the scope of freedom of press as “an essential prerequisite of a democratic form of government” and regarded it as the “mother of all other liberties in a democratic soceity”.⁶

III. THE CONCEPT OF MEDIA TRIAL

The public become more interested and eager to stay informed whenever a sensational, contentious, or high-profile case is brought before a court for a trial. They want to know about any small changes that the court makes throughout the proceedings, as well as any new evidence that the investigating team finds, potential defendant etc. By producing news, articles and their content that include their interpretation of the facts of the case that may differ from the actual facts, even if it happens infrequently, the news channels, newspapers, or websites satiate this desire produce among the public.

When someone observes or reads such a story or an article, they start to create an opinion based purely on such stories and articles and start to see the person being tried as the guilty or innocent, depending on what is being fed to them by the media. And this is done even before the court rule on the case or the defendants position about the case. The term “media trial” refers to the full influencing process in its entirety. In other words, we can say that media trial refers to the procedure of declaring the defendant guilty before the court has even rendered its decision.

There have been numerous incidents in India where the media trial process clearly had an impact on the outcome, including the infamous Aarushi murder case, the Jessica Lal murder case, and the most current Sushant Singh Rajput death case.

In *R.K. Anand v. Delhi High Court*,⁷ the Hon’ble Supreme Court interpreted trial by media as the impact of television and newspaper reporting on a person’s reputation by producing a widespread perception of guilt, independent of any court verdict. In high-profile cases, media are often accused of causing an environment of mass outrage comparable to a lynch mob, which not only makes a fair trial unlikely but also ensures that, irrespective of the outcome of the trial, accused is already guilty in the eyes of the public perception and therefore is condemned to live the rest of his life under intense public scrutiny.

Media trials refer to this occurrence of convicting the accused before the court has rendered its decision. Regardless of any judgement rendered by the court of law, it is the widespread reporting of the accused’s guilt and the imposition of a particular perception about him. The

⁵ Re: Harijai Singh and Anr. v. In Re: Vijay Kumar, (1996) 6 SCC 466

⁶ *Ibid*

⁷ R.K. Anand v. Delhi High Court, (2009) 8 SCC 106

media has frequently played a significant role in hysteria among spectators during high-profile court trials, making it practically difficult for the trial to proceed fairly. There are explanations for why certain situations have drawn extraordinary amounts of media attention. A few reasons among them are that the case involves children, or it could be a case involving a celebrity as a victim or an accused, or they could be a horrific or terrible incident that the media might consider it essential to sensationalize such a case.

IV. THE GROWTH OF MEDIA TRIAL IN INDIA

From print to digital, media has changed. During the pre-independence period, the freedom of the press was not guaranteed by the Indian constitution or any other laws. Media freedom and operation were under the jurisdiction of the colonial government. Even after gaining independence, press freedom was not specifically mentioned in the Constitution; rather it was interpreted and believed to be a subset of the freedom of speech and expression granted by Art.19(1)(a) of the Indian Constitution. To protect press freedom and support and to raise the standards of the Indian newspapers and news organizations, the Press Council of India (PCI) was first founded in 1978. However, it was short lived.

The press freedom has been abused by to a great extent by the Indian mainstream media. Nobody can dispute the importance of the media in influencing and shaping the public opinion. Nevertheless, media trials frequently abuse their ability to stifle freedom of speech and expression. Media trials violate the ethical bounds of the model code and conduct by abusing the freedom to speech. The majority of the cases that are subject of media trials are the result of unfounded rumors and outright lies, which serve no purpose other than to increase viewership. These stories simply serve to sway the public's attitude because they allow the media to feed them presupposed viewpoints

The Priyadarshini mattoo case⁸ is the first significant turning point in the history of overt media trials, although it was quickly forgotten after the outrage and did not prove to be very helpful in achieving justice. In this case, a law student was raped and murdered. Legal and social issues continued to conflict throughout the Mattoo case investigation. The incident finally subsided after considerable commotion, but whenever it is opportune, it is frequently brought back into the public eye.

A more recent and iconic example is the Bhima-Koregaon case⁹. The Maharashtra police detained a few activists who were a part of an event planned a day before the Bhima Koregaon

⁸ Santosh Kumar Singh v. State through CBI (2010) 9 SCC 747

⁹ Romila Thapar v. Union of India [2018]10 SCC 753

violence that broke out in the state of Maharashtra. The occasion was known as Elgar Parishad. Later, the police claimed that those in attendance were involved in the violence and had ties to the Maoists. In the meantime, the Indian media went ballistic with their boisterous newsroom activities. The case was saved by the intervention of the Bombay High Court, which ensured the letter leak. The court questioned the fairness of investigation. The court held that, “the use of electronic media by the investigating arm of the state which did the task of influencing public opinion during the pendency of the investigation completely subverts the fairness of the investigation¹⁰.

Another instance of the media overstepping its bound is the case of the Noida double murder¹¹. The public was very interested in the deaths of Aarushi Talwar and Hemraj Banjade because the parents were the accused in this case. The case was rife with gossip and speculation, and the media did everything in their power to exploit it. The teen girl’s privacy was repeatedly violated by the media, which also disseminated fake news and information regarding the facts of the case. Due to lack of proof, the Court discharged the couple, but media already labeled them as killers. This demonstrates that for the media, viewership comes first and accuracy of the information comes second.

These media-driven mock trials primarily highlight high-profile cases because the public enjoy gossip, especially when famous people are involved. ‘Investigating’ such incidents keeps viewers interested. Facts, evidences, fair trials, and most crucially, the judiciary’s function are frequently ignored in media trials. Inappropriate and unfair stories that include invasion of privacy, defamation, and fake evidence are frequently broadcast by the media without hesitation.

In conclusion, the idealistic vision of the media’s role in promoting democracy appears to be relatively valid, but the media’s real involvement in and whereabouts with reference to investigative journalism are highly unethical and contentious. Although the media serves as a watchdog for the democracy, when it begins to chase viewership, it needs to be restrained.

(A) Significance of media trial

We cannot ignore case wherein media has played a positive role in drumming up public support against apparent injustice. It was because of media’s relentless campaign in high profile murder cases of Jessica Lal, Priyadarshini mattoo and Nitish Katara that citizens were able to highlight injustice through mass peaceful protest/rallies and appearances in media, both print and

¹⁰ *Id.*

¹¹ Dr. Rajesh Talwar and Anr b. Central Bureau of Investigation, 2013 (82)ACC 303

electronic.¹²

In Jessica Lal murder case¹³, due to lack of evidence, all the accused were set free. After widespread public protest that was covered extensively by the media, the case was reopened. Numerous petition were forwarded to the President expressing their outrage. The accused was then found guilty with daily hearings over a month and he was given life sentence. If the media has not stepped in, the culprits would have escaped punishment in the Nitish Katara murder case and the Bijal Joshi rape case, which both received praise from the public.

V. THE IMPACT OF MEDIA TRIALS

(A) Media Trial vs Freedom of speech and expression

Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Similarly, the persons in power should be able to keep the people informed about their policies and projects, therefore, it can be said that freedom of speech is the mother of all other liberties.¹⁴ Balancing between the rights of people to know and presumption of the accuse to be innocent till he is found guilty by a competent court, has become inevitable but neck to neck competition regarding publication and coverage among various media houses having a tendency to interfere with administration of justice has become matter of concern for legislature as well as judiciary.”research art”thereby, balancing between the two fundamental rights has become inevitable and the time has come that courts should give appropriate directions with regard to reporting of matters, in electronic and print media, which are sub judice. When rights of equal weight clash, Courts have to evolve balancing measures based on re-calibration under which both the rights are given equal space in the constitutional scheme.¹⁵

(B) Media trial and fair trial

Articles 14 and 20,21 and 22 of the Indian Constitution states that everyone living within the territories of India has a fundamental right to a fair trial. Without a doubt, the right of a fair trial is more significant because it derives from Article 21 of the constitution, which should be read with Article 14. The Indian criminal justice system is built around the right to a fair trial. It covers a number of additional rights, such as the right to a speedy trial, right to be legal representation, right not to be forced to testify against oneself, right to be presumed innocent until found guilty, and more.

¹² SM Aamir Ali & Mohd Imran: *Media Trial: A Hindrance in Dispensation of Justice*, 2 JLSR 88,94 (2016)

¹³ (2010) 6 SCC 1

¹⁴ Shalushravan Singh, *Media Trial and Its Impact on Evidence*, LEGAL SERVICE INDIA (May 03,2023,11:20 AM), <https://www.legalserviceindia.com/legal/article-4005-media-trial-and-its-impact-on-evidence.html>

¹⁵ Dr.S. Krishnan, *Trial by media: Concept and Phenomenon*, 6 Int.J. Adv. Res, 889, 895 (2018)

The media coverage ultimately colors the perception of the public of the accused due to the bias that's created by the media, this also makes it difficult for the accused to have fair trial and a diligent advocate as advocates are less likely to represent accused or the victims if their reputations are at stake. Even if the lawyers do take up the representation, the media dissuades such advocates. For instance, in the case of Jessica Lal, the senior lawyer who defended the accused was titled to be "defendant of the indefensible" by media houses, thereby declaring the accused guilty he had not been proven yet. This presumption of media encroaches on the accused's right to a fair hearing as well as his right to an adequate lawyer.¹⁶

In the case of *Zahira Habibullah Sheikh v. State of Gujarat*,¹⁷ the Supreme Court explained that a "fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated."

The right to a fair trial is at danger, and media trial strikes at the integrity of the legal system. By publicizing unnecessary facts of the case, the accused's confession, and biased viewpoints while the legal process is still ongoing, the media not only oversteps its bounds but also disparages the legal system. There is always a conflict between two constitutional rights I.e., fair trial and freedom of press, when there is trial by media. The ability of media to awaken people is enormous. However, that authority must be used with caution and accuracy. The investigation's flaws can be exposed by the media, which will draw attention to them, close any loopholes, and correct the system; that is the media's useful function. But, trying to showcase the failure of the system, it actually often amounts to a media witch hunt.

(C) Media trial's impact on Judges

Judges who are hearing a particular case being prejudiced is another disturbing aspect of trial by media. In a high-profile case, the media, unwittingly exert an indirect pressure on the judiciary. There is a chance that the judges may be swayed by the comments made about a specific controversy being aware of the fact that they are being observed. The public is presented with the case by the media in such a way that if a court rules against the conclusion arrived at by the media, then they are accused of being crooked or biased.

It is very difficult to argue that media trials could affect judges, but there are many opinions on it. The American and the Anglo Saxon perspectives are particularly important in this context.

¹⁶ Diva Rai, 'Constitutionality Of Media Trials And Landmark Cases iPleaders.com (May 03,2023, 2:45 PM), <https://blog.iplayers.in/constitutionality-of-media-trials-and-landmark-cases.html>

¹⁷ *Zahira Habibullah Sheikh v. State of Gujarat* (2004) 4 SCC 158

The American view says that judges and magistrates are not liable to be influenced by the media, whereas the AngloSaxon view says that the judges may still be subconsciously influenced, though not consciously influenced, which makes people think that the media influences the judges.

In *State of Kerala v. Poothala Aboobacker*,¹⁸ the High Court of Kerala observed: “The fourth estate does not seem to realize the irreparable damage inflicted on the victims of the crimes and the alleged culprits and those close to them through the sensationalized journalistic adventures. Truth is very often surpassed, exaggerated or distorted to add flavour and spice to the stories. Trial by media can do more harm than good to the society at large.”

VI. CONCLUSION

As one of the tools for mass communication, the media helps spread information on a massive scale. It plays a vital role in a democratic country like ours because it educates people about the social, political and financial matters. The media is supposed to provide impartial news and to present facts instead of making any judgments. However, the media tries to distort facts and gives its verdicts before the court arrives at a fair judgment on numerous occasions. It is needless to say that in a democratic society, the role of the media cannot be overlooked. It holds the government accountable by informing the public of governmental activities. It also encourages transparency and conveys the views of the public on a variety of topics. A strong and independent media is capable of bringing about positive changes in a society. The press freedom is essential for achieving this, however, it is important that the media does not stray from its mission and start churning out news that is just trying to make money. In the criminal justice system, the accused is presumed innocent until proved guilty. Fair trial is a really important part of the justice system, but it is not given enough attention because of media trial. This practice has been seen as detrimental to the interests of the accused, as well as to the principles of the criminal justice system, and has been the subject of debate for a considerable period of time without a definitive resolution. The 17th Law Commission of India addressed this issue in their 200th report, but nothing serious has been done about it yet. They did suggest that people should be treated in a sub judice setting from the moment of their arrest instead of having a charge sheet filed, but that is not enough to stop the media from interfering with the justice process. It is for the media to understand that whatever they post has a significant influence on the public. Therefore, their role must be restricted to providing factual reporting of cases and avoiding any attempts to influence public opinion in favour of either the accused or the complainant, as this

¹⁸ 2006(2) KLD (Cr 1 482)

could lead to a miscarriage of justice.
