

Research Article

Beyond the Headlines: The Harm Caused by Media Trials

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Abstract: An exhaustive legal examination of media trials is included in the article. The article assesses the legality of media trials in relation to Article 19(1)(a) of Indian Constitution, which guarantees the freedom of speech and expression. It also investigates the necessity of imposing appropriate limitations on the freedom of the press to guarantee the effective execution of justice. The evaluation of media trials also takes into account the right to a fair trial, which is essential for the accused and the efficient operation of the criminal judicial system. Moreover, the article examines the Contempt of Courts Act of 1971 and demonstrate how its principles render media trials non-valid. Finally, this study examines the consequences of media trials in terms of bias and influence on the court, and its capacity to undermine the right to a fair trial, a fundamental right for the accused, diminishing their dignity, infringing upon their privacy, and impeding the administration of justice.

Keywords: media trial, freedom of speech and expression, fair trial, contempt, prejudice

INTRODUCTION

Journalism is regarded as the Fourth Estate of a democracy, positioning Media houses, journalists, and reporters on pedestals of responsibility and integrity. Economic liberalization and advent of technology has transformed the world of media with 100s of news channels and media houses flooding the market.¹ Journalists and the growth of journalistic activism has had huge positive ramifications in reforming the most regressive and polluted institutions in the country. So much reportage ideally would mean an evolution of democratic discourse in the country. However, the reality is quite bleak.

Media trials have eroded the potent role of media-guided discourse in the country. They scandalize and sensationalize sexual assault, murders, suicide, and other crimes for the sake of TRPs or Television/Target Rating Points, eroding their credibility and reducing their standing as an authoritative source of information.

There is an important distinction between the media factually reporting a criminal proceeding and the media conducting the trial. The former falls under the media's job profile and must be done with utmost diligence and responsibility. However, the latter is when the media proclaims themselves and their audience as the judge and the jury and conducts a parallel proceeding on television every night presenting the audience with information that may or may not be based on public documents and is often prejudiced.

¹ Pravin Swami, *Breaking News: The Media Revolution, in The State Of India's Democracy*, Sumeet Ganguly, Larry J Diamond & Marc F Plattner, eds., (2007).

INCENTIVE OF THE MEDIA TO PURSUIT TRIAL

Media Houses have huge incentives for pursuing media trials and sensationalizing legal proceedings as they are run by advertisement money and need larger audiences to make a profit. Journalistic virtues of accurate and unprejudiced reportage are forgotten in pursuit of higher advertisement revenues garnered by higher TRPs. The media today conducts an investigation on live television via a biased narrative and influences the masses against the accused while the matter is pending before the court. Consequently, the accused is not given his right to presumption of innocence and is instead proclaimed a convict without a fair trial.

The Delhi High Court in the *Zee Telefilms Case*², while describing modern media, stated that newspaper journalism and ethics are at loggerheads as “*virtues of accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people*”³ conflict with more practical considerations like successfully careers, getting larger audiences and meeting other growth targets. These incentives go against the overriding duty every journalist or reporter has to the society, educating its viewers with fair, accurate and true reports.⁴ The conflict compels the media houses to showcase the most colourful version of the news and not pure facts with the right context; turning an accurate factual report of a criminal trial into an entertaining crime thriller.

Given the media incentives are rarely altruistic or in public interest, reports of the infamous *Sushant Singh Rajput* case or the *Nirbhaya Case* are merely fuelled by competitive rush to attract larger audiences and get the advertiser’s money. Both these cases were reported insensitively and without much due diligence. The triggering nature of death by suicide or sexual assault was not given any importance as media houses appointed themselves and their audience as the judge, assaulting victims and the accused while also hindering the possibility of any justice being delivered.⁵

LEGAL ANALYSIS

EXTENT OF FREEDOM OF SPEECH AND EXPRESSION

Media trials and their costs and benefits must be analysed according to the fundamental right to speech and expression under Article 19 (1)(a). The Indian Constitution envisaged a system of parliamentary democracy and freedom of press is a vital tool to upholding the sanctity of this system. The Courts across many judgments have reaffirmed this importance of the freedom of press in light of Article 19 (1)(a). This right allows media to perform its duty as a potent tool of public discourse without being interfered unless in exceptional circumstances.

Freedom of press is not specified under Article 19(1)(a) of the Constitution of India. However, the Supreme Court in *LIC v. Manubhai Shah*⁶ emphasized that the freedom of speech and expression is a broad freedom including everything from words that come out of our mouth to words in writing or other audio visual mediums. Therefore, the freedom includes the right to disseminate our views through print or other media.

Discussion, advocacy and incitement form the basis of right to free speech and expression. Any discussion or advocacy which incites or threatens to incite must be restrained by law.⁷ When the

² *Zee Telefilms v. Mother Dairy Foods & Processing Ltd.*, IA 8185/2003

³ *Ibid.*

⁴ *Rajendran Chingaravelu v. R.K. Mishra*, (2010) 1 SCC 457.

⁵ *Supriya Roy, Trial and Error*, Caravan Magazine; <http://www.caravanmagazine.in/perspectives/trial-and-error>.

⁶ *LIC v. Manubhai Shah*, (1992) 3 SCC 637.

⁷ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

media is reporting trials or legal proceedings in a manner that is accurate and a factual representation, then it must be upheld and even heralded. However, an unsupervised, ill-informed and unregulated media trial is touted as an advocacy or discussion that incites and thus cannot be sanctioned by law.⁸

Rule of law is fundamental to adjudging the scope of Article 19(1)(a) to maintain the “*purity of administration of justice.*” To this end, reasonable restrictions can be put on freedom of press to ensure that justice flows “*unsullied and unpolluted, uninfluenced by extraneous considerations*”⁹, else it would lead to “*disorder and anarchy.*”¹⁰ In *Romesh Thappar v. State of Madras*¹¹, the Supreme Court declared two situations where the freedom of speech and expression could be restricted; *Firstly*, if it posed a danger to the foundations of the State and *secondly*, if it threatened to overthrow a democratically elected government or the security of the state.

RIGHT TO FAIR TRIAL

A fair trial constitutes a judicial environment free of prejudice and bias against the accused, or the victim, where there is an impartial judge, a fair prosecutor, and the witnesses are not coerced to testify.¹² The Apex court has held¹³ that all media reporting that is “*not legitimate comment and instead a usurpation that affects the presumption of innocence*” falls under trial by media, is charge for contempt, and tarnishes the right to free trial guaranteed under Article 21 of the Constitution. Further, the Courts have emphasized on the legal importance of the presumption of innocence principle as being intangible to the criminal justice system and declared it cannot be compromised by irresponsible and malicious media trials of matters that are sub-judice.¹⁴

Courts world over have held that media presence in courtrooms and the sensationalized reportage of trials violates the accused’s right to fair trial and compromises on the administration of justice. This is because the media is able to try and declare an accused to be guilty even before the trial starts, prejudicing the people, the lawyers, and most importantly the judge.¹⁵ Mostly the accused and their version of the facts are never reported by the media if they are of the opinion that they are guilty. This opinion may be uninformed, incapable of understanding the legal nuance or simply be prejudiced against the accused for any other social or political reason.

Therefore, in all cases where the media suggestively pronounces on the guilt or innocence of matters that are still pending before the court jeopardizes the presumption of innocence and endangers the constitutional protections vested in the accused. The Apex court has declared that while public access to information about criminal trial is important, the right of fair trial of an accused is equally crucial.¹⁶ Emphasizing on the individual’s right to life and liberty and a

⁸ C. Edwin Baker, Human Liberty And Freedom Of Speech 232 (1992).

⁹ *Ibid.*

¹⁰ Harijai Singh, In Re., (1996) 6 SCC 466.

¹¹ Romesh Thappar v. State of Madras, AIR 1950 SC 124.

¹² Zahira Habibuallah Sheikh v. State of Gujarat, (2004) 4 SCC 158.

¹³ Siddhartha Vashisht v. State of NCT of Delhi, C.A. No. 179 of 2007.

¹⁴ Ankush Chandra Pradhan v. Union of India, (1996) 6 SCC 354.

¹⁵ Law Commission Of India, *Trial By Media: Report On Free Speech And Fair Trial Under Criminal Procedure Code 161-2 (1973)* (Law Comm’n No 200, 2006).

¹⁶ Kartongen Kemi Och Forvalting AB v. State Through CBI, (2004) 72 DRJ 693.

dignified life, Supreme Court has held media trials to be violating rule of law, ultimately leading to “miscarriage of justice.”¹⁷

RIGHT TO INFORMATION

The argument in favour of media trials or unregulated freedom of press stems from the ideal role media is meant to play in a democracy: report facts and facilitate informed public discourse. Additionally, it is also the public’s right to know which seeks freedom of press. The Apex court affirmed this notion and declared that the press must provide objective and holistic factual information to its viewers. This information must encapsulate social, political, economical and cultural aspects pertinent to the people and must be brought forth with the aim of educating the masses. The press plays a huge role in influencing the public opinion.¹⁸

However, media houses today provide more than just the facts pertaining to an event or case. As analysed above, they are driven less by journalistic virtues and more by ratings and profit. This convolutes the integrity of news provided by them. Media trials are quintessential example of good things gone rogue. A tool meant to inform the public about crimes and deter them from such acts, serves more as a source of entertainment.

CONTEMPT OF COURTS ACT, 1971

The Contempt of Courts Act of 1971 is a judicial safeguard which imposes checks and balances on the media. It holds them criminally liable for publishing anything that prejudices the judicial process and obstructs the delivery of justice.¹⁹ The courts have declared that public comments about matters that are sub-judice are inappropriate and may be ground for contempt.²⁰ The Act punishes publications that, “*scandalize the court or the judge, weaken people's confidence in administration of justice and tend to bring the court into disrepute by a libellous attack on a Judge probing his authority.*”²¹

The Supreme Court has warned the media against sensationalizing of the issues and stressed that “*the press needs a strong internal system of self regulation.*”²² The Courts while holding media houses liable for contempt only consider whether or not such reporting had the potential to influence the masses and the judge and hinder justice. They do not consider the intention of the reporter to obstruct justice.²³

According to the Contempt of Courts Act, 1971, Section 2(c)(iii) states that newspapers cannot assume the role of investigator and broadcast a decision as to the guilt or innocence of an accuse pending trial. This same principle must be applied to Media Trial who try and pronounce conviction or acquittal on matters that are sub-judice. If Trial by media is not punished, it can result in loss of trust in the judiciary, inhibiting litigants from knocking at the court’s doors for justice.

¹⁷ State of Maharashtra v. Rajendra Jawanmal, 1997 (8) SCC 386.

¹⁸ A.G. v. Times Newspaper, (1973) 3 All. ER 54.

¹⁹ Section 2(b) and 2(c), the Contempt of Courts Act, 1971

²⁰ Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India, C.A. No. 9813 of 2011.

²¹ Dr. D.C. Saxena v. Hon’ble C.J.I., 1996 (6) S.C. 529.

²² Rajendra Sail v. M.P. High Court Bar Association, (2005) 6 SCC 109.

²³ S.K. Sundaram: In Re, (2001) 2 SCC.

CRITICAL ANALYSIS

The media of today has an extremely widely range of audience be it the millions they reach via television through their daily newscast or the re-tweets, likes and shares they receive on social media; making it one of the most potent tools of discourse in a country. Courts have held that biased media reporting has “*assumed dangerous proportions*” and expressed the need for journalists to be shown their place and role in the democracy.²⁴ The trials and parallel investigations conducted by media houses in the form of broadcasting debates, voicing opinions, showcasing material witnesses and chasing everyone connected to the case are a violation of constitutional, ethical and journalistic virtues.

PREJUDICE AND PRESSURE ON THE JUDICIARY

A dangerous consequence of trial by media is the immense prejudice and pressure on the judiciary interfering with the delivery of Justice. The Apex Court in *State of Maharashtra v. Rajendra Jawanmal*²⁵ and *Lohia v. West Bengal*²⁶ cautioned the publishers, editors and journalists reporting or trying criminal cases against indulging in matters that are sub-judice. In the *Lohia Case*, the Supreme Court criticized a magazine for revealing legally material information in a dowry death case which could potentially hamper the trial proceedings. This is because constant media reportage on sub-judice matters can subconsciously influence the judges who are “*susceptible to the same human fallibilities as the common man.*”

Justice Cardozo referring to the “*forces which enter into the conclusions of Judges*” noted that “*the great tides and currents which engulf the rest of men do not turn aside in their course and pass the Judges by.*”²⁷ The Apex Court in *Manu Sharma Case*²⁸ analysed in great detail the need for judges and investigating officers to remain impartial and uninfluenced.

Media trials present a sensationalised version of facts catered to garnering larger audiences and making profit from advertisement money, with little diligence toward ethical and accurate reportage of trials or understanding of legal nuance. Judges may be subconsciously influenced by such reporting and as a consequence, may even be pressured into giving out erroneous judgments.

DEFAMATION AND LOSS OF REPUTATION

A huge consequence of trial by media is the shock it has on the lives of the accused, victims and others it sensationalizes. The Supreme Court held that “*the impact of 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.*”²⁹ This is because media trials have the power to get individuals ostracised, humiliated and convicted without a fair hearing.

Courts have reiterated that the independence of press is secondary to the delivery of justice and the duty of a reporter is the coverage and not the adjudication of cases.³⁰ However, media trials

²⁴ Labor Liberation Front v. Andhra Pradesh, (2005) 1 ALT (AP) 740.

²⁵ Supra Note 16.

²⁶ M.P.Lohia v. State of West Bengal, AIR 2005 SC 790.

²⁷ *The Subconscious Element in the Judicial Process*, Yale University Press, (1921).

²⁸ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1.

²⁹ R.K Anand v Delhi High Court, (2009) 8 SCC 106.

³⁰ Rao Harnarain v. Gumori Ram, AIR 1958 Punjab 273.

use the freedom of the press as a license to attack the accused, the victims, and witnesses and damage their reputation forever.³¹

In the infamous *Aarushi Murder Case*³², the trial and conviction by the media was extensive, uncontrolled and remorseless. The media speculated about the character and reputation of the young girl who was murdered and the parents who were the accused. Similarly, in the reporting of the *Sushant Singh Rajput Case* by all news channels resulted in a complete disruption of the investigations, harassed the accused, witnesses and declared the accused as the convict before the case was even presented to a judge. The reportage or rather the witch hunt of Rhea Chakraborty took tabloid journalism to a new low. Media trials violate the privacy of private individuals and defame both existing and deceased persons by prying into their personal lives and broadcasting private conversations on national television.

CONCLUSION

Freedoms of speech and expression and of press are the most potent tools of discourse for the effective and efficient functioning of a democracy. Media can single handedly shape the narrative of a particular event in the country and its power with social media has only strengthened. Given the unique position of media in the society, its responsibilities are manifold and they must be carried out in an ethical, accurate and unbiased manner.

The incentives of the media as elucidated above make it clear that sensationalizing news and presenting it to their audience is a pre-requisite to sustaining in the competitive market. However, self-declaration of media houses as the judges and the jury of the society, attempting to overreach judicial or investigative territories is a major cause for concern. The judiciary and media are institutions are independent institutions and their functions do not overlap. The final authority to make a decision as to the guilt or innocence of an accused must only be the judiciary and not the media. This is because it is the duty of judge and the court to ensure justice and the duty of the media to report the same.

The foundational tenets of the Indian criminal justice system are *innocent until proven guilty beyond any reasonable doubt*. Media trial and the haranguing of uninformed and unregulated opinions of various media houses presenting pending every criminal as an entertaining crime thriller threatens fair trial by prejudicing trial proceedings and obliterates the dignity and reputation of the accused by influencing and inciting the public at large.

Media trial serve as a menace to the justice system and to the society at large as they propagate a culture of uninformed and sensational discourse plagued by prejudice and bias. Unless the parliament and the judiciary take cognizance of this menace, proclaim guidelines to correct its course and ensure its implementation, media houses will continue to vilify and harass accused and victims of sub-judice matters and crumble the tenets of the criminal justice system.

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³¹ *Bijoyananda v. Bala Kush*, AIR 1953 Orissa 249.

³² *Nupur Talwar v Central Bureau of Investigation*, AIR 2010 SC 2352.