

MEDIA TRIAL IN INDIA FAIR OR NOT?

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Abstract

The media plays a major role in forming an opinion in society maybe that is why it is considered as one of the pillars of democracy. Recently, the media has shown its power in the case of Sushant Singh Rajput where a family who is accused is already remarked as culprits by the process of media trial. This case is not the first in the list Indian media has many times shown that TRP is above some lives.

Media trial is one of the most talked-about words recently. The idea of a media trial is such that the media is successful in showing or proving events that were kept as secret or tried to be kept as secret. Many times, these trials can cause wrongful portrayal of the accused and can also destroy the career of the accused even before the court declare them guilt but sometimes the media trial is helpful in solving many cases or to give them lead for solving a case. Basically, everything has its positive and negative impact the same goes with media and its unofficial trials. The research article tries to actually recognize the advantage and disadvantages of media trial with the impact on today's society and is media trials justified under the law?

Generally, Media trials are given under Article 19(1) which provide a fundamental right of Freedom of Expression. The right under Article 19 (1) gives the right to hold on to opinions without any interference and impart information, ideas without any kind of interruption. It is considered that Freedom to the Media is indirect Freedom given to the people.

KEYWORDS - *Media trial, Media, Freedom of Speech, Democracy, Fundamental Right.*

INTRODUCTION TO MEDIA TRIAL

Media trial is not a new term anymore actually it is the most seen concept these days. Everyone watching news channels understands the power of media. It is easy to differentiate when its power is misused and what is the actual meaning of media trial. To not keep any confusion in definition let's just distribute the term into two parts Media and Trial. Media here particularly means any platform where people can be added at large number through technology like News Channels, social media, etc. whereas, Trial is a legal word generally used when the case is heard in the court. so, if we conclude a meaning of Media Trial out of this form then we can explain it as when media declare accused of any case when before the competent court does.

The court can evaluate the consequence of publication or broadcasting news that can be an imminent danger to a fair trial. The publications are purely factual in nature and are based on public documents and such publication or broadcasting should not actually an environment of hate between anyone in the society till the accused is proved guilty in the court of law.

Media is considered as a pillar of democracy, it is said and understood that media plays an important role in a democratic country because it gives power to the media to disclose the facts which are important and as are a matter of right to its citizen. It is noted that the role of the media has increased during the past few years. People are more open to media than to actual facts. There is some kind of professionalism which are followed in every profession but when professionalism is not followed it can create a problem for many.

Generally, media trials are done in two types of cases i.e cases that involve children and are heinous in nature and cases which involve a celebrity as a victim or even as the accused. This Media trial gives its own verdict without even listening to both the parties. Media has the power to actually change the opinion of its viewer and this is what had happened in the case of Sushant Singh's Suicide cum murder case. The media has already decided on Sushant's murder case and made their own decision ex-parte.

The role of media is important in society. They act like a mirror to society. it is a platform on which people can know about the things which are happening in society or in the world. Sometimes media overstep its power and portray an alleged accused as a declared accused. Media trial has

become a trend in this present time, media trial increases the circulation and TRP of the newspaper and new channel.

Media trial is being criticized by many judges on the ground that it affects the psychology of a judge while giving a decision in that case. Media trial can be helpful in collecting evidence, in exposing the real accused but that is a rare case. Media in India enjoy unlimited powers. There are different regulations that govern the power of media but there is still no limitation on the power of media.

CONSTITUTIONALITY OF MEDIA TRIAL

The maker of our Constitution has given great importance to the concept of democracy. Indeed, Article 19 (1) (a) of the Constitution guarantees freedom of speech and expression which also includes freedom of the press within its scope. This article gave rise to the fourth pillar of democracy, namely the media or the press. It is very important that the media of a country function in a very independent, free, and powerful way as they form the basic essence of a democratic country.

Furthermore, the media is not only in charge of being a platform where an individual can express their feelings, but also responsible for building people's opinions on various topics of national interest and also on international agendas. They are the watchdog of several company officials and also an important element in eliminating the wrongs in our system by bringing them to the knowledge of all.

In a few cases, even the judicial part of the state has benefited from the ethical and fearless journalism that has led to an awareness of the issue. The Constitution guarantees many rights to the media directly or indirectly. The constitutionality of media trials also depends upon the impact it leaves on the society. we will discuss a few of these rights.

- **Freedom of Press**

Freedom of the press is given under Article 19 of the Indian Constitution. The right to freedom of expression is involved in Article 19(1). This right includes many other rights. This right includes and gives the power to impart information in every form such as orally or in writing, print, or any

other form. The freedom of the press is not included directly in the constitution but it is covered under Article 19 of the constitution by the Interpretation done by the Supreme Court of India.

Supreme court in many cases has resolved the issue of the Right to press in this modern time. The court heard cases on the role of media through different platforms such as electronic media, social media and etc. The court has always uplifted justice for society. The court imposes a restriction on the coverage which can affect the harmony, peace of the society.

- **Contempt of Courts Act, 1971**

The act of Contempt of court, 1971 gives immunity to the media to publish the proceeding of the court. The court can interfere only on the matters which obstruct the proceeding of the court in any matter be it civil or criminal in nature. The court cannot allow the media to hamper the idea of justice. Sometimes media gives its verdict even before the court which can mislead the people and can destroy the public reputation of a person. These are called contempt because the concept of media trial is a one-sided trial in which the other party is not given any chance of being heard which is a violation of a fundamental right to a fair trial.

In recent times the ongoing media trial is happening in the case of Sushant Singh's murder/Suicide case in which the media has already shown the public that he was being murdered by his own girlfriend (Rhea Chakraborty). The case is still pending in the court but the media has solved the case and the public reputation of the family is destroyed in seconds. She has been declared as a murderer without even listening to her side of the truth. Is this really justice? Is the media responsible for providing justice? these are a few questions which we need to think about before declaring her a murderer. People and media can wait till the case is not decided by the competent court.

IS MEDIA TRIAL A FAIR TRIAL?

Media trial and fair trial are two very different concepts. The concept of media trial does not respect the rights of the people. The principle of fair trial and the right to the free press have different principles which are invested by people at large. The right to press is a part of democracy as media is considered as the fourth pillar of democracy. media trial can be considered as investigative journalism.

The constitution also grants the right to a fair trial to everyone. The accused and the victim are given equal opportunity to explain their side of the argument. Media trial also can sometimes influence the judgment of the court which will be a violation of the basic tenant of justice. The right to a fair trial is an absolute right that is provided to an individual under Article 19, Article 20, Article 21, and Article 22 of the Constitution of India.

Sometimes because of the media criticizing the accused of the case force the lawyers to not take up the case. The media declared the individual guilty, without even being proven guilty in court such conditions violate the right of the accused and even sometimes force the person to withdraw their cases. Jessica Lal's Murder case is a great example of how the media puts pressure on the lawyers to not take up the case from the accused side. In the said case senior lawyer Ram Jethmalani took up the case but the media used headlines such as "Defense of the indefensible".

Media trial in a general sense can be considered as contempt of court. The right of fair trial must be uninfluenced and it should not get affected by any newspaper publication or headlines or anything. Today, we have seen that the leading news channel does not follow the ethical code of contempt while their telecast. Sometimes, reporters are found violating another right of privacy which should be punishable too. The media has to understand the replication of the accused. The media has to understand its duty of showing the transparency of the act and not to blame anyone for the act.

THE CONFLICT BETWEEN FREEDOM OF PRESS AND RIGHT TO PRIVACY-

When considering the conflict between the freedom of the media to disseminate information and the right to privacy, there has always been a fundamental question about the relative weight of privacy versus the public interest. Although India does not currently have a codified law on the right to privacy, it has acquired constitutional recognition which led to the drafting of the Personal Data Protection Bill in 2019.

One question to ponder is whether the Personal Data Protection Bill, which will soon come into effect as an Indian privacy law, includes a provision to safeguard people from the invasion of privacy by the media.

The answer to the question is unfortunately no, since the Personal Data Protection Bill, pursuant to article 36 has allowed exemptions for the processing of personal data for journalistic purposes. Journalists have been given the freedom to distribute opinions, opinions on any information which, acting as data trustee, consider the interested masses.

According to the Indian government, the rationale behind granting such unlimited freedom is to ensure that the press and media channels are independent of unnecessary restrictions and not hindered from their work. However, Article 36 (e) certainly gives the impression that the government needed to think more deeply, exempting journalists from the responsibility to protect privacy under the PPPB. Indeed, the government has not only been oblivious to such privacy violations by the media, but has also overflowed with media intervention and strengthened its power through this bill. First, the obligation on the data trustee to decide what information he believes is of interest to the masses does not strike a perfect balance between the fundamental right to privacy and appears to be quite discretionary.

The media should show "what is of public interest" rather than presenting "what the public is interested in". Second, the PDPB does not require journalists to meet the standards of necessity and proportionality before violating the right to privacy. It also exempts the media from complying with the basic obligations applicable to data trustees, including the requirement of purpose limitation and data retention. The data privacy law does not respond to the need to safeguard the invasion of people's privacy by the media.

The only requirement for the media to claim this exception is to ensure that they adhere to the code of ethics issued by self-regulatory media organizations.

MEDIA TRIAL IN DIFFERENT COUNTRIES-

United States of America: - According to the first amendment of the Charter of Rights of 1791, freedom of the press under the American Constitution was imposed as an absolute right and no reasonable restrictions were subject to it. Therefore, if any media or press interferes with the court of justice or prejudices any proceedings, it is not possible to take legal action against the offenders.¹

¹ First amendment of the bill of right, 1791 USA

United Kingdom: - It has been established under section 4 (2) that the court has the power to defer any publication relating to the proceeding or any part of the proceeding, according to the court. Therefore, they find a substantial risk of prejudice to the administration of justice in such proceedings.²

Canada: - Under Section 2 (b) Section 1 of the 1982 Charter of Rights reads that under Canadian law the reasonable restriction is imposed on free speech under prescribed law. This was included to maintain a balance between two rights. Both rights can be enjoyed when they are balanced.

LANDMARK JUDGEMENTS

The sensational news reporting by the media raises a debate between the freedom of speech and expression which is claimed by the media, and the right to free trial which is proclaimed by the judiciary itself. The judiciary and media always have a common bond and are complementary to each other. Both are engaged in one task i.e to discover the truth.

In the case of **Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspaper**³, the issue raised that continuation of such injunction especially when the shares are oversubscribed and the company has to bear loss because of the insensitive loss because of such reporting the court in this matter held that there must be a reasonable ground to believe that the loss incurred is apprehended in the continuance of injunction is real. The balance of convenience has to be checked by the test of acceptance.

In the case of **State of Maharashtra v. Rajendra Jawanwal Gandhi**⁴, the court while dealing with an issue of an alleged attempt to rape a mirror the court observed that the trial by the media in any form is the antithesis of the rule of law which led to failure of justice. It was further stated that the judge has to be a guard himself from being partial to anyone.

The other case in which the judiciary tries to differentiate between the judiciary and media trial is **M.P Lohia v. State of W. B**⁵ in which the court held that the dowry death was sub-judice when

² Contempt of Court Act, 1981

³ Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspaper, (1988) 4 SCC 592.

⁴ State of Maharashtra v. Rajendra Jawanwal Gandhi, (1997) 8 SCC 386.

⁵ M.P Lohia v. State of W. B, (2005) 2 SCC 686.

the article titled “Doomed by dowry” was published. The interview consists of an interview with the family. The court observed that these articles interfere in the justice process. The publisher and the other members include were held responsible for the article which indulges inactivity such as media trial which sub-judice an issue.

In the recent case of Sushant Singh’s murder case, the court has not given its final judgment but has looked into the issue of sensitive reporting done by some media channels regarding the unsolved mystery case of Sushant Singh Rajput. The Bombay high court when asked the news channel in the case “You did not even spare the deceased, is this investigative investigation?”. The News Broadcasting Standards Authority (NBSA) has imposed a fine on news channels like Aaj Tak and has also asked channels like Zee News, News 24 & India Tv to apologize for ‘insensitive reporting’ in the case.

If there is a violation of Article 21 of the Indian Constitution which is called as heart and soul of the constitution. The rule of law has to be protected and has to be given preference over the freedom of speech and expression which is enjoyed by the media or press. Let’s know a few more cases which went famous for one or other reason and have taken headlines to other level.

- **Sanjay Dutt Case-**

Sanjay Dutt was granted imprisonment for 5 years by the apex court of the country. He was involved in the 1993 Mumbai serial Blast. He was in communication with some of the major names of the mafia world. In 1993, Sanjay Dutt confessed that he was in possession of AK-56 rifles with him. He was charged under Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987.

He was able to secure a bail after 18 months of the imprisonment. The TADA court gave judgment after 11 years and held that Sanjay Dutt had weapons only for self-defense and not any kind of terrorist activities. After which Supreme court cut short the punishment for 5 years which ended in 2016.

Being a famous actor in Bollywood the case was highlighted and the media portrayed Sanjay Dutt’s character as a terrorist but the court afterwards clear that he was not held for those charges. This incident affected him and he had to suffer a lot of problems personally and professionally.

- **Jessica Lal Murder Case-**

In 1999, Jessica Lal (model turned bartender) who worked in a restaurant owned by socialite Bona Ramani in Mehrauli, South Delhi, was killed by Manu Sharma, the son of the former Union Minister of the Congress, Venod Sharma after Jessica refused to do it. serving liquor to him and his friends. This case immediately gained media coverage after the murder when the accused was acquitted by the court⁶. This case has become one of the most prominent cases in which public pressure and the media have forced the judicial system to take a second look at this case. Although Manu Sharma was initially acquitted in 2006 as Delhi police failed to support the reasons, he built his case after public outcry due to media coverage of the case, the Delhi High Court sentenced him to prison. 'life sentence'.

- **The Delhi Rape Case-**

The brutal gang rape that happened in Delhi shocked the world. A girl of 23 year was being raped and was tortured and beaten in private bus in which she was travelling with one of her male friends. Six men in the bus raped her and had fight with her friend. She was admitted to the nearest hospital but after 11 days she was shifted to the hospital in Singapore where she could not survive⁷.

The case was known as “Nirbhaya Case” which means fearless. The girls fight against the incident and her death had become a symbol of resistance by the women all around the world. The incident was worth of all the criticism which was received. The case outrage was too much and the people around India was furious against the state government and the central government for not providing safe environment for the women. The outrage led to amendment in laws including Juvenile Justice Act and more.

CRITICISM OF MEDIA TRAIL

The media play an indispensable role in a democratic country. All pillars of democracy should function independently without affecting the functions of others. The media had overstepped the

⁶ <https://economictimes.indiatimes.com/news/politics-and-nation/is-justice-served-by-premature-release-of-jessica-lals-killer/articleshow/76252372.cms>

⁷ <https://www.bbc.com/news/world-asia-india-51969961>

sanctity of the judiciary in high profile criminal cases such as the Indrani Mukherjee case, the Jessica Lal case etc. Some of the accused were released thanks to the intervention of the media.

A panel of three judges led by President of the Indian Supreme Court R M. Lodha described the matter as very serious and said that to implement the Court would consider few guidelines to balance the interests and rights of interested parties. The guidelines observed by the Court are as follows:

In the wake of the growing cases of media trials, it is necessary for the Supreme Court to investigate the matter as it leads to the public conviction of the accused based on information provided by prosecutors and the police, although the trial before the court of law is not still started. The courts took news of a media briefing by police and other investigative agencies seriously. Nothing should be done to hinder the investigation process and the secrecy of the investigation. All of these require some checks as they all fall within the scope of Article 21 of the Constitution.

When a trial is already pending in the Court, the parallel media trial should not be allowed. The Supreme Court is now expected to consider developing guidelines for the media on criminal case coverage and briefing by investigative agencies.

CONCLUSION

As a citizen of any country, everyone has a right to have knowledge about various events happening around the world, and this big responsibility with the media of the country. As it is said responsibility comes with power and freedom. The influence of media over a trial in recent years has given some fluctuating outcomes. The media have sometimes given a positive result in the administration of justice but sometimes it can also cause problems for the litigants.

Media trial has even sometimes led to provoke the public and created an atmosphere of mob lynching. The media is the mirror of society. people tend to look into issues as a portrait by the media. There are many roles that are played by media which includes making or changing mindset on any issue. The mob mentality also exists beyond the media trial which merely consists of the voices of people and has a public opinion.

Sometimes it feels that every media house only wants and TRP and no one is interested in knowing the truth. Maybe it is time for the media to regulate and follow some strict standards and ethics of journalism and if these standards are not followed then there should be some penal provisions that should be imposed. The Indian media fiercely enjoy independent journalism. The government is regulating the screening of the movies then why can't media be regulated by some authority? The freedom of the press can be good it is in the interest of the public or its viewer. The media is the cornerstone of our democracy and operates in the interest of the public but sometimes it can also hinder the legal process.

The media has also helped to give light some of the biggest scams and then they were afterward followed by the legal authorities. Recently in the case of Sushant Singh Rajput mystery case, the information which was looked inaccessible was credited by some of the most heftily paid journalists. The information related to the Rhea Chakraborty having relations in drug trafficking was also brought up by the media.

Courts are the right form of deciding cases and only they must be allowed to function without spreading prejudice in public opinion. The right to free and fair trial under Article 21 will be more helpful to society. The public Interest is sometimes missing and there is some manipulative interest on the face of it. The media many times loses its ground and invites the rage of the court.