



MEDIA TRIAL AND RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

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A trial is “a judicial examination of issues of fact or law to determine the rights of the parties involved.” according to law. Therefore, trial here legally means the examination of facts of a case taken before a competent court of law to see justice. Media trials, on the other hand, presume or decide that a person is guilty or innocent even before the trial takes place. This largely influences the mind of the people and in turn, shapes the opinion of an entire nation.

It is a known fact that the media is called the fourth pillar of democracy in India¹ in addition to the three other organs, i.e. the Legislature, Executive and Judiciary. It also acts as a watchdog and closely monitors the government for any wrongdoings or errors.

Our Constitution which is the supreme law of the land grants all the citizens of India the Right to Freedom Of Speech and Expression as per Article 19(1)². However, this right is not absolute and has reasonable restrictions as under Article 19(2), mainly to protect the interests of the State. Likewise, Sections 292³ to 294 of the Indian Penal Code deals with

content that may be viewed as obscene. Therefore, this freedom assured to the citizens of India indirectly guarantees the press the freedom to express their opinions. This in turn shapes the opinions of the people.

The rule of criminal law is that an accused shall always be presumed innocent until proven guilty beyond any reasonable doubt. But the media in many cases have violated the very basic principles of law. Trial by media in the modern world has gained huge importance and as always it has its pros and cons. An important approach to trial by media can be seen in the Mukesh and Anrs. Vs NCT Delhi⁴ case where the incident was criticized widely both in India and abroad resulting in so much outrage in the media and widespread protests. There were multiple amendments made including the Juvenile Justice Act⁵ where for the heinous crime the age of punishment was reduced from 18 to 16. Another famous criminal case was the Lal case⁶ where there was immense pressure and interference by the media. The accused had been acquitted in 2006 resulting in mass protests under the title “Justice for Jessica” by the public, the major news channels and newspapers other than yours. Due to the growing pressure from the public and media, the high court admitted an appeal by the police based on evidence and the accused was convicted.

The Interference of media went wrong in the Talwar case⁷ where the media had declared the guilty even before the trial had begun.

¹ Abhishek Srivastava, Media Trial – Media Intervention and Justice Delivery, Alliance University (Oct.15,2021,11:27 PM), <https://alliance.edu.in/blog/2021/05/20/media-trial-media-intervention-and-justice-delivery/>

² INDIA CONST.art 19,cl.1

³ PEN.CODE.§.292

⁴ Mukesh and Anrs. Vs NCT Delhi,(2017) 6 SCC 1

⁵ Juvenile Justice Act, 2015, § 6, No. 2, Acts of Parliament, 1949 (India)

⁶ {Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)2010) 6 SCC 1; (2010) 2 SCC (cri) 1385

⁷ Dr. (Smt.) Nupur Talwar vs State Of U.P. And Arr ,(2012) 2 SCC 188



Excessive public exposure of the accused might reduce the chances of a fair trial by convincing the public that the accused is a criminal even before he or she is brought before the court. As a result of this interference with the "administration of justice," media trials are being held as a kind of contempt of court. In most circumstances, media regulations, which are norms designed to control journalism, are insufficient to avoid civil rights violations. Whenever there is a sensitive case before the court there is an increase in the curiosity of the people. Since television channels always look to sensationalized news they start to publish their interpretation of facts to increase the television ratings. This is commonly called investigative journalism and in India, it is not prohibited.

The media has now made itself a "public court" and has interfered in court proceedings and even pronounces verdicts before the court does⁸. Therefore it overlooks the vital gap between an accused and a convict keeping at stake the golden principles of "presumption of innocence until proven guilty" and "guilt beyond a reasonable doubt." The media itself conducts an investigation, builds a public opinion against the accused even before the court takes cognizance of the case. Therefore the media has been regulated by several acts brought upon by the government. This includes the Press Council Act 1978⁹ to preserve the freedom of the Press and of maintaining and improving the

standards of newspapers and news agencies in India, and the Cable television Network Rules and Regulations,1995¹⁰ which was implemented to keep track of the cable operators and the programmes telecast to the public.

MEDIA TRIAL AND CONTEMPT OF COURT

Any publication of news that is circulated to poison the minds of the accused, witnesses, or the jurors or to create such an atmosphere where the administration of justice would become difficult or impossible, amounts to contempt. Contempt of Court also includes commenting on the pending cases or abuse of party only when a case is triable by a judge. No right lies with the media to play the role of an investigator, in any case, to try to prejudice the court. According to Section 2(a) of the Contempt of Courts Acts,1971¹¹, "Contempt of court" means civil contempt or criminal contempt. Any publication of any matter or the doing of any other act whatsoever which scandalizes, prejudices or interferes with due course of any judicial proceeding or obstruct the administration of Justice in any other manner which is pending proceedings constitutes the contempt of court. Apart from the mentioned, the media is not subject to any governmental regulation. Several self-regulatory organisations oversee them, including the News Broadcasters Association, Broadcast Editors Association, and News Broadcast Federation. Each authority has its own set of rules, and

⁸ Diganth Raj Sehgal, Famous cases of media trials in India, Ipleaders (Oct.15.2021, 12:20 PM), <https://blog.ipleaders.in/famous-cases-media-trials-india/>

⁹ The Press Council Act, 1978, §13, No 37, Acts of Parliament, 1978 (India)

¹⁰ Cable Television Networks (Regulation) Act, 1995, §4A, No.07, Acts of Parliament, 1995

¹¹ Contempt of Courts Act 1971, § 2, No.70, Acts of Parliament, 1971 (India)



membership is purely voluntary. In fact, the members of all such self-regulatory bodies include the office bearers of leading news channels. Moreover, complaints about guideline violations are handled by an independent body appointed by the members themselves.

It has been termed as contempt because even before the verdict of the court the media is misleading the public by publishing certain acts which might affect the right of a fair trial to the alleged accused person.

Other famous cases of contempt of court in media trials include the Sanjay Dutt Case¹² where he was put on media trial and declared as a terrorist among the people when he was found possessing weapons. As mentioned before, in the Jessica Lal case due to the media outburst the accused was arrested. This case is one of the few examples where the media had helped to deliver justice. But despite media trials having their pros, there are also some downsides of trial in the media. For example, witnesses can draw unwanted threats from third parties when their identity is revealed by the media. Similarly, when an accused is presumed guilty even before the trial takes place, there may be chances of prejudice. In case the accused is innocent his reputation would have already been damaged which is irreversible. Social activists have filed a petition in Bombay's High Court stating that the agencies in charge of the

investigation into Rajput's death disclosed personal information to the media, which was then shared with the public¹³. The court inquired as to why electronic media are not regulated by the state. The court ordered the central government to disclose the level of state control over telecasting news with significant repercussions. Similarly, the Court held in *Vijay Singhal and Ors. vs. Govt. of NCT of Delhi and Anr.*, 2013¹⁴, that the purpose of trials is to achieve the ends of justice, and that if there is a competition to achieve that end between the right to freedom of expression and the right to a fair trial, the right to a fair trial will triumph over the right to freedom of expression.

FREEDOM OF SPEECH AND EXPRESSION

Article 19(1)(a) of the constitution of India guarantees Freedom of Speech and Expression, which is crucial to form public opinion. Article 19(1)(2) of the Indian constitution has contoured this right by listing grounds of restrictions on the freedom of speech and expression as no freedom in this constitution is absolute and unfettered. Privacy is not counted as a ground for imposing reasonable restrictions on the right to freedom of speech and expression. Additionally, there is no specific legislation in India that directly protects the right to privacy against excessive publicity by the press including media trials¹⁵. The freedom

¹² *Sanjay Dutt vs State Through C.B.I. Bombay, Criminal Misc. Petition No. 4087 Of 2009, 5229 Of 2009, 5230 Of 2009, 5237 Of 2009 & 5314 Of 2009 In Criminal Appeal No. 1060 Of 2007*

¹³ *TIMES NOW NEWS*, <https://www.timesnownews.com/mumbai/article/three-social-activists-move-bombay-hc-to-stop-media-trial-in-sushant-death-case/643741> (last visited October 2021)

¹⁴ *Vijay Singhal & Ors. vs Govt. Of Nct Of Delhi & Anr.* on 22 March, 2013, WP(C) 195/2013

¹⁵ Nikita Das, *Media trials in India: An unwritten carve-out to the right to privacy?*, IAPP (17th October 2021, 4:19PM), <https://iapp.org/news/a/media-trials-in-india-an-unwritten-carve-out-to-the-right-to-privacy/>



of media is indirectly guaranteed by the constitution through Article 19 which guarantees freedom of speech and expression. This freedom is thought to allow the media to intervene and assist people in forming attitudes and views on a variety of national issues; yet, too much intervention is also a cause for concern.

In *Express Newspaper Pvt. Ltd. v. Union of India*¹⁶, the Supreme Court even while upholding the freedom of speech, which our Court has always unfailingly guarded, also added: “This freedom is not absolute and unlimited at all times and under all circumstances, but is subject to the restriction contained in Article 19(2). That must be so because unrestricted freedom of speech and expression which includes the freedom of the press and is wholly free from restraints, amounts to uncontrolled license which would lead to disaster and anarchy, and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State.

When weighing the conflict between the freedom of the press to broadcast information and the right to privacy, there has always been a fundamental disagreement over the relative weight of private vs. public interest. Despite the lack of codified legislation on the right to privacy in India, the right to privacy has received constitutional validity, leading to the preparation of the Personal Data Protection Bill in 2019. The PDPB has granted exemptions for processing personal data for journalistic purposes under Article 36. (e). Journalists have been given the right to share their thoughts and opinions on any

data that they, as data fiduciaries consider will be of interest to the greater population. According to the Indian government, the justification behind such unrestricted freedom is to ensure that the press and media channels are not restricted in their work. Individuals' right to privacy cannot be jeopardised for news outlets to enhance their self-interest, regardless of their stance in a judicial dispute. In the absence of adequate government regulation, it is self-evident that the media should not be given carte blanche in the investigation process. They should not be allowed to abuse their fundamental right to free speech and expression to violate ethical norms.

CONCLUSION

As there are currently no precedents for media outlets to restrict their content concerning a violation of the right to privacy, courts should take suo moto notice of the violation and amend the record until India enacts a complete privacy law.

Trials in the media frequently create a situation conducive to mob lynching or impact public perception. However, it also plays an important part in shaping the current generation's attitude. It should also be noted that the media simply expresses what the people already believe. The most efficient method to regulate the media would be to use contempt of court to punish those who violate the fundamental code of conduct. Another point to consider is that, for a democracy to work peacefully, the judiciary and the media must function as two different bodies that do not influence each other's decisions¹⁷.

¹⁶ *Express Newspapers (Private) vs The Union Of India And Others*, 1986 AIR 872, 1985 SCR Supl. (3) 382

¹⁷ <https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud->



Similarly, the general public should not rely solely on the media for information and should conduct their research before concluding. It is also necessary to avoid the spread of misleading news. Instead of portraying "what the public is interested in," media outlets should be required to convey "what is public interest."

The media must understand that it has a responsibility to bring critical issues to the public's attention. The media can provide a voice for those who are unable to speak for themselves. In India, we have a judiciary for this purpose, thus the media should not make decisions on its own.

