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An Empirical Analysis on Media Trials in India

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ABSTRACT

Media is considered to be the fourth pillar of democracy. They have a duty to uphold the values of democracy as they are the connecting link between the Government and the public. They create transparency on the proceedings of the Government by timely and systematic reporting of it's activities. In many instances the media has proven to be a weapon of truth. They have been vital in uncovering the truth in many cases. Without them, justice would not have been delivered to the deserved. But along with the positive side there are negatives to the media also. Media trials are one of such negatives. Media trials are public trials carried out by the media against an individual by declaring him guilty in the eyes of the public before the case being decided by a competent court. Media trials often lead to mistrial, wrongful conviction, tarnishing the reputation of the accused even if he was acquitted etc. It is a clear violation of the right to fair trial which is a fundamental right guaranteed under article 21 of the Constitution. Also at many times media tend to violate the right to privacy of an individual by following unethical ways to get information without the consent of the concerned individual and then publishing it. The research paper covers the positive and negative aspects of media and what impact does it have on society. It discusses in detail the ways in which media trials affect the rights of the accused and what are the legal restraints put on media to prohibit them from overlapping their right to freedom of press.

I. INTRODUCTION

Media being the fourth pillar of democracy provides transparency on the actions of the Government. Media can also act as a mirror to the actions of the people and provide them with information about the same. Thus, media has a twofold responsibility to provide transparency on the actions of the Government and to act as a mirror to the society.

Media is one of the most powerful entities on planet earth. An individual comes across many different forms of media in his daily life. And as media is one of the most important source of information to the public to educate themselves' and to create awareness on various issues,

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they should provide them with information in the most fair manner possible. The Jessica Lal case³ and Bijal Joshi rape case⁴ can be looked upon as prime examples on the power of free and fair media in India. Both the cases would have been remained unsolved if it was not for the media.

But the question is, is this always the case? Does the media always act in a fair and free manner? If we are looking at the present scenario, we should be inclined to say that that's not always the case. Media trials are one such problem. Media trials are when the media acts prejudicial to the interest of an accused person. And as the media directly influences the public opinion it can form its own narrative and deliver it to the public forming a public opinion about the accused before the actual verdict by a competent court.

In recent times the influence of the media has grown rapidly and massively in the process of Justice being delivered. Media trials can impact a person's reputation and it can destroy him. Media forces the public to accept that a suspect is guilty even before the Court declares so. Even if the Court declares him innocent the false perception once created will always remain in the eyes of the public. And media trials can also force justice to be delivered to the victims resulting in pressure on the Judiciary. Thus we can understand that media trial influences the process of fair trial.

II. CONSTITUTION ON MEDIA

Article 19(1)(a) under the Constitution of India is the fundamental right that gives the right to media to function in our country freely. It guarantees a fundamental right to freedom of speech and expression. According to the article "all citizens shall have the right to freedom of speech and expression." Freedom of press is not specifically mentioned anywhere in the Constitution of India. But as seen in cases of *Romesh Thopar v State of Madras*⁵ and *Brij Bhushan v State of Delhi*⁶ the Supreme Court explained the fact that freedom of press was an essential part of the right to freedom of speech and expression.

But the exception given under Article 19(2) provides reasonable restrictions to this freedom. It gives State the power to impose reasonable restrictions on freedom of speech and expression and this shall also be applied to freedom of press. So the media shall operate within the confines of the restrictions provided, if any.

³ Manu Sharma v. State (Nct Of Delhi), (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385

⁴ Chandan Panalal Jaiswal v. State of Gujarat, 2005 (3) GCD 2406

⁵ A.I.R. 1950 SC 124

⁶ A.I.R. 1950 SC 129; 1950 SCR 605

III. INVESTIGATIVE JOURNALISM IN INDIA

As defined by UNESCO, Investigative Journalism means “the unveiling of matters that are concealed either deliberately by someone in a position of power, or accidentally, behind a chaotic mass of facts and circumstances – and the analysis and exposure of all relevant facts to the public.”⁷ And thus Investigative Journalism contributes to the ideals of freedom of speech and information and develops it. By studying the definition, we can understand that the aim of investigative journalism is to bring into light the information that should be available to the public but which is concealed by people who are in power. Normally the information will be out of reach to the public. But through investigative journalism the information is disclosed. The Hindu Newspaper’s bofors expose was one of the prime examples of investigative journalism in India. The bofors scandal became the first time when corruption became a widespread public issue in India.

Other examples of investigative journalism are Tehelka’s defence deals expose in which an operation named operation west end was carried out which publicized videos of politicians, officials etc accepting bribe from reporters disguised as arms agents, Indian Express’ Cement scam expose which came to be known as India’s Watergate where it exposed a corruption on grant of Government cement quotas, Indian Express’s human trafficking expose where the reported exposed human trafficking by breaking the law himself to show how easy it was to buy a human in India and Open Magazine’s Nira Radia tapes where the magazine publicized transcripts of telephone conversations between Nira Radia and top officials, politicians etc. All of this can be said as feathers in the media’s cap for the level of professionalism it showed in bringing these information to the public. Although investigative journalism is a positive side of media, there is only a fine line between investigative journalism and media trial.⁸

IV. MEDIA TRIAL

India follows an adversarial system of trial. In an adversarial system the trial is based on the innocence of accused. Under this system the Judge act as a neutral party without showing bias to any of the sides and thus uphold the balance of the trial. There will be two parties to a case- of which one is the aggrieved party, who will be the petitioner and the other is the accused party, who will be the defendant. These are the primary components in a trial. In a fair trial the accused is presumed to be innocent until proven guilty in a competent court.⁹

⁷ *Investigative Journalism*, UNESCO, (May 02, 2022, 10:00 AM), <https://en.unesco.org/investigative-journalism>

⁸ *Power of Press: 5 Times India Was Rocked By Investigative Journalism*, The Better India, (May 02, 2022, 10:30 AM), <https://www.thebetterindia.com/121148/journalist-investigations-that-changed-india/>.

⁹ Srikrishna, B. N. (2008), *The Indian Legal System*, International Journal of Legal Information: Vol. 36: Iss. 2,

As we said before the media is the 4th pillar of democracy and it reports its findings as the freedom of press¹⁰ gives it power. The media thus plays a vital role in forming public opinion. Public opinion can be understood as a collective opinion of the public on a specific matter relevant to the society. And in most of the cases the public will usually have a curiosity to know the happenings and events in high-profile or sensational cases and form their own opinions. So what they will do is find information where they can easily find them and form their own opinions based on the facts found. And in most of the cases the sources will be media which comprises newspapers, news channels, social media etc. They provide the information they find to satisfy the people's need for knowledge in these cases. This can be said as investigative journalism and this is legal in India. In fact, as said in the previous section, many cases have been uncovered by journalists through their investigations. But when the media misuses this power and creates an opinion in the mind of the public for or against the accused, it is known as media trial. It is a major legal and social problem.

If we look at what happened to Roscoe Arbuckle we can get an understanding on how media trials can turn a person's life upside down. Roscoe Conkling "Fatty" Arbuckle was a successful American actor of the 20th Century. He was a renowned comedian and he also directed several of the early silent films. He was also a mentor to actors like Charlie Chaplin and Buster Keaton. He was one of the most popular and one of the highest paid actors in his time. But in 1921 he was accused of murder and alleged rape of an actress. There were three widely publicized trials between November, 1921 and April, 1922 in which finally he was acquitted from the charges. Although he was acquitted by the Courts all his reputation was ruined and in public he was "declared guilty" by the media. Due to this his films were banned from theaters and he was shunned from the public. In spite of the Courts acquitting him, he was a guilty person in the eyes of the public due to the misuse of power by the media. His legacy as a pioneer of comedy movies came to a sad end because of this. The case of Roscoe Arbuckle was only the first of many cases of media trials where it destroyed a person's reputation, career and ultimately his life.

The case above mentioned happened before electronic media existed. Now that media in electronic form exists matters are much worse since the news spread faster. So it is imperative that journalists should follow certain standards while reporting. Until the Courts reach a verdict at the conclusion of the trial no one knows the truth. And if the media seals a person's verdict before the Court it leads to prejudging of the guilt of the accused which could not be easily

Article 8, (May 02, 2022, 11:30 AM) <http://scholarship.law.cornell.edu/ijli/vol36/iss2/8>

¹⁰ Indian Const. Art 19(2)(a)

erased even if it's not true. And when the media is pushing narratives through media trials purely out of commercial interest it will cause much more harm to the person who is under the trial and to the society as a whole.

The media drew severe criticism in their reports on the murder of Aarushi Talwar when it reported that her own father, Dr Rajesh Talwar, was the culprit. In the case the media created the story and misdirected the minds of the public and investigators. Later investigation by the CBI led to the finding that her parents were in fact not the culprits. But that does not change the mental agony suffered by them during the period.

Media have also violated Section 228A of Indian Penal Code countless times which prohibits the disclosure of identities of victims in certain cases. Section 228A was included in the Indian Penal Code to protect the victims against public harassment and victim shaming. Media, while violating the law, is not only committing an offence but also is doing a grave injustice to the victims and their relatives. Society does have a responsibility to support the victims in this situations. But in most of the cases the victims end up getting blamed and ostracized from the society. And in such cases the media will end up violating the privacy of victims. Also media have a tendency to dig up the sexual history of the Victim to sensationalize the case.

In Kathua rape and murder case¹¹ the Supreme Court imposed fine on 12 media houses for disclosing the identity of the minor victim and forbade them “from effecting any publication including the name, address, photograph, family details, school details, neighbourhood or any other particulars which may have an effect of leading to the disclosure of the identity of the child victim.”

V. MEDIA TRIAL AND FAIR TRIAL

In *Zahira Habibullah Sheikh v State of Gujarat*¹² the Supreme Court observed that “each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. It means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.” And from this we can understand that fair trial refers to a trial without bias or prejudice for or against any of the parties or components of a trial and every citizen has an inbuilt right for a fair trial. In India the right of fair trial was enunciated under Article 21 of the Indian Constitution- right to life and personal liberty by the Apex Court in a

¹¹ Mohd. Akhtar v The State Of Jammu And Kashmir, (2018) 5 SCC 497

¹² (2006) 3 SCC 374 at 395

number of cases.

Media trials undoubtedly affect the process of free trial. When media cook up its narrative from half baked stories and rumours it not only affects the public but it may also affect the judicial process as the lawyers may be disinterested in taking cases where the guilt was already established in the public eye as it may affect their reputation as well.

The Supreme Court observed in *State of Maharashtra v. Rajendra Jawanmal Gandhi*¹³ that “a trial by press, electronic media or public agitation is the very antithesis of the rule of law. This may very well lead to miscarriage of justice and therefore, a Judge should guard himself against any such pressure and should strictly be guided by the rules of law. Parties have a constitutional right to have a fair trial in the court of law, by an impartial tribunal, uninfluenced by newspaper dictation or popular Glamour.” In this case the Apex Court itself has identified the influence media trials can have on the Judiciary and advised Judges to guard themselves against any such influences.

Also while hearing the case against media trial in the actor Sushant Singh Rajput’s death case the Supreme Court pointed out that journalists have lost their neutrality and the media has become polarized. The case was heard by the Court after a Public Interest Litigation was filed against the harsh media trial after the said actor’s demise.¹⁴

VI. MEDIA AND RIGHT TO PRIVACY

According to Article 21¹⁵ “no person shall be deprived of his life or personal liberty except according to procedure established by law”. And this fundamental right is known as the right to life and personal liberty. Courts in various cases gave further meanings to this article. And in *Justice KS Puttuswamy v Union of India*¹⁶ a 9 Judge bench gave a unanimous verdict that The Constitution of India guarantees to each Individual a fundamental right to privacy. And now, the fundamental right of life and personal liberty includes right to privacy. We can understand the right to privacy as a “right to be let alone”¹⁷. It gives individuals the right not to be scrutinized in any of their personal matters such as his education, choice of partners, family etc. The right gives a safeguard to individuals against public scrutiny. India does not have codified law on the matter of privacy but the Constitutional recognition of the Right to Privacy

¹³ (1997) 8 SCC 386

¹⁴ K A Y Dodhiya, *Media trial in Sushant Singh Rajput case: Bombay high court says journalists have lost their neutrality*, Hindustan Times-Oct 23, 2020, (May 03, 2022, 11:00 AM), <https://www.hindustantimes.com/mumbai-news/media-trial-in-sushant-singh-rajput-case-bombay-high-court-says-journalists-have-lost-their-neutrality/story-ZAxw4R2tgEMAqtrfNzUjLL.html>

¹⁵ The Constitution of India

¹⁶ (2017) 10 SCC 1

¹⁷ *Govind v. State of Madhya Pradesh*, 1975 SCR (3) 946

has led to the Personal Data Protection Bill, 2019.

Currently the media has grown uncontrollably and at many instances we can see media infringing the rights and liberties of a person. In the name of performing it's duties the media violates the right to privacy of an individual. For increasing the rating and other commercial purposes media collects information unethically without the consent of concerned individuals and publish it as stories. Moreover this would turn into a media trial soon and the lives of individuals concerned will get affected negatively. In the case of *Labour Liberation Front vs State of AP*¹⁸ Andhra Pradesh High Court opined in the issue violation of privacy by media as "Gross misuse of technological advancements, and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitment to the noble profession. The freedom of speech and which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively".

VII. 200TH LAW COMMISSION REPORT¹⁹

The Law Commission released it's 200th report in April, 2006 titled Trial by Media: Free Speech and Fair Trial Under Criminal Procedure Code, 1973. In this report the law commission reported about the multifaceted nature of media trials and what positive and negative impact it have on the society. The report raises concerns on the matter of media trials' effect on criminal trials and the fact that there is only a little restraint on media interfering with the judicial process. The major suggestion by the report was to amend Section 3(2) of Contempt of Court act. Under the act a publication comes under contempt only if the publication is made after the filing of the charge sheet. The suggested amendment was to amend it in a way so that contempt can be invoked on publications at the moment from the arrest. The recommendation was to prohibit the publication of any report which might be prejudicial to the rights of the accused from their arrest to investigation and finally their trial. It's because at the moment of the arrest of an accused a case would come into public discussion and if the media is not controlled from that point onward they can cause irreversible damage. Another recommendation made by the law commission in this report was that High Courts should be given power to instruct any media to hold off reporting of any criminal case.

¹⁸ (2005) A.L.T 740

¹⁹ 200 THE REPORT ON TRIAL BY MEDIA FREE SPEECH AND FAIR TRIAL UNDER CRIMINAL PROCEDURE CODE, 1973, Law Commission of India, (May 03, 2022, 02:00 PM) <https://lawcommissionofindia.nic.in/reports/rep200.pdf>

VIII. LEGAL RESTRICTIONS ON MEDIA TRIAL

(A) Restriction Under Constitution

The right to freedom of press is not specifically stated as a fundamental right in the constitution of India. But the Supreme Court of India recognized freedom of press as a fundamental right under Article 19(1)(a), right to freedom of speech and expression. Thus Article 19(1)(a) provided a fundamental right to the citizens of India to publish and circulate their ideas and all forms of media come under this.

But the freedom provided under Article 19(1)(a) of the Constitution of India is not an absolute freedom. Article 19(2) imposes reasonable restrictions on the freedom guaranteed under Article 19(1)(a). It allows the Government to restrict the activities of the media reasonably so that it does not violate the interests of 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 offence.

(B) Restrictions Under Contempt Of Court Act, 1926

The section 2(a) of the contempt of court act, 1971 says that contempt of court means civil contempt or criminal contempt. And under section 2(b) of the act, civil contempt has been defined as “wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.” Also section 2(c) criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

- (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
- (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Media commits contempt of court when they are overstepping their freedoms. Media trials are a result of such an action. When media trials are carried out they are evidently interfering with the process of fair trial. They are directly interfering with a judicial proceeding. Once a case is in the hands of the Court no one should be allowed to publish their own version of the facts which would interfere with the Judicial process. And if any individual commits a violation

resulting in the interference of administration of justice, he should be held guilty of contempt. In the case of *Ashwini Kumar Ghose v. Arabinda Bose*²⁰, a Times of India article criticizing a Judgment of a case and further implying there were motives behind the Judgment was subjected to contempt of court by the Supreme Court.

(C) Restrictions Under Indian Penal Code, 1860

The Indian Penal Code, 1860 is the official criminal legislation of India. It deals with criminal offences and their punishments. Mainly the criminal offences committed by the media falls under defamation. The code deals with defamation under sections 499-502. Under these sections the Code defines defamation and prescribes punishment for it. Also it deals with matters of printing or engraving defamatory statements and selling or publishing it. Media houses may attract these offences when they are publishing untrue stories which are just based on rumours and tarnish a person's reputation.

Media may also violate section 228 of the Code when they interfere with the judicial proceedings by any public servant by offering any insult or causing any kind of interruption. Also media houses have been found guilty of section 228A of the Code which prohibits the disclosure of the victim's name in certain cases.

IX. LANDMARK JUDGEMENTS ON MEDIA TRIALS

1. *Y.V. Hanumantha Rao vs K.R. Pattabhiram And Anr*²¹

A curfew was imposed on a district in the state of Andhra Pradesh. And a petition was brought before the Court on the ground that the curfew imposed was arbitrary and there was no legal ground to it. And while the case was pending before the court, a newspaper published an article about the curfew along with legal basis of curfews and its historical background. The Court held the act of publishing the article an offence as no publication should be made when the case was pending before a competent Court as it may cause prejudice. The Court also held that even the individual publishing the article believes it to be true, such a publication would amount to Contempt of Court.

2. *Nilesh Navalekha v Union of India thru the Secretary*²²

In this case, following the unnatural death of an actor, which became a sensational issue, there were a number of reports and discussions in the media. The media began to report it in such a way that it made people believe the actor's death was confirmed to be a murder. Many of the

²⁰ AIR 1953 SC 75, (1953) 55 BOMLR 278, (1953) IMLJ 211 SC

²¹ AIR 1975 AP 30

²² 2021 SCC OnLine Bom 56

channels even accused the actor's close friend as a guilty party and several reports were published by the media against the actor's close friend, painting the friend as the guilty party in public's eye. Following this events, a public interest litigation was filed against the activities of the media. And hearing the PIL the Delhi High Court gave direction to media to refrain themselves from publishing such materials and conducting media trials. The High Court made it clear that media trials will interfere with the investigation and thus affect justice being carried out and hence it is unacceptable. Courts held that persons conducting media trials of such nature would be guilty of contempt of court under the contempt of court act, 1971.

3. *Santosh Kumar Singh vs. State Through CBI*²³

In this case a law student was brutally raped and murdered. The accused person was a senior in her college. Before the rape and murder being committed the accused used to harass the victim in several occasions. This led to a police complaint being filed against the accused. Later the accused raped the victim and murdered the victim using a motorcycle helmet. The trial court acquitted the accused due to lack of evidence. And following the acquittal the father of the victim gave interviews to the media demanding justice to his daughter. He wanted the case to be reopened. The media took the same opinion and publicised it. Due to this positive initiative taken by media in the case the public also demanded justice to the victim and in 2010 CBI filed an appeal. Here the appeal was filed before High Court due to the pressure exerted by the media. And following the appeal the High Court held the accused guilty of offences under section 376 and section 302 of the Indian Penal Code and awarded death sentence. The Supreme Court also upheld the conviction on appeal but reduced the sentence into life imprisonment.

This case is an example of positive pressure exerted by media which gave justice to the victim and her relatives by punishing the culprit who was acquitted due to lack of substantial evidence.

X. CONCLUSION

In this research we can see the positive and negative aspects of media and certainly media trials are on the negative side. Even if the media is exercising the fundamental right to freedom of speech and expression, it should not be at the cost of another. Media trials does the exact thing. When the life of a person is put in front of the public they are violating the individual's privacy. Not only that, media trials also results in denial of fair trial to the accused which is fundamental right guaranteed under Article 21 of the Constitution of India. Media should not be allowed to put a person's life on line just for the sake of a story.

²³ (2010) 9 SCC 747

Even if there are many legal restrictions against media trials, media still uses their influence to sensationalize a case. The lack of laws to protect privacy is one of the reasons for it. So to guard citizens against it and to prevent the abuse of power by media houses, a better system of checks and balances should be made by legislative action
