

MEDIA TRIALS: PRESUMPTION OF GUILTY UNTIL PROVEN INNOCENT

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I. Introduction

In today's time media intrusion is an ethical dilemma for the almost all of the developing nations of the globe. William Pfeifer's comment on social media in court rooms gave a new direction to think that an impact has been significant through the rapid growth of social media and online networking. India's first Prime minister Pt. Jawaharlal Nehru had the opinion that a completely free press with all the dangers involved in the wrong use of that freedom is better than a regulated or suppressed press. In India the freedom of media has been recognised by the supreme court as of freedom of speech and expression which remains a facilitator for an engagement within a democracy like India in with participative media is considered as the 'Cornerstone' of democracy under Article 19(1)(a)² of the constitution. The evolution of media in India can be seen as one which was been exclusively operated by state but post liberalization there was a media boom and it led to a improvement of the proficiency of media through international news channels that entered into India i.e. CNN, BBC, TV18 and Bloomberg.

The trend of media coming forward to investigate the truth also know as 'trial by media' has been very a very popular term and has grown in the 20th to 21st century and this creates a perception of guilt before innocence. Judiciary having the key responsibility in our society to provide justice there have been various courts established at all levels to get proper justice at the proper time. In developing countries it can be seen that media trials are getting prominent day by day even though the political parties are not in favour of such trials but the lack of faith in the judiciary has made such trials popular. The concept of justice delayed is justice denied is applied here and citizens nit wanting to wait for years in order to get justice take matters into their own hands and hence the concept of media trials are very prominent in todays time.

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² INDIA CONST. art. 19, c.l. 1(a).

'Public court' this term has been reincarnates itself to media and in certain ways it has been seen that these media platforms has started interfering into court proceedings and this completely discards the concept innocent until proven guilty as the media has started doing investigations separately which acts in a prejudice way to the public and this starts affecting the decisions of the judges because the media comes into conclusions before the court. This causes an interference in the administration of justice and hence amounts to contempt of court under Article 129³ of the constitution.

II. Media Trials an Indian Perspective

2.1 The Right to Freedom of Press

Under Article 19(1)(a) of the Constitution of India grants freedom of speech and expression with reasonable restrictions imposed by Article 19(2). However the reasonable restrictions does not refer to 'administration of justice' but the concept of administrative justice is referred to under Section 2 of the Contempt of Court Act, 1971⁴ which defines contempt and what amounts to a contempt under Section 3, Publication in the media which interferes with the administration of justice thus amounts to contempt of court under the Act and reasonable restrictions can be imposed which is valid and will not be violative of Article 19 of the Constitution. Freedom of press is not specifically mentioned in Part III of the Constitution, however in the case of *Indian Express Newspaper v. Union of India*⁵ the Hon'ble Supreme court states that freedom of press is recognised by right to speech and expression. The balance between the fundamental rights of Article 19(1)(a) which recognises the right to freedom of press as a fundamental right and Article 21 which always the accused and civil litigants to have a free and fair trial, this balance has become inevitable and directions should be given by the court in the reporting of cases in media which are sub Judice. The courts in certain cases have stated that medial trials are an anti-thesis to the general rule of law leading to the miscarriage of justice.

³ INDIA CONST. art. 129.

⁴ The Contempt of Court Act, 1971.

⁵ (1985) 2 S.C.R. 287.

2.1.1 Immunity under the Contempt of Court, Act 1971

The contempt of court act, 1971⁶ protects publication and they are sheltered under proceedings, However any publication which tends to interfere or obstruct any proceeding shall constitute a contempt of court because such proceedings can be misleading and can affect the right to a fair trial of the accused by relating it to their previous convictions or a mere character assassination. In the Aarushi Talwar Murder, 2013⁷ before the trial had even begun the media had declared her parents as guilty which led to mass protests and left the public in hysterics. This right can also be seen as an immunity given to the press as publications have been unchecked without interference of the legislature.

2.2 Free speech v. Fair trial, The 200th Report of the Law Commission

In order to harmonize the rights of free speech and fair trial the law commission of India in the 200th report submitted various amendments and measures of postponement of proceedings in the Contempt of Courts Act, 1971⁸ and further enumerated that such powers of postponement cannot be vested in the subordinate courts during an active criminal proceeding. Under the Act the authority to take action for contempt does not lie in subordinate courts, they can make a reference to the high courts under Section 15(2). Such publications being prejudicial to the accused, could amount to contempt of court if such publications prejudice any trial later in the criminal courts was stated by the Supreme court in *Meneka Gandhi v. Union of India*⁹, in such cases 'Due process' under Article 21¹⁰ of the Constitution and to an extent the regulation of publication by media can be made.

In the report it has been observed by the Supreme Court that subconsciously judges are affected by the Prejudicial Publications in relation to the accused. The right to a fair trial is absolute under Part III of the Constitution of India. Even though the 17th law commission addressed the issue of free speech v. fair trial there has been no steps taken other than certain recommendations that have been made to treat the sub-judice period from arrest to filing of the charge sheet. While dealing with the administration of justice such steps can be seen as inadequate thus they suggest that a stronger implementation of the same is required.

⁶ *Supra* note 4.

⁷ Express News Service, "Aarushi murder case: SC slams „sensationalist“ media".

⁸ *Supra* note 3.

⁹ AIR 1978 SC 597 : (1978) 1 SCC 248.

¹⁰ INDIA CONST. art. 21.

2.3 Analysis of the effect of media trials

The effects of media trial can be analysed using precedents and through certain developments in recent times. In recent times and through these cases it can be seen that there is a clear issue that exists between the media and fair trial.

2.3.1 *Sunil Sharma v. The state (Delhi Administration and ors), 1996*

The court held that any conviction of the accused will solely be based on the facts and evidence of the case and not be effected by the decisions of the media.

2.3.2 *The Jessica Lal Murder Case*

The murder of a model named Jessica Lal took place in the year 1999. While working as a bartender in Delhi she was shot by a gun which resulted in her death. She had refused to serve Manu Sharma who was the son of the minister Vendo Sharma and as a result he took his revolver and fired it at the ceiling and then at her. The witnesses had pointed out Manu Sharma as the culprit but he was not arrested as he was in hiding and had destroyed the weapon. When he was found and arrested the trial court released him due to the lack of establishment of evidence by the police¹¹. As a consequence the release there was a huge public outcry which led to several protests taking place and the media actively started publishing the issue and made claims that the power was misused by Manus father to influence the outcome. In the year 2006 the accused was held guilty by an appeal at the high court of New Delhi at that point a magazine named 'Tahelka' revealed that witnesses were bribed by the father and kept away from the case and were later published on various channels, these channels also persuaded the public give their concerns and views regarding the trial. It is clear that trial by media may take place to satisfy public interest. The defence lawyer in this case argued that the accused was targeted by the media before and after the processing's. The court further admitted that the accused was affected by "Trial by media" but only to a limited extent and has no effect on the decision by the high court. It was also held that if the role of media is unregulated and restricted it may lead to a serious risk of publication of evidence or facts made before the court even before the court has made a decision the same. It is the role of the persons responsible to ensure that trial by media does not act as a hindrance and should not lead to the obstruction of fair investigation.¹²

¹¹ J. Venkatesan, "Supreme Court confirms life term to Manu Sharma"

¹² Sidharth Vashisht v. state(NCT of Delhi), AIR 2010 SC 2352.

2.3.3 The Double murder case

This case remains unsolved till today, the murders of Aarushi Talwar and Hemraj Baanjade. The police in this case considered Rajesh Talwar the father of Aarushi as the prime suspect and said that he found them in a objectionable position and therefore murdered them the care was later transferred to the CBI but they recommended closing the case due to the lack of evidence that existed and that Rajesh Talwar was considered as the sole suspect only based on circumstantial evidence and not solid evidence. The CBI court in the year 2013 rejected the claim by CBI and sentenced the parents to life imprisonment later in the year 2017 the Allahabad High Court, acquitted the parents on the ground of lack of evidence.

The media covered the case in both print and electronic media, they portrayed objectionable scenes of the victims and the parent later abusing them. This showed that media had acted as a court before an actual order was rendered. This led to the public being influenced by media to cause speculation about the character of the girl, this led to her reputation being affected and also the reputation of people that were mentioned by the media who were involved in such wrong doings.¹³ A PIL was filed regarding the role played by the media in this case and the Supreme court stated that the converge of the case in the media is one to worry and said that such coverage may cause prejudice to the defence and damage the reputation of the persons. The court held that guidelines will be laid down on media coverage and the court will not be affected by media coverage, the media is given freedom but such freedom is not absolute in nature. In the year 2010, Rajesh Talwar sought for Judicial intervention of media reports and alleged that the media kept publishing despite of the interim order passed by the Supreme Court, further the court held a restraint in publishing of material which interfered with the respect to all cases.

2.3.4 Sunanda Pushkar case

On January 17th, 2014 Sunanda Pushkar the wife of renowned politician Shashi Tharoor was found dead and the police was informed by Shashi Tharoor. The initial post-mortem reports claimed that the cause of death is suicide but later it was reviled that there was a drug overdose and there were injury marks on the body and stated the reason of death as unnatural.

¹³ Shoma Chaudhury, "Arushi Talwar murder case verdict is a chance for cops, courts and media to say: never again", <https://www.dailyo.in/politics/aarushi-talwar-murder-case-rajesh-nupur-talwar-hemrajinijustice-media-trials/story/1/20055.html> (May 11, 2018).

In October, 2014 the medical team came into a conclusion that the death was due to poisoning which resulted in an FIR being filed in the year 2015. The media reached the crime scene and published stories of the mysterious murder. The media by disclosing half-truths and twisting the statements went on to declaring Shashi Tharoor as the prime suspect and some media houses stated that the case was clearly of murder and the murder by Shashi Tharoor. The trial by media in this case creates the necessity to set out norms and regulations for the media and their ethics. "Right to silence" by Shashi Tharoor must be respected was stated by the court in relation to a defamation suit filed by Shashi Tharoor in the Delhi High Court on the grounds that the publications by media risked prejudicing the investigation and raised a concern to strike a balance between free speech and media trial.

Care and caution needs to be taken into consideration by press while reporting such cases.¹⁴ The press cannot declare anyone guilty or make any claims which are unsustainable. The role of media is to inform the public the facts of a case they in no way have the right to make any judgments and it can be held as a contempt to court. Hence, they are restrained from doing so.

2.3.4 The Nirbhaya case

This case¹⁵ took over the media like wildfire, before the proceedings of the court had started the media had come into conclusions and had conducted a media trial for the same. The judges of the cases stated that the trial of cases in media needs to be stopped till the case is over and said that there is an amount of pressure that is built on the judges while deciding the case due to media. The judgement rendered by the court in this case was appropriate due to the facts in question but they also stated that if they had not rendered the same the media would have questioned the competency of the court.

Through these precedents the effects of media on proceedings can be seen. Due to trial done by them before the court it creates an idea of misjudgement in the eyes of the public and thus the imposition of restrictions on media and publication are essential.

¹⁴ IANS, "Republic TV can report on Tharoor, can't compel him to speak on Pushkar death: HC".

¹⁵ Mukesh & Anr vs State (NCT of Delhi), 2012.

III. A Comparative Analysis to International Regime

3.1 Freedom of Speech in United States of America

Under the 1st Amended of the Bill of Rights, 1791 states that freedom of press is an absolute right and is not subject to any justification, interference with media will lead to an infringement of law which is contrary to the principle in India under Article 19(2). The Freedom of Speech and Expression in the United states comes with certain limitations.

In the case of *Schenck v. United states*¹⁶ Justice Homes set out a test of "clear-and present-danger", it stated that id words are used in a nature that brings a substantive evil the parties have a right to prevent the same and hence it can be seen that the first amendment is not absolute and does not give protection to all kinds of speech. Statements which are false of facts is another limitation and one cannot escape civil or criminal penalties imposed by law¹⁷. But reasonable ignorance can be used when there is a charge of obscenity.¹⁸ Fighting words are those which inflict injury to incite a breach on peace, the court said that the first amendment only guarantees the freedom of speech but not fighting words.

2.4 Freedom of speech in United Kingdom

In United kingdom under the contempt of courts Act,1981 empower courts to postpone any publication of reports that may make a risk of prejudice to the administration of justice in courts under Section 4 of the Act. J.S Mills in the 19th century further developed the concept of freedom of speech and based his arguments on liberty. According to him every individual has the right to express without harming other individuals.¹⁹ The Universal Declaration of Human Rights under its Articles 18 and 19 guarantees everyone the freedom of through and that everyone has the freedom of his/her own opinion, almost all modern constitutions reflect the same but in United kingdom they joined with various unions and follow European Convention of Human Rights and this under article 10 grantees the freedom of expression provided that there is no interference with public authority.

¹⁶ 249 U.S. 47 (1919)

¹⁷ *Gertz v. Robert Welch, Inc; Proconier v Martinez*, 416 U.S. 396 (1974).

¹⁸ *Smith v. California*, 361 U.S. 147 (1959).

¹⁹ Milton Sanford Mayer, TRADITION OF FREEDOM: SELECTIONS FROM THE WRITERS WHO SHAPED THE TRADITIONAL CONCEPTS OF FREEDOM AND JUSTICE IN AMERICA, 1957, p. 467.

In UK, defamation laws are stringent and the defendant has a high burden of proof. The court provided that defamatory statements could be published in public interest in *Reynolds v. Times Newspaper*²⁰. But this stance was abolished in the Defamation Act, 2013 which said that freedom of expression even though granted by law needs to follow the protection of reputation of a person.

2.5 Freedom of speech in Canada

In Canada the law states that when there is a conflict between two rights protected by law, there needs to be an equal balance achieved between both rights. Freedom of expression under Canadian law is permitted with reasonable restrictions imposed and thus has shortened the experience from US laws. Indian Law works in the same parallels to Canadian laws.

IV. Recommendations

Media trials are a serious issue which needs to be addressed and proper restrictions need to be made in order to prevent the inference of media trials with court proceedings. For the same the following are some suggestions which will reduce the inference of Media into the proceedings for the court- Firstly, the starting point for reforms should be made in the Contempt of Courts, Act itself the pendency of criminal proceedings should be made at the time of arrest itself and publications which are prejudicial in nature to the case should be permitted. The 200th law commission for fair trial is only recommendatory in nature and thus the recommendations need proper implementation.

Secondly, A change in the pattern of ownership of news channels, Currently there is a lot of ambiguity in the pattern of ownership if such stakeholders are known to the public it will help them in order to under the sources of the report. The "Press council of India" which is a statutory body which governs the standards of print media in India needs to have a better reach due to the limitation in power conferred on them currently.

²⁰ (2001) 2 AC 127.

Thirdly, There should be minimum standard that a person should have in order to join the media profession. These standards should be set on a central level and should be implemented and not recommendatory in nature. The fear of punishment is the only way to control the issue of media trials. This would make the media careful while expressing their views and it will restrict them to express trivial matters to great extent.

V. Conclusion

The involvement of media in cases have become powerful and the journalists try to investigate cases on their own before a judgement is made by the courts. This can be seen through the Jessica Lal case, Arushi Talwar case and so on. Even though the media has a positive aspects as they are the means of communication and helps in dissemination information that intern plays an important role in democracy there needs to be certain restrictions imposed in order to prevent the intervention of media in court proceedings. The freedom of press under freedom of speech and expression does not give the right to conduct media trials and come into their own conclusions. The media is expected to deliver unbiased news and put out proper facts rather than make their own judgements on an issue. But in most cases media tries to distort facts and bring about their own analysis to the case. The golden principle of a person being innocent until proven guilty is not followed by media and thence affecting a proper criminal justice system in India. It has been seen that media trials have a potential effect on judges subconsciously while rendering judgements and the concept of trial by media can be seen as contrary to the basic principle of rule of law. Hence, the media plays a vital role and media trials inference with the administration of justice.