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An Insight into the Constitutionality of Media Trials in India

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In accordance with Article 19(1)(a) of the Constitution of India, which guarantees freedom of speech and expression, the media is accorded freedom of the press. However, owing to this freedom, the media is permitted to report and publish articles based on interviews with witnesses and other parties about cases that are currently under consideration by a court of law, which may prejudice the case and hamper the administration of justice. Investigative reporting and ongoing news coverage by the media in high-profile cases can generate so much buzz about the issues under consideration that it leads to prejudice and impair the execution of justice. This research paper has been put forward by the researcher to gain insight into the constitutionality of media trials in India. This paper starts with an Introduction, wherein the term media trial has been introduced to the readers. Next, it proceeds with Chapter I wherein the historical evolution of freedom of speech and expression has been put forward by the readers. Further, Chapter II talks about the implications of media trials on the rights of the accused and how public opinion changes. In addition to this, the paper deals with the prominent case studies wherein the intervention through media trial had hindered the administration of justice. In continuation to this, Chapter III talks about the gaps in the existing regulatory framework governing media, and finally, the paper has a Conclusion which lays down solutions to fill in the gaps in the existing regulatory framework so as to ensure that media retains its beneficial function in a democratic nation.

Keywords: *constitution, democracy, freedom of speech and expression, gaps, media trial.*

INTRODUCTION

*Conscientious media is the handmaiden of an efficacious judicial administration.*¹

The term 'media' plays a significant role in society at large since it is responsible for raising public awareness, maintaining the government on its toes, and also in preserving democracy in our nation. As a result of this, the media is classified as the fourth pillar of democracy. Many prominent figures from throughout the world, including Pandit Jawaharlal Nehru, have advocated for freedom of the press under Article 19 (1) (a) of the Constitution of India as they believe media to be the cornerstone of democracy. Justice Bhagwati cited Free speech and open discussion have emerged as the foundation for democracy since they are the only means by which the actions of the government can be monitored in a representative democracy.

If democracy is characterized as the "government of the people, by the people", then it should go without saying that every citizen must have the right to take part in the democratic process.² Furthermore, free and open discussion of public issues is crucial for empowering every citizen to exercise their right to vote prudently. Consequently, free and independent media is fundamental to guarantee democracy in our country. However, it is vital to comprehend that media today has evolved into a 'Janta ki Adalat' in which media bypasses the judiciary, relies on the scant information it has, and expresses a prejudiced opinion prior to the judgement in the court of law. The term 'media trial' refers to the pervasive impact that newspapers and television have on the public perception of an accused person's guilt or innocence prior to the decision of the court. The unpleasant truth of today is that the majority of media organizations are owned or controlled by businesspeople or political parties, and the idea of unbiased reporting has been traded for increased ad revenues, which can only be obtained if the channel has a high TRP. The media has evolved to be a superpower, interfering with the due process of law because of a lack of established guidelines to regulate such cases. This paper delves into the constitutionality of media trials in India along with its impact vis-à-vis the prominent cases.

¹ Hon'ble Mr. Justice G.S Singhvi, 'Trial by Media : A Need to Regulate Freedom of Press' (2012) Bharati Law Review <<http://docs.manupatra.in/newslines/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf>> accessed 07 December 2022

² *Union of India v Bennett Coleman and Co. Ltd* (1988) (3) BomCR 581

ORIGIN OF FREEDOM OF SPEECH AND EXPRESSION

The most fundamental requirement for liberty is the freedom of speech and expression, which retains a coveted position in the hierarchy of liberty across different democracies. A free and independent press is a requirement for democracy since it not only serves as a watchdog over the government's institutions but also strives to rectify injustices in our legal system by rendering them public. Therefore, this chapter emphasizes the historical evolution of freedom of speech and expression in order to comprehend the complexities which have been associated with this fundamental right.

The provision protecting freedom of speech and expression had been incorporated in the Constitution of India Bill, which is considered as the first Indian articulation of a constitutional vision.³ Every person is free to express their ideas verbally, or in writing and to publish them in print without any previous censorship, but they must be held responsible for any violations of this freedom that may occur in a manner that the Parliament deems appropriate. Other pre-constitutional documents with provisions relating to freedom of speech and expression include the Commonwealth of India Bill 1925, States and Minorities 1945, and the Nehru Report. After a while, the Indian Constituent Assembly debated the necessity to enshrine the freedom of speech and expression in the Constitution of India. Though disagreements arose among the members over its inclusion, the freedom of speech and expression was eventually incorporated into the Constitution with the consent of the majority of the members.

In a democratic nation like India, wherein the Preamble to the Constitution guarantees everyone's freedom of speech, expression, faith, worship, and belief, freedom of speech and expression has grasped a special status in society. Over time, the right evolved into a fundamental right as a result of its inclusion and significance in the Preamble to the Constitution. Article 19 (1) (a) of the Constitution of India guarantees to all its citizens the freedom of speech and expression which encompasses the right to express one's ideas, convictions, and opinions through spoken words, written or printed words, visual art, or any other form. The Hon'ble

³ Routray Shriya, Rights and Freedom of Media with a special reference to privacy rights in India' (*Legal Services India*) <<https://www.legalserviceindia.com/legal/article-5750-rights-and-freedom-of-media-with-a-special-reference-to-privacy-rights-in-india.html>> accessed 08 December 2022

Court in the landmark decision of *Maneka Gandhi v Union of India*⁴ ruled that the only way to monitor government action in a democracy is through free speech and open discourse. The Court further observed that this right included the unrestricted ability to impart and receive information because, without adequate information, a person can neither effectively participate in social, cultural, or political life nor make an informed decision and participate strenuously in society. In disagreeing with this judgement, the Hon'ble Court in *State of Uttar Pradesh v Raj Narain*⁵ held that though maintaining and preserving freedom of speech and expression in a democracy is paramount, it is also crucial to place certain restrictions in place. Therefore, Article 19(2) of the Constitution stipulates that the State may pass legislation imposing 'reasonable restrictions' on the exercise of the right to freedom of speech and expression in the interest of the state's safety, public order, friendly relations with foreign states, sovereignty, and integrity of India or in relation to defamation or contempt of court.

The basic right of the press is implied in the right to freedom of speech and expression, even though Article 19 does not expressly mention it. *Express Newspapers v Union of India*⁶, a landmark judgement noted that the press has now presumed the position of the public educator, making formal and non-formal education plausible on a large scale, especially in the developing world where television and other forms of modern communication are still not accessible to all sections of the society. Additionally, it was observed that a democratic electorate cannot function responsibly without the publication of facts and opinions by the press, which serves to advance the interest of the public. In *Romesh Thapar v State of Madras*⁷, the Hon'ble Court observed that the freedom of speech and the press were fundamental to all democratic institutions because they permitted political debate, which is fundamental for the proper functioning of people's government.

Therefore, it can be argued that although the press has been given the same rights as individuals, it does not have any special standing above ordinary citizens and cannot claim any privileges until it has been expressly granted by law. The public has a right to information, and the

⁴ *Maneka Gandhi v Union of India* (1978) SC 597

⁵ *State of Uttar Pradesh v Raj Narain* (1975) SCR (3) 333

⁶ *Express Newspapers v Union of India* (1985) SCR Supl. (3) 382

⁷ *Romesh Thapar v State of Madras* (1950) SCR 594

government has a responsibility to inform the populace whenever necessary, therefore the freedom of the press serves the public more than it does the press.

IMPLICATIONS OF MEDIA TRIAL VIS-À-VIS PROMINENT CASES

India's criminal law is based on the presumption of innocent until proven guilty and guarantees the accused the right to a fair trial. The Constitution of India provides the accused with these rights. However, when these rights are in conflict with one another, it creates one of the most important confrontations in the administration of criminal justice, which is known as the "media trial" or "prejudicial news reporting."

Furthermore, because of their immense power, the media goes far in reporting the truth and in broadcasting interviews with persons like witnesses, victims' relatives, and members of the legal community which is prejudicial to the ongoing criminal investigations. In any event, a parallel inquiry by the media can put excessive and unreasonable pressure on the authorities conducting the investigation, thus posing a serious threat to the legal system. Additionally, as it negates the objective of the establishment of an adjudicatory body, the media is not justified in engaging in such investigative journalism outside the jurisdiction of the appropriate court. Millions of viewers of news channels become influenced by the information presented by the media and tend to create an opinion about the case whenever the media sensationalizes a situation. Thus, it can be concluded that media trial has a significant impact on the rights of the accused and on public opinion.⁸

a) Effect on the rights of the accused

The fundamental problem with media trials is that they don't strike a balance between freedom of the press and the right of the accused to a fair trial. The reasoning presented by the media in favor of free speech is that it stems from the public's access to information and participation in discussions that affect them. However, this freedom must be consistent with the rights of the accused and must not interfere with the administration of justice by sensationalizing or

⁸ Apoorva Singh, 'A Study on the Influence of Trial by Media on the Administration of Justice & Rights of the Accused' (NUALS, 2021) <http://14.139.185.167:8080/jspui/bitstream/123456789/417/1/LLM_0120010_CAL.pdf> accessed 08 December 2022

distorting the truth. It is equally unfair to the accused as it is to the victim and society to deny the accused a fair trial and to preserve the presumption of innocence. Additionally, a media trial violates the right to privacy of the accused. This is because there has never been a clear consensus regarding how much importance should be placed on personal privacy versus public interest when considering the competing rights of media freedom and privacy.

b) Effect on the Public Opinion

Media has a tremendous amount of capacity to shape or sway public opinion, and as technology has advanced, it is now even capable of polarizing people's opinions. The emergence of the right-wing and left-wing press was a result of polarization, which has been a recurring subject in Indian politics. There is growing evidence that the media has an impact on people's opinions and political action. The cultivation of people's ideas and opinions is another way that the media has shaped society. Regular exposure to the media alters how its users view the world and act. By portraying the legal system as defective or prejudiced in favor of the accused, media trials can further polarize public opinion against how the legal system functions. Thus, media trials have a significant impact on public perception and erode public confidence in the legal system.

In the past couple of decades, it has become increasingly prevalent for the media to sensationalize news by focusing on incidences of rape, murder, and corruption which have been laid down as follows -:

- **Salman Khan Hit and Run Case**

On September 28, 2002, Salman Khan's Toyota Land Cruiser smashed onto Bandra's sidewalk, killing one person and injuring four others before speeding away. Ravindra Patil, his bodyguard promptly filed the First Information Report. Salman Khan's blood tests had been taken by the police wherein it was indicated that he had consumed more alcohol than was permissible. He was then taken into custody by the Bandra Police but then later released on bail. Furthermore, he had been charged under Section 304 of IPC in October 2002, however, the Bombay High Court eventually dismissed the charges. In 2013, he had been prosecuted before the Bombay Sessions Court where he denied the charges pleading not guilty, and had not only been convicted of culpable homicide but was also found guilty of driving without a license while intoxicated.

Noting the reasons for Ravindra Patil being an utterly unreliable witness, the court granted the appeal ruling that the prosecution was unable to prove its case beyond reasonable doubt and exonerated Salman Khan of all the charges.

The media leveraged this situation as a huge chance to increase TRP by sensationalizing the story rather than holding Salman Khan responsible in this matter. The top newspapers in English and Hindi published live pages with banner headlines and lots of graphics, involving the people in debates and discussions on the decision of the court. Furthermore, some news outlets were even attempting to whitewash his reputation by emphasizing his charity forum and portraying him as a kind individual. The Hon'ble Court discussed the role that the media had, adding that it was expected of the Court to be immune to pressure from both the people and the media. Since public opinion is frequently formed based on information that is constantly aired by the media, the law of evidence does not allow for it to be a consideration that the Court should consider when rendering a judgement.

- **Noida Double Murder Case**

On May 16, 2008, Aarushi Talwar was found dead in the bedroom by her parents. Hemraj, who was at that time believed to be the primary suspect in the killing had gone missing, but the very next day his body had been discovered on the terrace. The investigating authorities, in this case, came under heavy fire for failing to protect the crime scene, which jeopardized some of the most critical forensic evidence. All of these factors contributed to an inadequate investigation, which prevented the police from conclusively solving the case.

The Central Bureau of Investigation (hereinafter referred to as CBI) was then entrusted with the case, wherein Rajesh Talwar and Nupur Talwar (Aarushi Talwar's parents) had been recognized as suspects based on the circumstantial evidence in the closure report submitted by CBI. In the year 2013, they had been found guilty and were sentenced to life imprisonment by the Ghaziabad Sessions Court. An appeal was filed by them in the Allahabad High Court, wherein they had been acquitted in 2017 due to insufficient evidence and lack of ability of the prosecution to prove its case beyond a reasonable doubt.

The media engaged in 'yellow journalism' rather than uncovering the truth about the case.⁹ Leading English and Hindi news channels began using dramatic representations of intimate and homicidal situations to illustrate their interpretations of the tale. The Talwar family was vilified by the media as shrewd, decadent, immoral, cold, and unfeeling people. The media descended to such a low level that it started questioning the morality of a deceased girl and her parents. A PIL had been filed in the Supreme Court, which in response to complaints about the role that the media had played in this case, ordered a ban on the publication of information that might impede the investigation's progress and chastised both the print and electronic media for their failure to recognize the inaccurate reporting as it intruded with the rights of the defense of the accused.

Before the court could even render the decision, the media pronounced the Talwar as guilty. They endured suffering and humiliation without any eyewitness or circumstantial evidence. This case serves as a typical illustration of how media coverage of a case may be detrimental to the rights of the accused and the fair administration of justice.

- **Sushant Singh Rajput Case**

On June 14, 2020, Bollywood star Sushant Singh Rajput was found hanging at his Mumbai residence. The Mumbai Police identified it as a suicide case once they arrived at the scene. His postmortem findings further supported the police's assertions by identifying asphyxia from hanging as the cause of death. When Sushant's father filed a FIR with the Bihar Police, things took an unexpected twist. On charges of aiding suicide, illegal restraint, theft, criminal breach of trust, and cheating a FIR was filed against Rhea Chakraborty and six other persons, including her relatives. Furthermore, she had been accused of abducting and emotionally tormenting him. The Enforcement Directorate also came into the picture after the complaint registered by his father. All these events led to the denigration of Rhea and her family by the media, and she had been declared guilty by the media even before the investigation was complete.

Since it had been covered nonstop for two to three months, this case had evolved to be the biggest media trial in the history of Indian broadcast media. The case had garnered so much

⁹ *Ibid*

attention that all the news outlets began live-streaming its progress without a pause and overlooked other crucial issues such as Covid-19. Sushant Singh's right to privacy had been completely violated when TV journalists who were covering the incident posed as psychiatrists and publicly discussed his mental health while browsing his confidential medical records. The media representatives assumed the role of the investigative authorities and conducted a number of national television interviews with witnesses whose evidence would be beneficial to the court. Furthermore, a number of conspiracy theories regarding drugs and money had been developed to generate public attention.

All of these events led to a PIL being filed in the Bombay High Court, wherein the Court urged the media to use caution when reporting on suicide cases. The Court further observed that the media trials violate the program code set forth in the Cable TV Network Regulation Act and hinder the administration of justice. Furthermore, it was noted that in order to avoid having media outlets punished for contempt, any story has to adhere to the rules of journalistic ethics and standards.

All the above-mentioned cases demonstrate how the media's involvement can be detrimental to both the administration of justice and the rights of the accused. Even though situations like these make for a great media narrative, they actually involve a grieving family who is yearning for the answers and the truth. A request to be left alone to grieve in peace while the authorities handle the issue professionally should not be interpreted as an admission of guilt or a refusal to answer the endless questions of television anchors. Instead, it should be comprehended as a simple requisition to be left alone to express their sorrow without interruption.

GAPS IN THE EXISTING REGULATORY FRAMEWORK

The Indian media sector has been booming as a result of reasons such as rising levels of literacy, more consumer spending power, aggressive publication, and the availability of digital media. However, along with the growth in the media sector, there are a few shortcomings in the current structure that could be alarming. These flaws have been laid down as follows:

- **Escalating Privatization of Media**

According to the current media market trends, cross-media ownership has been escalating in India. Cross-media ownership refers to a scenario in which one media company dominates various forms of communication such as print, television, and radio. Nowadays, corporations own a variety of media platforms all around the world. They consider it as a tool to exercise influence and power in addition to another way to increase their earnings to grow the company. Furthermore, it enhances its financial objectives by making investments in media outlets. The majority of the top media companies are owned by huge conglomerates that are still under the control of the founding families and have investments in a wide range of sectors besides media. Reliance Media is one such example in India which exercises a substantial amount of influence over a large number of media outlets in the country. Such media ownership has radically altered how the media should operate and is detrimental to the functioning of a democracy. This is the consequence of the major flaws existing in the legal framework which has been designed to protect media diversity and deter media concentration.

- **Sensationalism of News**

Sensationalism can be classified as one of the forms of rhetorical strategies that are used in mass media, wherein events and topics are portrayed in news reports in a style that most readers and viewers find compelling. This method of news reporting encourages emotionally charged or biased interpretations of events and may distort the truth of a story. The media's emphasis on sensationalism is primarily driven by TRP. Every year, every news aspires to achieve high ratings. Television networks spin stories into big controversies in an effort to boost their ratings and gain an unfair advantage over their rivals. Such tales have an effect that can linger for a long time in the public eye and can alter how we perceive the media in general. People may think it is difficult to understand the truth of what was covered when the facts of a story are completely exaggerated for that particular newspaper or TV channel to attain a higher rating. The general public would also need to think about it if the news they are receiving is authentic in addition to filtering away stories to get the truth.

- **Lack of Accountability of Media**

The term 'media accountability' refers to the widespread conviction that the mass media must be held accountable to the public interest. This implies that the media must act in a way that advances society as a whole. The NSBA is the governing body for electronic media which operates on a self-regulation framework. But the NSBA is made up of representatives from the member news stations and serves as the body which is responsible for hearing complaints and resolving grievances. As no one can be a judge in their own matter, this is a flagrant violation of the norms of natural justice. Furthermore, since NSBA has jurisdiction only over its members, the other news stations operate mostly unregulated and in accordance with their own regulations. Therefore, the NSBA actually offers little or no accountability for electronic media. Any self-regulatory system must be impartial, timely, proactive, participative and most importantly, one to which all mass media outlets are dedicated and accountable. Thus, it is undeniable that the accountability systems for all types of mass media should be overhauled.

- **Online Journalism**

The institutional press no longer has exclusive access to the public due to the growth of online journalism. Any kind of information can be disseminated to the rest of the globe by anyone. Emerging digital actors that identify as journalists while having no formal education or institutional experience at all are examples of how the journalism industry is undergoing ongoing changes. These new types of news producers frequently annoy and obfuscate the traditional boundaries of the journalistic sector in the course of their journalistic endeavors. Since anyone can write online articles claiming to be a journalist, there should not be absolute freedom in the case of online journalism from a regulatory standpoint.

CONCLUSION

The media, one of the means of mass communication, facilitates the widespread dissemination of information. It maintains people informed about social, political, and financial events, which is crucial for a democracy. Though the media is expected to convey information objectively and to present the facts without rendering any decision, however, it frequently endeavors to distort the truth and deliver its judgement even in front of the Court, thus invading the personal and

private space of an individual. But on the other side of the coin, it is unthinkable to negate the beneficial function that media performs in a democracy as the media holds the government responsible for its actions by informing the public about all the activities of the government.¹⁰

Along with this, the media also encourages openness and offers people's perspectives on diverse topics a platform. In order to ensure the positive role played by media there is a need for reforms in the current mechanism regulating media. Firstly, according to the recommendations of the 17th Law Commission, the Contempt of Courts Act of 1971 has to be modified in order to prevent media from publishing defamatory articles. Furthermore, a criminal trial that is still underway should originate from the day of arrest and not from the date of filing of the charge sheet. Nevertheless, not all the media coverage of the case needs to be regulated. Secondly, it is essential that aspiring journalists have the requisite training as a part of their school of journalism.

There ought to be a shift of perspective about how journalism students should be educated regarding the rules governing media, how the press operates and regarding the standards and ethics which are expected of professionals. Lastly, online news media should be subjected to the PCI regulation by amending the Press Council Act of 1978. A proper enforcement and adjudicating mechanism that has the authority to impose violators of criminal penalties is the need of the hour. Along with this, it should be made mandatory for media outlets to submit annual statements in compliance with the code of ethical journalism. Thus, these suggestions are the need of the hour so as to aid the media in retaining its beneficial function in a democratic nation.

¹⁰ A Gowri Nair & Saipooja, 'Fair Trial, Judiciary and Media - Need for Balance' (*Academike*, 4 February 2015) <<https://www.lawctopus.com/academike/fair-trial-judiciary-media-need-balance/>> accessed 08 December 2022