

CONSTITUTIONALITY OF MEDIA TRIALS

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Abstract

Today in the 20th century with the changes and development that is taking place in the society. Media is making a strenuous effort to show the bare truth and sometimes which may be harsh. It would have been very difficult or almost impossible for people to know everything that is happening around the world so media acts as a source of information in the society. The media uses different medium for transmit information it can be transmitted through newspaper, Television, radio, social media platforms and etc. Media playing very significant role in influencing the society and it also holds a vital role in molding the opinion of the people. India is a democratic Country and the media is considered as the fourth pillar of democracy. The media plays an important role in strengthening the democracy. The Media trial there has been Various significant cases where media trial had helped in exposing the criminal and putting them behind the bars whereas there are several cases where trial by media has drew criticism for molding the opinion of the society and causing psychological variation in various cases. Hence media has both positive and negative impact in influencing the society. The media has completely overlooked 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 reasonable doubt“. Now adays it is observed in the media trial is where the media itself does a separate investigation, it molds the public opinion against the accused even before the court takes cognizance of the case, hence in some cases we find the media trials are in encroaching in the judicial proceedings. Media trial is also an appreciable effort along with the revolutionary sting operations as it keeps a close watch over the investigations and activities of police administration and executive. But there must be a reasonable self-restriction over its arena and due emphasis should be given to the fair trial and court procedures must be respected with adequate sense of responsibility.

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Introduction

The media wields tremendous influence in our society. Media acts as the mirror of the society. The term "media" means medium through which communication outlet, or tools which is used to store and deliver information or data. Mass media refers to a diverse array of media technologies that reaches the large audience via mass media or the medium of communication.

Media play a commendable role in the society as it has power to influence people and it can even bring revolution in the society. Media plays an important role in starting a trend to bringing the accused behind the bars. As there is a famous saying „With great power comes great responsibility“. Hence media holds a great responsibility in conveying the information and it focuses on the sophisticated and qualitative way of transforming information and out letting the information to the audience. The media trials are actually having some positive and negative impact and so it is considered as a mix of both negative and positive aspect.

It is the media whether it can be print or electronic it generally strings people who are geographically divided. Mass media Creates awareness in the society. Media is the place where anyone can contribute to important issues or topics of discussion relating to this society. Hence media is considered as the fourth pillar of democracy.

Media houses focuses on promotion of Democratic ideas through the spread of information. The mass media communication allows or rather give right to people to participate and that would help in gathering of information that can be viewed and shared by the people at large. It also extends the media's relationship in public spear. The media act as a platform where the information is shared with the public and that information which are important and which the public wants or need to know gets published. The media houses also have an important accountability for the information transmitted by them to the audience at large. As the Constitution which provides freedom of speech and expression it also includes within its ambit the freedom of press which is provided Under article 19(1)(a). There is always a debate on Media trial on the ground that whether the freedom of speech and expression as claimed by the mass media houses means interfering in the ambit of the judicial proceeding and the right of the accused to fair trial. The constitution has also provided the right to the accused for a Fair trial under Article 21 which guarantee right to fair trial. Hence a media trial would involve a journalist to only report on the basis of the facts and not on basis of personal attitude toward the facts. The mass media is supposed to be neutral while representing a particular matter and it is essential for the reporter should approach the issues on an unbiased.

In today scenario media has facing a lot of Criticism in its operation as media trial it leading to psychological variation and the media trial generally influences the trial. So, in today's scenario media to increase the circulation of newspaper and TRP of news channels has completely forgotten the line of difference between an accused and a criminal. There have been many media trial which had faced a lot of Criticism on being biased and even those media trials have influenced the cases. Like in the case of Aarushi Talwar and Ruchika case. Whereas in some case the Media trial has been appreciated for their effective performance in exposing the accused. As in the cases of Priyadarshini Mahatoo case, Jessica Lal Murder case, Nitish khara case, Bijal Joshi case. Hence media trials today can be both boon and bane.

Key Words: strenuous, Fourth pillar, Media trial, Influence, Constitution

History of Media Trial

The term Media, though coined recently, Its essence is there from along time but its meaning had been derived from the case of Roscoe "Fatty" Arbuckle, 1921, In this case the accused was acquitted by the court, but he had lost his job after he had been declared guilty by media. Hence it can be understood that media plays a huge role in moulding the opinion society. Another famous case in the trial of O.J. Simpson, 1995, where the media had promoted the case and influenced the mind of the viewers even before the pronouncement of by the court.

It is often that the media coverage plays an importance role in influencing the mind of the viewers. Effect of media trial can be having both negative and positive impact.

Even before Independence, India had already become party to the United Nations Declaration on Human Rights 1948, (UDHR). This was indicating to the future plans and visions for a free, fair and democratic government. In furtherance of this, when India finally got independence the first Constitution was framed in 1950 and India had declared itself to be a fully democratic country, having adopted the basic principles of the UDHR. In the constitution the right to press is a fundamental which has been guaranteed by the constitution.

The Media has always played an important role in impacting the society and in moulding the opinion of the society. Press had played a very important and productive role in the independence movement, through its strong support for the popular movement of Satyagraha and abdication of foreign goods and other similar forms of freedom struggle. The print media had an huge impacted during the British era. Hence media has played an important role in Freedom struggle.

The framers of our Constitution knew the immense power vested in the media; therefore, they imbibed the Freedom of Speech and Expression in Article 19(1)(a) of the Indian Constitution which involves the freedom of press.

Constitutionality of Media trials

As the Constitution which provides freedom of speech and expression it also includes within its ambit the freedom of press which is provided Under article 19(1)(a). But the freedom which is recognized under the Constitution is to be so exercised within its reasonable boundaries.

Freedom of press has been expounded by Supreme Court through series of judgment.

In the case of **Ramesh Thapper vs state of Madras**¹, the petitioner was the printer, publisher and editor of an English journal called Cross Roads printed and published in Bombay. Under Section 19 (1)(a) of constitution and under the Madras Maintenance of Public Order Act, 1949, the entry and circulation of the journal was banned in the State of Madras. In response to the ban, the petitioner had filed a writ petition before the Supreme Court, averring that the powers under the Act were an excessive restriction on freedom of speech and expression under Article 19(1)(a) of the Constitution.

In response to the petition was filed by the applicant and it was considered on behalf of the respondent State, that the restriction was for the purpose of public safety and public order and the restriction was made as it was contradicting with article 19(2). This could be equated with the security of the State, which is considered as a reasonable restriction on freedom of expression

¹ Ramesh Thapper vs state of Madras AIR 1950 SCR 594

under Article 19(2). The court held in this case freedom includes the freedom of ideas, their publication and circulation. The Court also quashed the order of the Government whereby the newspaper was banned and the freedom of press was expounded in this case.

In **L.I.C.v. Manubhai Shah**², the Supreme Court reiterated as in **Indian Express Newspapers v. Union of India** stated that freedom to circulate one's views can be by word of mouth or in writing or through audiovisual media. This right to circulate also includes the right to determine the volume of circulation.

In **Tata Press Ltd v. Mahanagar Telephone Nigam Ltd**,³ the Supreme Court also included into freedom of speech and expression the right to advertise or the right of commercial speech. Before this decision, advertisements were not considered as part of the definition of free speech. This decision reflects the dilution in the already wide freedom of speech and expression. It was stated in the case of **Hamdard Dawakhana v. Union of India** AIR 1960 SCR (2) 671 The allegation of the petitioners was that various actions had been taken against them by the responded as it was violated the fundamental rights under Art. 19(1)(a) and 19(1)(f) & (g). The supreme court in this case held that the right of freedom of speech includes the right to acquire and impart ideas and information about matters of common interest. Today's the in reality the

² L.I.C.v. Manubhai Shah AIR 1992 SCR (3) 595

³ Tata Press Ltd v. Mahanagar Telephone Nigam Ltd JT AIR 1995 (5) SC 647

Mass Media houses are concerned in making profits and the Primary role of media houses is to address economic considerations, which are derived through advertisement. Advertisements are aired on the channels based on their Television Rating Points (TRPs). With surge of Competitiveness and need to remain relevant, news networks took up new initiatives for the „public at large“. While majority of media campaign are positive in nature, but the role of media in investigative journalism of matters pending trial is doubtful. Hence it is clear that are the media is the fourth pillar of democracy. So, the freedom that is enjoyed is not absolute rather subjected to some limitations. Media is not only medium to express one feeling opinion views or emotions but rather is an important and responsible instrument in building the opinion of the Society. **In Hindustan Times v. State of U.P**⁴, the Supreme Court again reiterated the importance of advertising and its connection with the circulation of paper.

Sakal paper ltd vs Union of India⁵ The Court in this case held that the right to propagate his ideas guaranteed in Article 19(1)(a) extended not merely to the matter which he was entitled to circulate but also to the volume of Circulation as in this case there was a provision Newspaper (price and pages) Act 1956 which has fixed the minimum number of pages and its price which the newspaper entitled to publish. The order

was challenged as it was violative to the freedom of press, since its adoption meant either reduction in number of pages or raising the price. In either case there would be a volume of circulation of the newspaper and therefore, a direct infringement of the liberty of the press. The order thus, acted as a double-edged knife. Hence Supreme Court struck down the order and held it to be inoperative since the impugned Act and the order placed restrained on the volume of Circulation.

As every coin has two side and with the increase in importance and power of media a certain degree of responsibility lies on the media. the media trials are capable of changing the whole through which people perceive various event. So, the freedom it enjoys is not absolute rather subjected to some limitation. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India.

The media Trial is a process that is essentially needs to be carried out by the courts. The trial conducted by the media is definitely an undue interference in the process of delivering the justice. Before delving into the issue of justifiability of media trial it would be important to define the media trial as trial is a word which is associated with the process of serving of justice. The word trial is the essential component on any judicial system that the accused should receive a fair trial and the accused should have a right to be heard. Media trial where the media itself does

⁴In Hindustan Times v. State of U.P Writ Petition (civil) 328 of 1992

⁵ Sakal paper ltd vs Union of India 1962 SCR (3) 842

a separate investigation on a particular case or issues that is prevailing in the society and for the case it also builds a public opinion against the accused even before the court takes cognizance of the case.

Accused Right to fair Trial and media trial

Trial by media has always been in debate because of the tug of war between two conflicting principles – free press and free trial, in both of which the public are vitally interested. The freedom of the press stems from the right of the public in a democracy.

Similarly, the Right to Fair Trial as Right is a concept which is essentially embodied in the Constitution of India. In a democratic country even, an accused cannot be denied his right to life and personal liberty. Indian Constitution under Article 21 renders the fair trial a part of life and personal liberty. The judicial system has encompassed certain rights to the accused as follows: every person is entitled to a free and fair trial the trial should be independent, impartial, uninfluenced and unbiased, the guilt is to be proved beyond reasonable doubt, an accused is presumed to be innocent until proven guilty. The onus of proving that the accused is guilty is on the prosecutor. The right to legal representation, the right to speedy trial, the right to be present during trial and examine witnesses.

Media trial has both positive and negative impact. In some case media trial cause hindrance in the fair trial of a person which the person is

guaranteed by the constitution and in some cases result in causing more harm rather than benefit to the victims. Sometimes due media trial identity of the victims is revealed even though actual name isn't revealed and which causes an effect on the mental health of the victim. Hence the media trial is infringing and they are causing the Breach of personal privacy. In Many times media trial is based on leaked information from anonymous source and in those cases the breach in privacy can affect or harm the essence of the case. In some cases, due to the bias in public opinion it leads to interference in the judicial proceeding. The media trial is causing a adverse effect or interfering on judicial proceeding therefore the constitution granting the right to press has subjected certain reasonable restriction under Article 19(2).

Legal system is based on facts not on emotion or perception. Hence the right to fair trial is absolute of every individual within the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution. Needless to say, right to a fair trial is more important as it is an absolute right which under Article 21 of the constitution. The right to freedom of speech and expression in contained in article 19 of the constitution. Article 19(1) (a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression. In accordance with Article 19(2), this right can be restricted by law only in 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

In *Zahira Habibullah Sheikh v. State of Gujarat*⁶ the Supreme Court explained that a “fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.”

*Mohd. Hussain & Julfikar Ali v. The State (Govt. Of Nct)*⁷ stated that every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty. Thus, right to a fair trial being a fundamental right cannot be refused to any person by the virtue of Constitution.

Significance of trial by media

Trial by media is a double edged- Sword. In some cases, media trial has been providing tremendously effective whereas in some cases it faced a lot of Criticism. In some case the media trials and the tremendous public support and the public outcry for immediate justice had helped in the judicial proceedings. The media trial like the television debates, panel discussions and public polls on news channels, so that the masses are aware of both sides of the coin and

are prepared to side with the side that’s right. Media without any intention it provides real truth to public and also helpful to maintain the law and order in the country. Hence a free and fair media is a prerequisite to democracy. sometimes a drop of ink dropped down from the journalist's pen might be more powerful than a bullet as the media play a huge role in moulding the opinion of the society. In some cases, media has attended significant proportion and has properly guided. The media trials are actually a mix of some positive and negative aspects. Its media whether print or electronic that strings people who are geographically divided. The unhindered freedom of speech given to the media is required to be heedfully exercised. The concept of media trial is not a new concept. The media has gained focus in its role in the trial of Jessica Lal murder case and the Priyadarshini Mattoo case and likewise many other high-profile cases.

In the Jessica Lal murder case. The accused who had been alleged in the murder case after several trial was convicted in 2006 and had been served with imprisonment for life. But later in 2020 there was some reduction was made in convict’s punishment. Hence in this case the media trial had played a huge role in this case in conviction of the accused and had also impacted the opinion of the public and also had fairly helped in the process of justice.

Similarly, in the case Priyadarshini Mattoo case the media trial had played a commendable role.

⁶ *Zahira Habibullah Sheikh v. State of Gujarat*, Appeal (crl.) 446-449 of 2004

⁷ *Mohd. Hussain & Julfikar Ali v. The State (Govt. Of Nct)*, CRIMINAL APPEAL NO. 1091 OF 2006

In this case Priyadarshini Mattoo was a 25-year-old law student, who was found raped and murdered at her house in New Delhi. In this case the prime accused had been stalking and harassing her for several years. Priyadarshini had complained that the accused was harassing and stalking her and later She had been provided security. The accused was from an influential family. In retaliation to the complaint filed by Priyadarshini the accused also lodged a complaint against the her. However, the complaint was turned out as it was merely malicious. Later the victim was found dead. Later in the prime accused was acquitted and was given benefit of doubt in the judgement pronounced by the trial court. The appeal was made at the High Court and the accused was awarded death penalty. Later, the appeal was made by the accused against the death sentence to the Hon^{ble} Supreme Court. His punishment was reduced from death penalty to life imprisonment. Hence the media trial in this case had played a commendable role in this case in bring out the truth. In this case there was a free and fair media trial which had positively impacted and has properly guided in this case in bringing out the truth.

Media trial drew criticism

In some case the media has drew criticism. The role of media has impediment in the serving of justice and in the fair trial. There has been always a conflict between the principles of Free press and Free trial both are a concern of public

interest and even the public are vitally interested. There have been numerous instances in which media has been accused of conducting the trial of the accused even before the court pronounces its judgment. In some case the media trial has cause hindrance in the judicial proceeding and which has led to delay in the serving of justice. As every person has a right to free and fair trial. As the media trial are infringing and they are causing the Breach of personal privacy. In some cases, due to the bias in public opinion it leads to interference in the judicial proceeding. As the Journalism is a very powerful process which affects and moulds the public opinion regarding a particular matter or a case.

In the Noida double murder case famously known as Aarushi Talwar Murder Case. This case is a unsolved murders of 13-year-old girl Aarushi Talwar and 45-year-old Hemraj Banjade, a male domestic worker who was employed by her family. The two were killed on the night of May 2008 at Aarushi's home in Noida. The case had also aroused public interest and it also received a heavy media coverage and the suspects were criticized in the trial by media. In this case the parents were considered as the prime suspect in this sensational case. The media in this case had portrait the parent as the main accused even before final judgment of the court and the puts a question mark on the media trials and the social responsibility of media. Later the case moved to CBI but as there were no concrete evidence. Hence CBI used a dubious

method to extract a confession against prime accused in this case. In 2013 the parents were convicted and sentenced to life imprisonment. The accused appealed against the order pronounced by the Allahabad High Court. Later the Hon^{ble} Supreme court acquitted them on the ground that the evidence against them unsatisfactory and there where not concrete evidence. The case was closed due to the critical gaps in the evidence. Later the media trials faced a huge criticism on portraying the parents to be the accused in this case even before the pronounced of the judgement.

Hence there are many other cases where the media trial drew criticism for moulding the opinion of the society. "As it is said the drop of an ink from the pen of a journalist is more powerful the a bullet" and it can be concluded that media has both positive and negative impact in moulding the opinion of the society.

Conclusion

From the above article it can be concluded that the media trial has both negative influence and positive effect. The media trials also provide awareness and helps in social progress maintaining the personal and professional ethics. Media is making a strenuous effort to show the bare truth and sometimes which may be harsh. The media trial has acted as a platform in in raising the voice against injustice in rapidly changing socio-economic conditions media has gained prominence and hence referred as a fourth pillar of democracy. Of course,

sometimes a drop of ink dropped down from the journalist's pen might be more powerful than a bullet. The has helped in serving of justice while in some case has also caused hinderance in the process of justice.