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MEDIA TRIALS AND THE RIGHT TO FAIR TRIAL IN INDIA: A CONSTITUTIONAL ANALYSIS

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ABSTRACT

With the increasing role of media in criminal investigation and trial procedures, there has been the emergence of the practice of media trials. The concern arises here since media trials can impinge on the administration of justice. Whereas the media plays an important role in ensuring transparency and awareness among the general public, the excessive use of media by the judiciary and lawyers in criminal investigations and trials may violate a person's basic right to a fair trial. This article analyzes the constitutional conflict between two rights provided for in Articles 19(1)(a) and 21 of the Indian Constitution, freedom of speech and expression and right to life respectively. Article 21 also includes the right to a fair trial. By conducting a legal analysis of cases decided by courts in relation to current practices in media, this paper aims to explore the issue of media trials and their effects on the administration of justice.

Keywords: Media Trial, Fair Trial, Article 19(1)(a), Article 21, Freedom of Speech.

INTRODUCTION

The rise in the number of television channels, newspapers, and online media platforms in today's era has raised a lot of discussion on the way in which the media covers criminal investigations and court cases. Such a situation is termed a "media trial." A media trial takes place when the media organizations come to a conclusion and publish their opinions on whether a person is guilty or innocent of the charges laid against him or her, even before the judgment has been passed by the judiciary.

India is a democracy, and thus it places great emphasis on the right to freedom of speech and expression for fostering transparency and accountability. The media is also considered the

fourth pillar of democracy since it serves the function of informing people about issues as well as exposing the corruption and malpractices prevailing in society. By means of investigative journalism, media organizations are able to unearth instances of malpractice in society. However, in doing so, the criminal cases are given too much publicity by the media organizations.

The media trial can influence public opinion and the image of the accused before the completion of any trial procedure. Also, it puts pressure on both the investigation agencies and the courts. The presumption of innocence, which is an important aspect of criminal law, could be affected due to the heavy involvement of the media in the process. In most cases, the media conducts a parallel debate and makes conclusions without proper judicial examination of all the facts and evidence.

It shows how there is a tension between two basic fundamental rights mentioned in the Constitution of India, namely, the freedom of speech and expression under Article 19(1)(a)¹ and the right to life and personal liberty under Article 21² of the Indian Constitution. While the freedom of the press is necessary for democracy, it must not affect the judicial process. This paper seeks to analyze the concept of media trials in India.

UNDERSTANDING MEDIA TRIALS IN INDIA

The phrase “media trial” means the act of providing opinions or conclusions on the accused individual by the media platform before the conclusion of the trial by the court. Here, the role of media does not merely remain confined to reporting facts but starts affecting public opinion by judging the individual as being guilty or not guilty prior to the trial. This, in some cases, makes it seem as if the media performs a trial parallel to the judicial trial.

While there is no formal definition of the phrase “media trial” under Indian law, the concept has been gaining prominence owing to the commercial nature of modern-day journalism. With the advent of news channels that operate round the clock and social networking sites, there is immense pressure to provide information immediately. Moreover, criminal cases involving celebrities or politicians and other bizarre cases tend to attract more media attention.

In several cases, especially those which involve prominent personalities like celebrities and politicians, or even highly-publicized criminal cases, the media attention tends to be very

¹ INDIA CONST. art. 19, cl. 1(a).

² INDIA CONST. art. 21.

intense and sustained. The discussion goes beyond informing the public about the progress of the case to speculating on the possible motives of the parties involved, recreating the sequence of events, and forming judgments about culpability. This sets up a second line of discourse that runs parallel with the official process of law.

The advent of social media has only compounded this phenomenon. Unlike conventional media, where editorial control is exercised, in social media, everyone is free to participate. This often leads to speculation, opinion, and assumption being spread quickly and freely. In effect, the public's opinion is formed within a few hours after an incident, even before the investigating agencies have completed their work.

Media involvement, as part of democratic accountability and a crucial tool for uncovering any wrongdoing, is not a problem per se, but the worry starts when media involvement tends to compromise the impartiality of the criminal process.

CONSTITUTIONAL FRAMEWORK

The legal conflict created by the mutual conflict between the right to freedom of speech and expression (as defined by Article 19(1)(a) of the Indian Constitution) and the right to due process is what creates the problem of media trials in India. Because both rights represent the central principles of democracy, they will often contradict one another when a member of the media reports or covers a criminal case.

FREEDOM OF SPEECH AND EXPRESSION AS A CONSTITUTIONAL RIGHT

The right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Indian Constitution, as is the press's right to perform its job as the press. Freedom of speech and expression allows the media to function as a means for the public to stay informed about issues of importance that affect them; i.e. to ensure that the government is accountable to its citizens, to promote transparency and to monitor the functions of the government, including the criminal justice system.

The Supreme Court of India has held that a "free press" is a prerequisite for a healthy democracy, and that when the media reports on the status of a criminal trial, the media is providing an important service to society by providing members of the public with an update regarding the status of the investigation, as well as assisting law enforcement in holding law enforcement to be accountable for its actions.

Nonetheless, this freedom does not exist in a void, i.e., it does not apply to all instances indiscriminately. Reasonable restrictions are placed upon this right in terms of Article 19(2)³. Examples of these restrictions are under the following areas: contempt of court, defamation, and public order. The limitations on freedom of expression under Article 19(2) become especially pertinent when the media may be reporting on issues that could potentially prejudice active judicial proceedings or otherwise affect ongoing justice.

▪ **ARTICLE 21: RIGHT TO A FAIR TRIAL**

The right to life and personal liberty is guaranteed by Article 21; judicial interpretation has given rise to a related right known as the "right to a fair trial"⁴. In accordance with the principles of due process, the right to a fair trial is required in the field of criminal law and requires that an accused is able to present his/her defense against a presumption of innocence through the fair, unbiased and impartial administration of justice. The principles of impartiality, presumption of innocence and reliance on documentary evidence found in court to find guilt (or otherwise) are the essential principles of fair trial jurisprudence.

The prejudgment before trial can infringe upon the right to a fair trial. If the public's view of the accused is tainted by media representations of guilt or innocence, this will create a negative environment that could lead to an accused being outcast by society even if he/she is found innocent.

The right to a fair trial is not exclusively related to procedural justice; it also protects against external influences that could impair the objectivity of the judicial process.

▪ **BALANCING ARTICLE 19(1) A) AND ARTICLE 21**

The conflict between freedom of the media and rights to a fair trial has to do with maintaining a constitutional balance, rather than choosing one over the other. The courts continue to emphasize that neither the right to free expression nor the right to a fair trial is absolute.

In cases that have ongoing criminal court proceedings within them, courts have noted the need for an order preventing prejudicial publicity that might impact justice being served. However, at the same time, they have upheld the function of the media as a legitimate institution within a democracy.

³ INDIA CONST. art. 19, cl. 2.

⁴ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

Consequently, the difficulty will be to ensure that media output does not cross the line between providing information and providing an opinion that prejudices the outcome of a trial. Achieving a balance will require responsible journalism to uphold the integrity of the judicial process, while at the same time providing individuals with an important fundamental right - freedom of expression.

IMPACT OF MEDIA TRIALS ON FAIR TRIALS

Media trials can have a huge and complicated impact on the criminal justice administration, especially with respect to the doctrine of fair trial, which is a bedrock of criminal jurisprudence. But while media reporting may draw the public's attention to matters of public importance, its interference with the legal proceedings live poses great and variously serious challenges to fairness and justice.

▪ EROSION OF THE PRESUMPTION OF INNOCENCE.

One of the oldest and most important principles in criminal law is that an accused person is presumed innocent until proven otherwise⁵ in a court of law. However, the media trials erode this doctrine by consistently reporting some member of an accused suspect as guilty. This is done via speculative storytelling, arguments for and against, and discussions stemming from opinions.

Once such narratives take root, they influence public imagination and build a pre-judged image of the accused. The stain of the media coverage is inescapably there even after the accused is exonerated by the highest court.

▪ PUBLIC ATTITUDE AND INFLUENCE OF INSTITUTIONS

The way that the media cover criminal cases that are ongoing can significantly affect public opinion. Often in high-profile cases, the amount of media attention creates such an outcry from the public regarding what is happening that they are demanding swift action, which can create indirect pressure on investigators.

Although the Judicial System is supposed to operate independently, they do not operate in a vacuum; the ongoing scrutiny from the media in conjunction with public perception will create

⁵ Narendra Singh v. State of M.P., (2004) 10 SCC 699.

an atmosphere that can lead an investigator to feel obligated to react quickly and thus may compromise the neutrality of the investigation.

- **IMPACT ON WITNESSES AND THE INVESTIGATION PROCESS**

Criminal cases with large amounts of media coverage can create significant negative impacts on witnesses who are a part of those criminal cases. Many times, the amount of media coverage regarding a case leads to the publication of a witness's identity, which can intimidate and influence their testimony. In some cases, witnesses withdraw or change their statements due to the fear of consequences from the media or the public.

Investigating agencies are also influenced by the amount of media coverage and can feel pressured to reach conclusions that align with the dominant media perception of a criminal case. This leads to a loss of objectivity by investigative agencies in their investigation of the criminal case.

- **REPUTATIONAL DAMAGE AND UNRECOVERABLE CONSEQUENCES**

A major consequence of media trials is reputational damage. Once a person is publicly viewed as guilty, particularly in highly visible cases, the long-term ramifications can be great both socially and professionally for that individual. Even after being found not guilty, restoring one's reputation is very difficult, if not impossible, to do.

This creates a circumstance whereby social condemnation of an individual occurs before the determination of guilt and undermines the fairness of the criminal justice system.

LANDMARK JUDICIAL DECISIONS

High courts in India have been challenged several times, as they have tried to balance the competing rights of freedom of the press and the right of the accused to a fair trial. Although there is no comprehensive statute that governs "media trials," the courts have issued a number of judicial pronouncements that have laid out the boundaries for what kinds of media reporting will be permitted before and during ongoing criminal trials.

- **SAHARA INDIA REAL ESTATE CORP LTD V SEBI⁶**

In the case of Sahara India Real Estate Corp Ltd v Securities and Exchange Board of India, the Supreme Court of India created "postponement orders" in order to temporarily restrain media

⁶ Sahara India Real Estate Corp. Ltd. v. Securities and Exchange Board of India, (2012) 10 SCC 603.

reporting of judicial proceedings, where such reporting could have a detrimental effect on a person's right to a fair trial.

The Supreme Court noted that while a free press is an essential part of a democratic society, it cannot create an imbalance and/or harm the administration of justice, and that excessive publicity during the course of criminal proceedings would harm justice. The Court also noted that all courts have inherent powers to make appropriate orders to avoid any prejudice to any party involved with a trial, particularly in cases of considerable public interest.

This case is significant because, for the first time in Indian legal history, the Supreme Court formally recognized the possibility of regulating media reporting of judicial proceedings without imposing a total ban on media reporting.

- **MANU SHARMA V. STATE (NCT OF DELHI)⁷**

The Supreme Court of India observed the impact of media on a notable murder trial (of Jessica Lal) and the effect it has had on a case that is being tried in the courts with public interest.

The Supreme Court acknowledged the role of the media in highlighting issues of public interest, but also identified the potential dangers of a 'trial by media'.

The Supreme Court said that while the media has an important role in bringing to light issues of wrongdoing, it should not operate as a parallel justice system where a media outlet makes a determination of guilt/innocence prior to the conclusion of the criminal trial.

The Supreme Court confirmed that the outcome of any criminal proceeding should not be determined by the public perception created by media outlets, but rather by the facts and evidence presented by the people involved during the course of the criminal trial.

- **R.K. ANAND V. REGISTRAR⁸**

In *R.K. Anand v. Registrar, Delhi High Court*, the Supreme Court reviewed the media's role in exposing wrongdoing through the use of investigative journalism, and the potential for investigative journalism to work within moral and legal standards.

The Supreme Court noted that investigatory journalism's potential to cause excessive harm through irresponsible or excessive reporting will compromise the administration of justice and

⁷ *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1.

⁸ *R.K. Anand v. Registrar, Delhi High Court*, (2009) 8 SCC 106.

the integrity of the courtroom. It reinforced the importance of responsible journalism, particularly regarding sub judice matters.

▪ **ROMALI THAPAR V. UNION OF INDIA⁹**

Although this case is not solely representative of a media trial, its importance is to expand protection to constitutional rights and stop outside forces from interfering in criminal investigations and the judicial process.

In its decision, the court stated that there is a critical need to protect judicial independence by prohibiting outside influences (such as public opinion or the public narrative) from adversely affecting the ability of courts to dispense justice.

▪ **JUDICIAL TREND ANALYSIS**

Each of these cases reflects a broader trend within India as evidenced by the above case law; while Indian courts are fully supportive of the importance of the free press, they also recognize the importance of protecting the rights of individuals during a trial. As such, there is no blanket prohibition on the ability to report on certain aspects of an individual's criminal proceedings; instead, there is a strong preference for using a balanced approach in determining the potential risk to the fairness of the trial and thereby the likelihood of delivering justice.

CRITICAL ANALYSIS

In today's constitutional democracies, one of the most difficult aspects to address is the media trial. Media trials are defined as cases that involve the media trials where the media has created a perception of guilt or innocence through its reporting. This phenomenon exists in many democratic nations around the world; however, it appears to have a particularly difficult relationship with democratic institutions in India, due, in part, to the broad-ranging reach of digital and electronic media into the realm of information dissemination and the evolution of public narratives due to media exposure.

The media serves a vital purpose in society by being an important "watchdog" of democratically run institutions. Media helps bring attention to instances of wrongdoing that might not otherwise come to light, provides a venue for exposing governmental failures to comply with their legal requirements, and raises public awareness of issues involving justice

⁹ Romila Thapar v. Union of India, (2018) 10 SCC 753.

and governance. In this way, the media contributes to the proper functioning of a democracy by holding government actors accountable for their actions.

However, the role of media transitions from a reporting one to an interpretative and judgmental one. This process often results in a narrative of guilt or innocence that is created before any judicial proceedings have actually taken place. This phenomenon creates an alternate form of adjudication outside the framework of the judicial process; more importantly, these alternative adjudications have lasting effects on a case even after all appropriate judicial procedures have been followed (i.e. "not guilty" verdict).

The lack of clear regulatory boundaries in the Indian media sector is also of great concern. Current guidelines are mostly self-regulatory and haven't been enforced effectively. Additionally, high-visibility clients also bring commercial pressure and competition for ratings to sensationalize news coverage.

In addition to these problems, the advent of social media has done nothing but worsen the situation. Unlike traditional forms of media, where there is traditionally some level of editorial supervision, online platforms are able to disseminate unverified information quickly and easily. This causes public opinion to amplify significantly and makes it possible for anyone to receive judgment from society on an ongoing basis without due process.

Constitutionally speaking, the legality of freedom of speech and expression, versus the right to a fair trial, creates a problem. Freedom of speech and expression is necessary for democracy, but having a right to a fair trial ensures due process. Each type of right cannot be interpreted separately; however, the absence of clear boundaries results in a sensational narrative dominating those judicial restraints.

SUGGESTIONS AND REFORMS

An appropriate strategy for resolving the problems associated with media trials should consider both the press's freedom and the courts' integrity. The aim of this proposed strategy is to limit media access; rather, the goal is to ensure that media access is exercised in a way that is responsible and in accordance with the Constitution.

▪ ENHANCING MEDIA GUIDELINES

An important action step would be to strengthen the current guidelines about media coverage of sub judice matters. The establishment of clearer, more detailed benchmarks to enable

distinguishing between reporting facts and providing commentary during the course of criminal trials needs to be established. Enforcement of the established guidelines must occur at the hands of appropriate regulatory agencies with substantial force.

- **SAFEGUARDING JUDICIAL PROCEEDINGS IN SENSITIVE SITUATIONS**

Judicial courts need to consider effectively employing “postponing orders” to control reporting before the determination of guilt in instances where reporting in advance may cause prejudice against the accused. As established in judicial jurisprudence, “postponing orders” represents not a form of censorship but a way to provide temporary protection of the fairness of court proceedings.

Therefore, the freedom of the press will continue to exist, but the individual accused of a criminal act will not be irreparably harmed since the individual was not provided firm boundaries of fairness in the judicial proceedings to prosecute him or her as a result of the aforementioned postponement orders.

- **STRENGTHENING CONTEMPT OF COURT STANDARDS**

Contempt of court laws are really important for the judiciary to be respected. These laws must be applied in a consistent way when the media reports on things that affect what is happening in court. If we have a structured approach, it can help stop the media from reporting on things in a way that is not responsible, without stopping them from doing their job and reporting on important things. Contempt of court laws need to be clear and consistent.

- **PROMOTING ETHICAL JOURNALISM**

Media organizations should have rules about what is okay to report on, especially when it comes to criminal cases. They should not report on things that are just guesses; they should make sure the facts are true, and they should not publish things that could make people think badly of someone who is accused of a crime. Media organizations should follow these rules.

The people in charge of what gets reported are very important in making sure that the media can report on things that are of public interest while also making sure that people get a fair trial. This is what the people in charge of the media should do to balance the interest, with the rights of a fair trial, and to make sure that Contempt of Court laws are followed.

- **ENHANCING PUBLIC AWARENESS**

The awareness of the public about the concept of presumption of innocence is just as crucial. It can be done by introducing media literacy programs, which enable people to analyze the news and determine whether the information conveyed is a fact or an opinion.

▪ **SOCIAL MEDIA DILEMMAS**

Due to the rise of social media, it has become critical to have mechanisms by which those involved are held accountable for any wrongdoing. Regulation should be done without infringing on personal liberties; however, some protection is required against false trials conducted on social media forums.

CONCLUSION

Media trials: The biggest challenge in India's criminal justice system today is in the context of journalism. The media does and will always have an imperative role to play in a democracy by providing accountability and transparency, but these influences are confined to constitutional parameters.

The right to free speech and expression guaranteed under Article 19(1)(a) is one of the essential pillars of democracy, along with the right to a fair trial guaranteed under Article 21, which is to safeguard individual liberty and ensure justice through fair judicial proceedings; each of these is vital. When the media starts to play a role beyond informing, but judges, then it creates an alternative story, which could lead to an adverse impact on the pending trials. This will weaken the concept of presumed innocence in the criminal justice system.

However, it is equally critical to acknowledge that a limited scope of freedom of the media is certainly not the answer. It should instead endeavor towards responsible reporting, ethics and ensure the media does not interfere with the judicial process.

Fundamentally, constitutional democracy depends on freedom of media and impartial justice, and the difficult task is in striking the appropriate balance where neither of them is hindered. Media ought to educate the masses, yet respect the sanctity of the courts.