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MEDIA TRIALS AND ITS EFFECT ON INDIAN DEMOCRACY AND JUDICIARY

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Abstract: The goal of this research paper is to thoroughly examine whether Media Trials are constitutional in India. The study will focus on Article 19 of the Indian Constitution, which guarantees freedom of speech and expression, including the freedom of the press, which interferes with the establishment of an adversarial legal system and impairs the rights of those being prosecuted, such as the right to a fair trial, the right to counsel, the right to privacy, etc. The paper's secondary goal is to highlight the detrimental effects of the media, including how they might misrepresent cases and cause injustice by interfering with the legal system's ability to function.

This research shows many lawyers think that there have been cases where judges have changed their rulings as a result of media pressure and where "extensive case analysis by media before completion of the legal procedure" has had an impact on the decision. Additionally, it states that "India's criminal justice system has always been reluctant to grant unrestricted media access to their operations and discussions." ¹When any external factor of any kind taints the decision-making process, people may suffer greatly. The media's involvement in cases that are in court has been studied. According to the available research, a media trial exposes people to the public's opinion, where they are condemned without being heard.

This Research paper will also throw light on the rule of sub-judice and how it is related to Media Trials. The author will further also show the other side of the study, which shows that how media trial can also help the courts in speedy trial.

IndexTerms - Constitution, Free Speech and Expression, Judiciary, Democracy, Media Trials.

I. INTRODUCTION

Media trial is a concept that has been dwelling in this era from quite a long time. The Media leaves no stone unturned before giving their verdict of the case which is only judiciary is competent to do. This concept of Media trial is based on the principle of 'showing what public finds interesting' than 'what is in public interest'.

The history of media trials goes back in the 20th century. This term was introduced from *Roscoe "Fatty" Arbuckle* case², in which a very famous actor though acquitted by the courts, was still tried 'guilty' by the media, that in turn spoiled his reputation. This concept was later developed in various other cases. However, Media has proved to be helpful in some case like Aarushi Talwar case, Nirbhaya gang rape case, etc.

The framers of our Constitution, though not expressly but impliedly had given the freedom of press under the purview of Article 19(1)(a) of the Constitution, which provides the Right to Free speech and Expression. However, this is not an absolute right and it comes with certain restriction that is enshrined under Article 19(2). Media Trials also have a direct and strong connection with other fundamental rights, such as Right to Privacy of the Accused, Right to Equality, Right to be Presumed innocent until proven guilty and Right to Free and Fair Trial.

Regulating the media in this day and age of electronic media is a challenging endeavor. There are no restrictions enforced by the Indian government, which is unfortunate or rather lucky for the media. Due to this almost complete lack of oversight, the media has grown to be the most effective form of mass communication and routinely transgresses the foundational rules of journalism, much to everyone's dismay. Giving the media unchecked, unfettered authority over publishing and broadcasting information about cases fosters prejudice among the public and those who determine whether an accused person is guilty in court. This could have a

¹ kafaltiya, D. R. a.B., Veronica, Choudhary, A., & Khushi. (2015, November 13). *Constitutionality of Media Trials in India: A detailed analysis*. Academike. Retrieved November 1, 2022, from <https://www.lawctopus.com/academike/media-trials-india/>

² Fischer, Elizabeth (2004) "The Fatty Arbuckle Trial: The Injustice of the Century," *Constructing the Past*: Vol. 5 : Iss. 1 , Article 5.

significant effect on the accused's trial. In fact, even if the accused is found not guilty, the verdict may not benefit him or her because the media has imposed biased ideas on the public, changing their perception of the individual.

This article analyses the relationship between "trial by media" and Freedom of speech and expression which includes freedom of press. The article focuses on the influence of media trials on the Indian judicial system.

II. CONSTITUTIONALITY OF MEDIA TRIALS

A. Right to free Speech and Expression

Article 19 of the Indian Constitution, which ensures freedom of speech and expression, trial by media or any of its principles are not included in the Constitution. Press freedom is a part of freedom of speech and expression. The entire concept of freedom of speech centres on the expression or communication of ideas, regardless of the media employed. However, this Article contains some constraints, making the freedom not absolute. The legislature has the authority to place reasonable restrictions on how this right may be used.³

In India, press freedom cannot be curtailed unless and until it is employed excessively, at which point acceptable restrictions can be imposed. Although press freedom is a crucial component of democracy, constraints are required when the media begins to overstep its bounds and interfere with the work of any other democratic functionary. In *Sakal Papers Ltd. v. Union of India*⁴, the Supreme Court ruled that it is unlawful to increase the cost to a point where it will cause some newspapers' readership to decline. The court's ruling was that because Article 19 of the Indian Constitution's guarantee of freedom of speech and expression includes the right to publish and distribute, such rights can only be restricted for reasons specified in Article 19 (2).

Moreover, the Supreme Court has stated that trial by press, electronic media or trial by way of a public agitation are instances that can at best be described as the anti-thesis of rule of law as they can lead to miscarriage of justice. In the opinion of the honourable court, a Judge has to guard himself against such pressure.⁵

Hence, media in the name of freedom of press, should not misuse its power and limit itself only to its function of making people aware about their surroundings instead of interrupting with the functions of the Judiciary.

B. Right to Privacy of the Accused

There has always been a major debate over the relative importance of privacy vs the public interest when analysing the tension between the freedom of the media to broadcast information and the right to privacy. The right to privacy is not officially codified in Indian law, but it has gained constitutional legitimacy⁶, which led to the 2019 development of the Personal Data Protection Bill. One of the issues to consider is whether the PDPB, which will shortly become India's privacy law, contains a provision to protect people from media invasions of their privacy.⁷

Similar to this, the Supreme Court of India ruled in *R. Rajagopal v. State of T. N.*, that the press has the right to participate in uninhabited conversation about the involvement of public people in topics and events. In any case, in order to uphold the democratic way of life outlined in the Constitution, a proper balancing of press freedom, the right to privacy, and maintained defamation must be carried out with regard to their private lives.

C. Right to Free and Fair Trials

The established judicial system is now submissive to the newly acquired media roles. The judges who preside over it mistakenly or purposefully give it a biased hue in their thoughts. They portray an image of the defendant that may be very different from the truth, which can only be learned after the matter has been heard on its merits. The judges are under tremendous pressure to budge in favour of the public. The classic example of the affected judiciary is when the judgment cites the social morality for its decision, for instance, statements like 'based on society's collective conscience' and 'society's cry for justice'. Therefore, media trials could make judges hesitant in going against the majority public opinion formed by sensational media coverage.

One of the most essential principles of a fair trial, the right to be heard by an independent, unbiased, and qualified judge, has already been denied, as evidenced by the introduction of an inherent bias. Another unforeseen effect of the media trial is that it transforms public opinion to the point where the public is no longer merely a spectator but a participant in the case. As a result, attorneys are hesitant to accept cases involving these individuals (as mostly happens in the terrorism cases). As a result, the accused is virtually denied the right to the attorney of his choosing and is forced to accept the one who is readily accessible.

D. Rule of Sub-Judice

Sub judice contempt is a class of contempt which relates to publishing information about matters that are due to be or are currently being tried in court. Contempt of court is concerned with protecting the administration of justice. Protecting the administration of justice covers both actualities (ensuring that fair trials are actually received) and perceptions (ensuring that public perception is that a fair trial has been received).⁸ In the context of sub judice contempt this means that the sub judice rule exists to prevent the risk of prejudice to a fair trial posed by the potential of publicity to influence potential jurors, but also to maintain public confidence that the accused has received a fair and unbiased trial. This is achieved by restricting publication of material which poses a risk to a fair trial.

³ Manupatra. (n.d.). *Manupatra*. Articles. Retrieved August 1, 2022, from <https://articles.manupatra.com/article-details/Media-Trials-Misuse-of-Freedom-of-Speech-and-Deterrent-in-the-path-of-Justice>.

⁴ 1962 AIR 305

⁵ Zehra Khan, "Trial-by-Media: Derailing Judicial Process in India", 1 MLR 91 2010.

⁶ *KS Puttaswamy v. Union of India* (2017) 10 SCC 1

⁷ Censorship in India No Comments | Jun 14, Author admin, A. T., & Name:*. (2021, May 2). *Media Trials in light of the right to privacy: Racolb legal*. RACOLB LEGAL | QUALITY IS ALL THAT MATTERS. Retrieved September 8, 2022, from <http://racolblegal.com/media-trials-in-light-of-the-right-to-privacy/>

⁸ John F Burrows and Ursula Cheer *Media Law in New Zealand* (5 ed, Oxford University Press, Auckland, 2005) 388.

Publications made in connection with free trials are protected from contempt actions under the Contempt of Courts Act, 1971. However, any publication that impedes or attempts to impede any ongoing legal action—whether civil, criminal, or otherwise—and the administration of justice is considered to be in contempt of court. It has been referred to as contempt because some actions revealed before the court renders its decision may deceive the public and jeopardise the rights of the accused to a fair trial. Such articles may be on the accused person's prior offences, the confession he made to police, or simply serve to malign him or her⁹. Moreover, a law prohibiting the media from reporting anything detrimental to the rights of the accused in criminal cases, from the time of arrest through the investigation and trial, has been recommended by the Law Commission in its 200th report, *Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)*. The commission has said,

“Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice”.

According to the commission, this constitutes criminal contempt of court; if the Act's provisions place reasonable restrictions on free speech, those limitations would be legal.

III. INDIAN JUDICIARY'S STAND ON MEDIA TRIALS

A. *Sanjay Dutt vs State Through C.B.I. Bombay*¹⁰

After 11 years, the TADA court cleared Sanjay Dutt of all accusations against him after finding that he had purchased weapons for self-defence and that he was not a terrorist. Sanjay Dutt was able to obtain a bail from the Supreme Court for his conviction under the Arms Act, for which he was given a six-year prison sentence. He was transferred to Pune's Yerawada prison on July 31, 2007. Later on though, he was released on bond. His term was further reduced by the Supreme Court on March 21, 2013, to just five years, and it ended on February 27, 2016.

Being a well-known actor, Sanjay Dutt's case received some media attention. The media painted him as a terrorist, but the court later ruled that he had not been charged with those crimes. Being an actor, he had to deal with a lot of issues and backlash after this episode, and his reputation was damaged.

B. *Siddharth Vashish @ Manu Sharma V. State NCT Delhi*¹¹

In 1999, Manu Sharma (also known as Siddharth Vashishth), the son of Congress former Union Minister Venod Sharma, shot and killed Jessica Lal, a model-turned-bartender working in a restaurant owned by socialite Bona Ramani in Mehrauli, South Delhi. Jessica had refused to serve alcohol to Manu and his friends. After the murder, this case received immediate public attention after the accused was found not guilty by the trial court. This case rose to the top of those when media attention and public pressure forced the legal system to reconsider its decision.

Despite the fact that Manu Sharma was initially found not guilty in 2006 due to the Delhi police's failure to prove the elements of their case in the wake of public outcry brought on by media coverage of the case, the Delhi High Court sentenced him to life in jail.

C. *State (Through CBI) v Santosh Kumar Singh*¹²

A law student Priyadarshini Mattoo was residing at her uncle's home in New Delhi. On January 23, 1996, her body was discovered. At first, it was believed that Santosh Kumar Singh, a senior of hers who had stalked and harassed her for years, was the main defendant. Later, it was revealed that Santosh, the son of an IPS officer, was the principal defendant. He wrapped a wire around her neck and strangled her. Santos repeatedly struck her in the face with the helmet, leaving no trace of her face. The conviction and death sentence were the result of an appeal in the High Court that was sparked by a persistent public outcry and media campaign against the acquittal. The death sentence had been imposed by the Delhi High Court on October 30, 2006, but it was later commuted to life in prison by the Supreme Court.

IV. IS MEDIA TRIAL A NECESSARY EVIL?

As every coin has two sides, there is also a justification to Media Trials. There have been several other such cases such as the Nirbhaya rape case, Bijal Joshi rape case etc. wherein the media brought the true facts in the public arena which amounted to a strong public pressure on the police as well as courts to bring fast justice to these cases. Apart from this, corruption cases like 2G scam, Bofors scam, Fodder Scam, Commonwealth Games scam and Harshad Mehta stock market scam were driven by media all the way till the day of verdict. Thus, Media at times also acts as a catalyst for speedy trials.

V. A WAY FORWARD

One of the main reasons why the media should be cautious about the information it publishes and broadcasts is because it has such a significant impact on the general people. The media has a moral obligation to present the public with accurate information so that they can draw their own conclusions or create judgments. Electronic media is to blame for the entire mess, despite the fact that print media has been regulated and hardly ever strays from these laws.

Since there are no regulations governing the electronic media, it has been experimenting to find what works and what doesn't. In order to control its audience, media should refrain from releasing and publishing vulgar over-sensationalized news that only presents one side of the topic. Because of the industry's extensive commercialization, it is now heavily affected by politicians and businesspeople who can offer them the right fun they need to climb the corporate ladder, more- bad than beneficial impacts have resulted from this.

⁹ -, D. R., By, -, Rai, D., & here, P. enter your name. (2020, June 29). *Constitutionality of media trials and landmark cases*.

iPleaders. Retrieved October 1, 2022, from <https://blog.iplayers.in/constitutionality-of-media-trials-and-landmark-cases/>

¹⁰ 1995 SCC (6) 189

¹¹ (2010) 6 SCC 1; (2010) 2 SCC (cri) 1385

¹² 2007 CriLJ 964, 133 (2006) DLT 393