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Media Trial And Right to Freedom Of Speech And Expression: An Analysis

Shivani Kharai¹

ABSTRACT

This area of Research topic deals with the analysis of Media Trial in regard to the freedom of speech and expression under Indian Constitution. The topic shall focus on dealing with constitutionality of media trial in India. The paper also covers freedom of press and the fair trial. The topics like historical background, Interpretation of Article 19(1) (a), Impact of Mediatrial and cases study are being covered under the topic. This paper focuses on analysing the impact by the trial by media and how it takes the route of article 19(1) (a) to continue with the inappropriate intervention with the governance of justice. The case laws are also mentioned for better understanding. So, the paper seeks to show the currently scenario regarding the same limited to India.

Keywords: Media trial, Press freedom, Article 19(1) (a), Indian Constitution, Fair trial

¹ Student at National Law School of India University

INTRODUCTION

*"All I know is just what I read in the papers
and that's an alibi for my Ignorance"*

- Will Rogers²

The media performs a crucial role all around the world, its carriers a huge duty and responsibility of spreading awareness amongst the public. The idea of Blackstonian of the liberty of the press which was communicated earlier as in the year 1769 consists of four basic points which are:

- Liberty of the press is important to the country.
- Previous curbs should not be made on the published content.
- It does not refer to the complete liberty to press as they cannot do what is forbidden bylaw.
- Each and every individual has the unquestioned and undisputed entitlement to keep whatever thoughts he keeps before the masses, but if he brings out in the form of publication what is inappropriate, unlawful or improper, he must take the consequences of his own audacity.

The media has been given massive authority under Article 19(1)(a) of the Indian constitution, several leaders like Pandit Jawaharlal Nehru have promoted for the freedom of the press as they were of the opinion that the media is the foundation for democracy. But if we take a look at the media in the present scenario, it is mostly seen nowadays that press media is temporarily doing the obligations of courts for people and are beginning to intervene with the working of the courts which absolutely fails to note the essential gap between an offender and a convict presenting in danger the essential principles of fact assumed to be true before innocence until proven guilty and guilt after an inexpensive doubt.

² GOODREADS, <https://www.goodreads.com/quotes/57431-all-i-know-is-just-what-i-read-in-the> (last visited Oct. 2, 2022)

RESEARCH PROBLEM

Liberty of speech and expression is of greatest essence in a democratic country and then comes the liberty given to the press. But that liberty must be of such nature that it does not harm others. Media trial frequently threatens the entitlement to a fair trial. Media trial is a recent going event which is not to be avoided as it intervenes with the working of the courts and it wasn't able to grasp the essential difference between an offender and a convict. This is often a global situation and on the other hand, the media institutions being the potent foundation with its trial can have a great impact on the masses which will particularly have a negative impact also. Trial by media adds up to the undue intervention in the direction of justice. This issue needs to be solved so that the order of society is preserved, and no individual is ever deceived for the sake of communicating information.

REVIEW OF LITERATURE

Sansar Singh, *Media Trial and The Freedom of Speech and Expression Under Indian Constitution: A Study*, Volume I Issue V, International Journal of International Movement [ISSN: 2456-0553]. The paper talks about the crucial role of media in gathering public opinions and bringing into light the injustices which mostly would have gone unnoticed otherwise. The author has attempted to provide the historical background and perspective of media trial. The paper mainly focuses on the scope of freedom of speech and expression and its restriction in regard to the media trial. The author has also mentioned various landmark case laws regarding the media trial in India. The author in his paper concluded with the view that the criminal justice system in this country has many limitations and loop holes which are cast off by the potent people to go away with the same.

Srishti Ramchandani, *the Constitutionality of Media Trials in India – A Critique*, Volume 10, (May 2020), ISSN 2581-5504. The paper talks about the Constitutionality of Media Trials in India. The author has discussed the recent trends and issues pertaining to the same. In the views of the author, the law must not allow media to influence the masses against the government, moreover, the media cannot determine or decide a man's life, and the media does not have the authority to determine if an offender is guilty or not, neither should be negatively to brainwash the public to blindly believe that the justice

system is tricked and bias. The author critically analyzed the media trial and provides suggestions for the same.

RESEARCH QUESTIONS

- (a) Whether the freedom of speech and expression is a threat to fair trial in India?
- (b) Whether the media trial affects the essence of the fair trial?
- (c) Whether the media is trying to mold the constitutional explanation of Article 19(1)(a)?

SCOPE AND LIMITATION

The study's goal is to determine the impact of media trials on the pursuit of justice and the extent to which press freedom is compromised and to how much extent it is presented in such a way so that it does not pre-conceptualize the situation of individual and societal liberty at large. The focus is primarily on India, with references to other countries where it was deemed essential. The focus of the research is on the impacts the media trial is bringing out and not on unbiased media records.

RESEARCH METHODOLOGY

The Research Methodology undertaken in this study is doctrinal in nature. The data which is referred in this study is secondary data that is collected through online and offline sources like the articles, journals, books, etc. Further, Bluebook 20th Edition citation format has been followed for reference purpose.

HISTORICAL BACKGROUND

The attentiveness for safeguarded certifications of human rights for Indians changed into volume that course again as in the year 1895 within side the Constitution of India Bill, prominently called the Swaraj Bill, which became motivated via way of means of Lokmanya Tilak, a felony counselor and a brilliant political dissident. This bill devised for Constitution of India making sure to every resident, amongst specific opportunities, the possibility of press.

To a certain point the foundation of press in India was made with commercial scrutiny in view. It was the brainchild of the first Multinational named the East India

Company. It was one of the tools of the British that were later used Indians to accomplish their goal; Public relations have undergone a remarkable reform and have been India's best tool they used in their struggle to break free from the British. The press was heavily affected by the company, however after its press job turns about the requirement to support brutal checks got unavoidable. Support for brutal controls became inevitable. Strict laws have been passed and decisions have been made to restrict freedom of the press. The Fathers of the Indian Constitution connected extraordinary importance to freedom of speech and expression and the freedom of press. They believed a democracy to flourish, Freedom of speech and opinion as well as freedom of the press are always respected. They recognized that the fundamental idea of the free press is the possibility of political mood and, in the middle, the possibility of censorship of the administration. The Indian Constitution shows liberty in Article 19(1) (a) under Indian Constitution which makes sure the entitlement on liberty of speech and expression. It has been discussed and contended that this entitlement to liberty freedom of expression consist the liberty of the press. It's an implicit or presumed right.

The trading aspects of the press are regulated in Article 19 (1) (g) under Constitution of India. The trading aspects of the press are stated under Article 19(1) (g) of Indian Constitution which states the liberty of occupation, occupation, business or trade restricted by Article 19 (6), which contains agreements on open and specialized capacities. The directions of Dr. B R Ambedkar and Dr. B.N. Rau have been acquitted by the Supreme Court. One of the limitations on the entitlement of free speech and the preciseness in the draft in the Indian Constitution was sedition, which was properly described by Mahatma Gandhiji's as the Prince of the Indian criminal Code.

MEDIA TRIALS AND THE FREEDOM OF SPEECH AND EXPRESSION

"A free press lies at the heart of our democracy and its preservation is essential to the subsistence of liberty. Any inroad made upon the constitutional protections of a free press tends to

undermine the freedom of all men to print and read the truth”³

Article 19(1)(a)⁴ states that all citizens shall have the entitlement to freedom of speech and expression which implies that all citizens have the right to express their opinions and views freely without any restrictions. This includes words spoken, and also a speech by way of writings, banners, movies etc.

Liberty of speech and expression refers to the entitlement to freely express one's beliefs and opinions through mouth, printing, writing or otherwise; therefore, it consists of the expression of one's own view through any communicable medium, such as actions, signs, gestures and expression. It also means publications and therefore liberty of the press is included in this category.

In *Maneka Gandhi v. Union of India*⁵ case, Justice Bhagwati focused on the meaning of the “freedom of speech and expression” as “Democracy is mainly based on free discussion and expression because it is the only cure for government deed in a democratic structure. If democracy is defined as government of the people, for the people and by the people, it is implicit that each and every national must have an entitlement to take part in the democratic procedures and working and empowering them to use their right to vote, having free and universal debate on affairs related to public is completely important. “

Media/Press basically depicts the institutions who have the main duty of collecting and distributing news. Press freedom is an element of liberty of speech and expression. The entire concept of freedom of speech centres on the expression or communication of ideas, regardless of the media employed.

In the case of *Indian Express Newspaper vs. Union of India*⁶, it was held that freedom of press has three elements basically:

- (a) Freedom to access all information.
- (b) Freedom to publish.
- (c) Freedom to circulate.

³ Anshit Agarwal, *Critical Appraisal of Media Trial Under Article 19(1)(a) of The India Constitution*, LAW CIRCA, (2021).

⁴ INDIA CONST. art. 19., cl. 1 (a)

⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248.

⁶ *Indian Express Newspaper vs. Union of India*, AIR (1985) 2 S.C.R. 287

The press's freedom is not prioritized more highly or given a greater status than that enjoyed by the nation's citizens. The problem only emerges when the media stop doing their job as information providers and start acting as the judge, jury, and executioner. The media communicates its opinions on specific subjects. The trial involving the media became known as this.

Grounds of Restrictions:

Article 19 (2) under Indian Constitution It contains the reasons why freedom of expression can be restricted. Some of them are:

- (a) ***Security of the State:*** It is considered one of the reasons why freedom of expression can be appropriately restricted, anything endangering the State's security is the rebellious action against the government etc.
- (b) ***Friendly relations with foreign state:*** The reason for such a restriction is to restrict any malicious advertising or promotion against any foreign state that has good faith relations with India and these prohibitions are necessary, or might be, in order to improve India's honest relations with foreign states or else it may result in embarrassment to India.
- (c) ***Public Order:*** The Constitution First Amendment Act, 1951, added public order as a restriction.
- (d) ***Decency or morality:*** The terms decency or morality have no precise meaning and they differ from time to time and from group to group. The word indecency as mentioned in the Indian Constitution is same as the word obscenity in English law.
- (e) ***Contempt of Court:*** Both the High Court and the Supreme Court have authorities under Articles 129 and 215 of the Constitution of India to sanction its disregard.
- (f) ***Defamation:*** When something said or written affects or harms the public image of an individual, then it is said to be defamation. Therefore, no one can use this liberty to give injury to the reputation of other individual.

(g) ***Integrity and Sovereignty of India:*** It was the Constitutional Act (6th Amendment) of 1963 which added this restriction to Article 19 (2) under Constitution of India.

In the case of ***Romesh Thappar v. State of Madras***⁷, Justice Sikri pointed out that: *“Liberty of expression and the liberty of Press are the basic of all democratic institutions, for because without free political expression there is no public education, which is so important for the effective functioning of the public government process.”*

Media Studios have become a courtroom for all reasons, literally. They look into the situation, gather proof, interview witnesses, and even provide expert opinions before drawing a verdict. The identical story is then disseminated across all websites and newspapers in an effort to garner a broad public viewpoint. Any democracy is under attack by this procedure.

ANALYSIS OF THE IMPACT OF MEDIA TRIALS

“The tension between the courts and the media revolves around two general concerns. The first is that there should be no ‘trial by media’; and the second is that it is not for the press or anyone else to ‘prejudge’ a case. Justice demands that people should be tried by courts of law and not be pilloried by the press.”

*- Senior Adv. Rajeev Dhavan, (Supreme Court of India)*⁸

Media is mainly expected to furnish news which is unbiased. It is the main obligation of the media to keep up with the facts of the case and not draw any conclusions. Authority is in the hands of the media to affect the minds of the public, which make it imperative for them to understand and fulfil the enormous duty and responsibility that are placed upon them, and they should in no way. In the current scenario, the media have a far-reaching impact and their requirements cannot be discussed. But what matters is its impartial and effective use to bring positive reforms into society and that is fair and this is only possible only when the media is unbiased.

However, the media sometimes tries to shape or effect public views and has the

⁸ Freedom of the press and fair trial, The Hindu, May 17, 2010 01:55.

ability to change minds through which people view different events. To keep up with the increasing competition in the market, the media continuously twist the facts and present the stories in a sensational way in the form of news attract the attention of the masses. The media always publishes biased views on behalf of the news. There are many cases where the media pursues a perpetrator and makes its own judgment even before the court has approved a court decision.

In the case of *R. K. Anand v. Delhi High Court*⁹, the effect of television and newspaper coverage on an individual's public image by inventing a global perspective of guilt regardless of any legal proceedings. An atmosphere of public hysteria that not only makes a fair trial impossible and that the accused has already been found guilty in public opinion and could not live his entire life.

Consequences of Media Trial

Every institution is susceptible to abuse, and every freedom, if unchecked, has the propensity to turn into a permit that would cause chaos and anarchy. For a democratic country to run smoothly, press freedom is crucial, but, in Theodore Levitt's words "anything in excess is poison"¹⁰. In order to serve society, media outlets should operate justly and fairly within their purview. In India, media trials interfere with the legal system, undermine fair trials, and entirely reject the assumption of innocent until proven guilty. In order to offer a biased view about any ongoing procedure, the media has positioned itself as a "Populace Court," which has led to an unwarranted effect of the media trial on the administration of justice. The media sensationalized the story and twisted the relevant facts to draw in the public.

It has frequently been observed that the media likes to incite the people, especially when there are delicate issues involved. This not only causes a number of mob lynch incidents, but it also impedes the process of a fair trial because the accused is already presumed guilty regardless of the court's decision, and as a result, they may have to spend the rest of their lives in the spotlight. This opinion is boosted by the fact that such newspaper behaviour tends to block the administration of justice, regardless of whether the inquiry

⁹ R. K. Anand v. Delhi High Court, (2009) 8 SCC 106

¹⁰ Mr. Gururaj D. Devarhubali & Ms. Bushra Sarfaraz Patel, "Freedom of Speech and Expression vis-à-vis Media Trial", Vol.3 & Issue 4, Law Audience Journal, (26th April 2022).

tends to favour the accused or the prosecution. A newspaper trial is in no way comparable to what transpired in this instance. Therefore, it is the duty of the court to defend the people involved in the cases' dignity from media attacks. To address difficulties with the media trail, the court developed a number of initiatives.

Are there any checks and balances?

Media trials in general, and in these specific cases, are more or less to contempt of court, which is also mentioned by the Indian Constitution and the Contempt of Courts Act, 1971. The act gives definition of contempt by stating, not a publication distributed to influence the opinion of a jury, witness or party, to create a scene where the administration of justice becomes complex or complicated, which amounts to contempt.

In *Aarushi Talwar Murder Case*¹¹ the parents were announced as accused by media trial even before the trial in the court of law started.

Recently in *Sushant Singh Suicide Case* media changed public views through their publications about the people suspected in that case and made them as accused even prior to the investigation. Hearing PIL on the part of electronic media in presenting news on Sushant Singh Rajput death case, the court said 'media trial' during criminal investigations can lead to contempt action.¹²

In *Tarun Tejpal Sexual Assault Case*¹³ during a conference called "Thinkfest" that was put on by "Tehelka," a woman journalist who worked with Tarun Tejpal accused him of sexually assaulting her in an elevator at a five-star hotel in Goa. While the victim was not being cross-examined during the trial, a channel unlawfully offered opinions that could be used to discredit the victim.

CONCLUSION & SUGGESTIONS

There have been various cases where the press has judged the situation and they are also blamed for holding the trial of the accused by making the decision in accordance with their investigation before the court delivers the verdict. It is important that the process be carried out by the courts and not the media. The law makers have a great duty

¹¹ Nupur Talwar v. Central Bureau of Investigation and Another, AIR 2012 SC 1921

¹² Apoorva Mandhani, *Freedom of speech and expression 'most abused right'*, THE PRINT, (2021)

¹³ Bhabna Das, *Tarun Tejpal and Curious Case of the Coerced Confession*, THE WIRE, (2021)

and responsibility to perform while drafting legislations on press media, making sure that their liberty is not diminished. Media has the entitlement to discuss and give their views on the decision of the case, but they haven't got any entitlements or any liberty to initiate a trial on judicial matters. It is precise that the impact of the media is more negative than positive. The freedom of speech and expression must not be granted to the media until the process itself has been pre-designed.

Suggestions:

- (a) For an objective of restraining the media from making preconceived notices and affecting the execution of justice, certain reforms are required to be made in the Contempt of Courts Act.
- (b) The Press Council of India which is a body enacted by statute which is regarding the improving and maintaining of the print media standards. It has very finite authority under the Press Council of India Act 1978. Pursuant to Section 14 of the Press Council of India Act 1978, the council is only authorized to give a warning or admonish the newspaper, news agency and publisher or journalist. It is necessary to change the law to make the PCI stronger to take strict action.
- (c) The Press Council Act of 1978 covers only print media and also requires the obligation to include electronic media in its scope. The electronic media must be held accountable for the same. Self-regulation of the broadcasting media is not at all the answer to solve the issues of media trial.

REFERENCES

- (a) GOODREADS, <https://www.goodreads.com/quotes/57431-all-i-know-is-just-what-i-read-in-the> (last visited Oct. 2, 2022)
- (b) Anshit Agarwal, *Critical Appraisal of Media Trial Under Article 19(1)(a) of The India Constitution*, LAW CIRCA, (2021).
- (c) INDIA CONST. art. 19., cl. 1 (a)
- (d) Maneka Gandhi v. Union of India, AIR 1978 SC 597: (1978) 1 SCC 248
- (e) Indian Express Newspaper vs. Union of India, AIR (1985) 2 S.C.R. 287
- (f) Romesh Thappar v. State of Madras, AIR 1950 SC 124

- (g) Freedom of the press and fair trial, The Hindu, May 17, 2010 01:55.
- (h) R. K. Anand v. Delhi High Court, (2009) 8 SCC 106
- (i) Mr. Gururaj D. Devarhubali & Ms. Bushra Sarfaraz Patel, *"Freedom of Speech and Expression vis-à-vis Media Trial"*, Vol.3 & Issue 4, Law Audience Journal, (26th April 2022).
- (j) Nupur Talwar v. Central Bureau of Investigation and Another, AIR 2012 SC 1921
- (k) Apoorva Mandhani, *Freedom of speech and expression 'most abused right'*, THE PRINT, (2021)
- (l) Bhabna Das, *Tarun Tejpal and Curious Case of the Coerced Confession*, THE WIRE, (2021)