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

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ABSTRACT

Today, the issue of media trials is very essential to address. We all know that the Indian Constitution allows Right to Free Speech¹. This Right isn't free from reasonable restrictions² available in the Indian Constitution. We have seen how media trials affect the journey of criminal cases in the courts of law. In the media trials, sensationalism may create hassles in the process of delivering justice. We have no right to say anything without solid proof. Media houses run these sensational media trials in a particular case because of the thirst of TRP(Television Rating Point).

This kind of behaviour from the media or press is rather dangerous for the accused and its family members. I am here to analyse the judicial pronouncements and the stand of the Constitution of India about media trials. It is so important because we call the courts "*Temple of Justice.*"

The courts may be affected by baseless media trials. We must enjoy the freedom given by the constitution of India but with adequate caution. The role of the media in any democratic country is very serious. We call the media the "Fourth Pillar of Democracy." Media personnel must understand their duty towards the public. They should try to educate the public with relevant facts and ground reporting instead of Sensationalism and Fiction.

I'm here to display the 360-degree view of this relevant issue. Social Media is fuelling the media trials with more sensationalism. We should use social media as a tool for awareness instead of as a tool to spread hatred and undermine the judiciary.

¹ INDIA CONST. art. 19, cl. 1(a)

² INDIA CONST. art. 19, cl. 2

In conclusion, this paper promotes answerability and justice. This paper is dedicated to deep analysis about this whole issue for a better understanding amongst all of us.

Keywords: Media Trials, Fair Trial, Freedom, Judiciary, Sensationalism, Reasonable Restrictions, Social Media, Democracy, Fundamental Right, Fiction, Mainstream

INTRODUCTION

The media is the Fourth Pillar of democracy. The former US president(POTUS) famously said, “Democracy is a government Of the people, By the people, and For the people.” This fantastic definition cannot be translated into reality without the presence of responsible media. The media must act with reasonable restrictions. The Constitution of India doesn't give a separate right to Media. It is a part of ‘Article 19(1)(a)’. We all know that this right is bound with the Restrictions available in the ‘Article 19(2)’ of the Indian Constitution. Journalists must respect the Rule of Law. The media's role is quite serious.

The media should act as custodian of the Rule of Law. The judiciary must act fearlessly. Media trials create a serious challenge to the Judiciary. There is no problem at all with Responsible Journalism but Crazy one is a challenge in front of all of us. Social Media is fuelling this problem day by day with senseless reels and baseless opinions. It must be restricted. We need a fine balance between the media trials and judicial duties. The Constitution of India promises that the Rule of Law will prevail in the most adverse situation as well. It must be prevailed in the interest of Constitutionalism in India. No democracy can function without checks and balances. Social media users are rampant everywhere from metro cities to the corner of the village. Many individuals use these social media platforms as a hate manufacturing machine.

The judicial process must be free from the opinion of the majority. Only evidence matters for the judiciary in the interest of the Rule of Law. We need *Zero intervention* of the media into a Sub-judice matter in the courts of law.

The media should focus on malfunctioning in the judiciary instead of the merits of sub-judice matters. Without facts, the media has no moral right to comment on a particular case. As Justice Lord Hewart said, “*Justice must not only be done, but also be seen to be done.*” in the case of

*Rex vs. Sussex Justices(1924)*³.

METHODOLOGY

This paper adopted doctrinal and analytical methodology. It goes into the depth of several acts, Judicial pronouncements, newspaper articles, observations of the HCs and the SC. Furthermore, selected case studies of Landmark Cases for extracting inputs. This paper is written purely with easy-to-understand language.

HISTORY

Media Trials means the trials of the cases conducted by the media groups through their journalists. Today, the reach of the media is rising day by day. It is not popular Pre-2000 amongst all of us. In the 20th century, media coverage of the particular cases suddenly increased due to multiple media companies and the rat race amongst the media groups. If the media doesn't play its role seriously, it harms the judiciary and its reputation amongst the public. This term was highlighted in India from the 1990s to 2000s. In *the case of Jessica Lal*⁴ and *the case of Priya-darshini Matto*⁵, the media trials attracted all of us.

True Journalism is healthy for democracy. It is vital for awareness amongst the masses. The Rat race amongst journalists harms the Right to Fair Hearing that is a fundamental right. Today, media footprints expanded due to more private players in the field of broadcasting and print. *TRP(Television Rating Point)* plays a very big role behind misinformation and sensationalism. Several media houses prioritize emotion and speculation over accurate reporting. This kind of behaviour harms the judicial process very badly. It is also very harmful to the accused and its family.

They face social boycott and their safety does compromise. Media trials mustn't cross the limit of Free Speech. Recently, we have seen in *the case of Actor Sushant Singh Rajput* where misreporting harmed *Actress Rhea Chakraborty* and her family brutally. It is unacceptable in a matured democracy where Rule of Law must be prevailed all above. In the case of Actor Sushant Singh Rajput, several media groups did consistently report fiction. Media personnels should enjoy the Freedom under 'Article 19(1)(a)' with caution.

³ R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256 (UK)

⁴ Sidhartha Vashisht v. State (NCT of Delhi), (2010) 6 SCC 1

⁵ Santosh Kumar Singh v. State (Through CBI), (2010) 9 SCC 747 (India)

At last, in the above mentioned case the Actress got a clean chit from the premier investigating agency *CBI(Central Bureau of Investigation)* and the agency closed this case as a suicide one.

We have seen Media Trials in the following matters as well:

- **Aarushi Talwar Murder Case(2008)**: In this case, baseless reporting and sensationalism underlined. Later, the parents of Arushi Talwar were acquitted from The Hon'ble High Court of Allahabad.
- **Tarun Tejpal Case(2013)**: Tarun Tejpal was the editor of *Tehelka Magazine*. He was accused of sexually assaulting a junior colleague in Goa(2013). The media took this case as an opportunity to raise TRP(Television Rating Point). This case was also a victim of Media Trial. Later, Tarun Tejpal got an acquittal from a court of Goa in this case.
- **Sunanda Pushkar Murder Case(2014)**: The lady was the wife of INC leader Dr. Shashi Tharoor. Several Media Channels did report fiction instead of constructive reporting. After the enquiry, the police confirmed the death as a suicide.
- **Indrani Mukherjea- Sheena Bora Murder Case(2015)**: In this case, speculative “investigations” conducted by the several media houses.
- **Sarvjeet Singh Case(2015)**: It was a false complaint but several media outlets called him “*Dilli Ka Darinda*”(Delhi's beast) before he was later acquitted in the case. Sarvjeet Singh was a victim of baseless reporting. The media has no right to malign the image of any individual.
- **Pradyuman Thakur Case(2017)**: There was a school conductor who was highlighted as an accused of a child's murder. Several media outlets painted him as guilty in their reports. He was later found cent percent innocent but his reputation had been crushed down by the Premature Trial by the several media outlets.
- **Aryan Khan Case(2021)**: The case of Aryan Khan is a landmark example of a Media and Social Media Trial in India. It was a high profile case because he was the son of very well known Actor Shah Rukh Khan. A significant portion of Media and Social Media acted as “Judge, Jury, and Executioner” and labelled him Guilty on the foundation of unverified information. Many negative memes were viral and hashtags were also trending like *#AryanKhanDruggie*, *#BoycottBollywood*, and *#NoBailOnlyJail*.

The WhatsApp chats were also widely circulated on Social Media for declaring him Guilty. This whole episode was against the Presumption of Innocence Until Proven Guilty. Later, Aryan Khan got a clean chit in the drug case. Unfortunately, nobody was

held responsible for reputational damage of Aryan Khan by Media and Social Media Trials. Many media outlets reduce this event into entertainment.

LEGAL PROVISIONS AND CONSTITUTIONAL RIGHTS

Rights of media do not separately mention in the Constitution of India. It lies under the ‘Article 19(1)(a)’ which talks about Free Speech. The constitution is supreme. Article 21 of the constitution ensures the Right to live a dignified Life. The Fair Trial also comes under ‘Article 21’.

The Contempt of Courts Act, 1971 plays a very important role to curb media excesses. The Rule of Law must be upheld in every situation. There is a need for a fine balance between the rights of media and judicial independence. Section 77(obstruction of justice) in the BNS(Bhartiya Nyay Sanhita) has strength to curb the media's misconduct. Additionally, the regulation of content is a part of the Cable Television Networks(Regulation) Act, 1995 as well. We need a regulatory framework for digital platforms because several social media users use this wonderful platform as a tool for spreading Hate in the society.

JUDICIARY AND TRIAL BY MEDIA

The judiciary has expressed concern over the behaviour of media platforms in the sub-judice matter in the Court of Law. We all know that journalism plays a very important role in the establishment of *answerability*. The criminal justice system must be fair and a promoter of Rule of Law. There is a lot of scope for transformation in the C.J. system of India. The presumption of innocence must not be undermined by the media in the name of reporting. We should believe the courts that have the legal right to deep dive into the facts of the case. Some of the Landmark decisions that show the firm stand of judiciary over media trials include:

1. **In the case of R. Rajagopal(1994)**⁶, The court held that the publications which were playing with the dignity of individuals were not protected under the Free Speech.
2. **In the case of R K Anand(2009)**⁷, The Court severely criticized the conduct of the media for interfering with ongoing investigations and trials.
3. **In the case of Sahara India Real Estate(2012)**, The SC issued “postponement orders” due to excessive media coverage.

⁶ R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632 (India)

⁷ R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106 (India)

4. **In the case of Nilesh Navalakha(2017)**, The Bombay High Court directed the media to avoid investigating or interrogating suspects in the sub-judice case.

RECENT JURISPRUDENCE

The recent jurisprudence stresses that Freedom of the Media is important but it cannot supersede the Accused Persons' Rights. Each & Every Accused has the right to a fair trial. Premature conclusion, sensationalism, and character assassination in the name of trial must be curbed. The media should act as a custodian of the Rule of Law. The Indian Constitution guarantees “*equality before the law*”. It consists:

1. Equal access to everyone
2. No privilege to anybody
3. Same laws for everyone
4. Free and Fair trial

In the year 2023, The SC directed the Ministry of Home Affairs to frame guidelines regulating conversation between police officials and the press. *The court said that premature disclosures about the accused and suspects violate presumption of innocence.* The Apex Court underlined that the presumption of innocence was a Fundamental Human Right in the case of *Sahara v. SEBI(2012)*⁸. The media cannot supersede the principle of *Presumption of Innocence until Proven Guilty*.

It is very essential in maintaining the faith of the Public in Judiciary. Nexus between media and police violate the rights of the Accused persons and Suspects. We all have seen that even officers in the police department invited their favourite journalists to share unverified details(Fiction) for praise which harmed the reputation of the Victim, Accused, Suspects, and their respective families. Right to Reputation is also a fundamental right under article 21. Such acts must be curbed in the interest of the Rule of Law.

- In the case, **Abhishek Banerjee v. UoI**, the Supreme Court of India rejected the plea filed by TMC leader Mr. Abhishek Banerjee. He wanted a gag order against the coverage of the West Bengal recruitment scam case. The court said that the law on media coverage had already been settled in the case of *Sahara v. SEBI(2012)* judgement. The proceedings of the court are live-streamed, public now.

⁸ Sahara India Real Estate Corp. Ltd v. SEBI, (2012) 10 SCC 603

- In a case of 2024, the HC of Kerala held that no one had the right to pronounce someone guilty before the conclusion of a criminal trial. The High Court compared the media outlets that broadcast/publish unverified details to a “Kangaroo Court.”

The jurisprudence in India is crystal clear that no one has the right to malign the image of anybody in the name of reporting. The courts have authority to convict or acquit. The media must maintain an adequate distance in the interest of the Rule of Law. The media should report accurate information because it is the most important stakeholder in creating awareness in society. The rights of media and the freedom of judiciary both are important and a fine balance must be maintained between them in the interest of the rule of law. The Indian Constitution stands at the top most position.

CONTEMPT OF COURTS ACT, 1971

Judiciary is so vital for each of us. The role of the judiciary is to interpret laws. Our common disputes are also settled by the judiciary. The role of the judiciary is quite important. So the judiciary needs to function in a free and fair manner. It must be:

- Unbiased
- Fair
- Free from External Influences
- Fearless

Without the power of contempt, the Judiciary cannot function fearlessly. This act empowers the HCs and the SC can punish for their contempt. The concerned HC can punish for the contempt of subordinate courts like its own contempt.

Some Landmark Cases

- **Arundhati Roy Case(2002)**⁹: A renowned author, Arundhati Roy criticized the judiciary. The SC took this matter as suo motu criminal contempt against Roy and she was sentenced to imprisonment for one day and a fine of INR(Indian National Rupee) 2000.
- **M V Jayarajan Case(2015)**¹⁰: In this case, M V Jayarajan publicly criticized the HC

⁹ In Re: Arundhati Roy, (2002) 3 S.C.C. 343 (India)

¹⁰ M.V. Jayarajan v. High Court of Kerala, (2015) 6 S.C.C. 648 (India)

of Kerala in a foul language. The HC initiated suo motu criminal contempt against the CPI(M) member M V Jayarajan. The HC sentenced him to six months imprisonment and a fine of INR 2000 in the year 2011. M V Jayarajan went to the SC against the verdict. The SC reduced the imprisonment period from six months to four weeks in the year 2015.

- **Justice Karnan Case(2017)**¹¹: Justice Karnan, a sitting judge of the HC of Calcutta levelled allegations against the several judges of SC and HCs without any evidence. Justice Karnan had written letters to the then CJI and PM. The SC announced six months imprisonment to Justice Karnan. Justice Chinnaswamy Swaminathan Karnan(CS Karnan) was the first Justice who went to jail for criminal contempt while in office.
- **Prashant Bhushan Case(2020)**¹²: The SC initiated suo motu Criminal Contempt against Senior Advocate Prashant Bhushan and Twitter India. Prashant Bhushan commented on the picture of the then Chief Justice of India Sharad Bobde. The SC fined the Advocate INR 1 in this case. The SC announced that if Prashant Bhushan did not pay the fine before 15 September 2020, he would be punished with the imprisonment of 3 months and debarred from his legal practice for 3 years. Prashant Bhushan did pay fine before the deadline.

GAPS AND CHALLENGES IDENTIFIED

Despite many developments happened, several challenges persist now as well:

- **Lack of Regulatory Body over Digital Media:**
There is a need to create a mechanism to regulate the Digital Media platforms. The concerned authorities must be vigilant about the length and breadth of Regulation because Freedom of Speech must be respected while making such a regulatory framework.
- **TRP-centric Reporting:** The rat race of TRP(Television Rating Point) must be curtailed in the interest of society. TRP ratings promote sensationalism. Trustful reporting is the need of the hour.
- **Zero sense of the Presumption of Innocence:** We all know that public discourse depends on media reporting. If factually incorrect reporting happened, the Right of

¹¹ In Re: Justice C.S. Karnan, (2017) 7 S.C.C. 1 (India)

¹² In Re: Prashant Bhushan & Anr., (2021) 1 S.C.C. 745 (India)

Presumption of Innocence until Proven Guilty does compromise. No one has the right to malign the image of any individual. Such reporting causes irreversible damage to victims, accused, suspects and their innocent families.

- **Limited Awareness in Society:** Several people do not know how to consume and where to consume the accurate information. A very large number of the population does not know which media outlet is serving the Fake information and which media outlet is serving the accurate one. They must know that the source of the content matters.
- **Artificial intelligence(A.I.):** Several unsocial elements are creating morphed videos and photos to malign the image of the individual. Awareness about the use of A.I. is must because the capacity of A.I. is much higher than we can assume.
- **Judicial Delays:** Judicial delays promote prolonged media scrutiny. We all know that speedy trial is recognised as a right of the accused. It is available in the article 21 of the Indian constitution.

LEGAL REMEDIES FOR THE VICTIMS OF MEDIA TRIAL

- **Defamation suit:** Victims may file defamation suits under section 356 of the Bhartiya Nyaya Sanhita(BNS), 2023 against those who are responsible for broadcasting or publishing defamatory content.
- **Suit for damages:** Anyone who is a victim can file a lawsuit seeking compensation for the losses suffered by Media Trial.
- **Postponement order:** The party has an opportunity to request the court for postponement order to temporarily halt media reporting in the interest of Fair Administration of Justice.
- **Injunction suit:** Victim has a right to file a lawsuit against the defamatory content of the media house. The court can issue temporary or permanent injunctions to prevent further loss of the image.

SOME BRIEF STORIES OF MEDIA'S IRRESPONSIBLE BEHAVIOUR

1. **Uma Khurana Case:** In the year 2007, a News Channel conducted a sting operation claiming that Uma Khurana, a teacher in a school situated at Delhi was running a sex racket of students. After broadcasting this sting operation, an angry mob attacked the teacher and ripped her clothes. Later, the sting operation found a fake. The teacher filed

for defamation. At last, there was an out of the court settlement between the teacher and the channel.

- **Arrest of journalist Muthi-ur- Rahman Siddique Case:** In the year 2012, journalist Muthi-ur-Rahman Siddiqui was arrested with six other persons on terror charges. The police of the state of Karnataka alleged that all the arrested persons were planning to target a high-profile politician and others. Later, journalist Muthi-ur-Rahman was acquitted by the N.I.A. Court. In the meantime, he was branded as a terrorist by a section of the Regional Media.
- **Rohtak sisters Case:** In the year 2014, the video of two sisters went viral where they were beating three boys with a belt. The sisters alleged that those boys were harassing them. That video had gone viral everywhere. The two sisters became heroes in the media. The boys were shamed everywhere brutally. Later, one another video went viral where the same sisters were kicking boys in public. Many people came forward and said that those sisters were habitual. Many females also came forward and claimed that those sisters misbehaved with the boys for publicity.
- **“Love jihad” Case**¹³: In the year 2016, Hadiya (formerly known as Akhila Ashoka). Her father filed a Habeas Corpus petition in the HC of Kerala. The father alleged that her daughter was brainwashed by Shafin Jehan. Her daughter was converted to Islam and married to Shafin Jehan. The HC of Kerala annulled the marriage. Shafin Jehan approached the SC and after the investigation by the N.I.A. The agency told the Supreme Court that Hadiya voluntarily converted and married Shafin Jehan. There was no forceful conversation as per the report of N.I.A. The Supreme Court of India restored the marriage. The regional and national media both covered this case with frenzy. The several media outlets played their role in a defamatory way.

COMPARATIVE PERSPECTIVE

Here is an International Approach over Media Trials:

- **United States of America(USA):** The SC in the landmark case of *Sheppard v. Maxwell(1966)*¹⁴ established that unlimited media coverage can affect the due process. The court recognised that it was the duty of the courts to conduct Fair Trials and establish such a mechanism where nothing could be influenced by the excessive media coverage.

¹³ Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368 (India)

¹⁴ Sheppard v. Maxwell, 384 U.S. 333 (1966)

- **United Kingdom(UK):** It takes a strict approach for regulating Media Trials. In the United Kingdom, the Right to Fair Trial is prioritized over Press Freedom. The Contempt of Court Act 1981 curbs senseless reporting which harms the interest of the particular case.

SOCIAL MEDIA: THE BIGGEST TOOL FOR CHARACTER ASSASSINATION

Social media has become the biggest tool for character assassination in the current age. No doubt about it that the Social Media Platforms have much potential to amplify the voice of people but the misuse of these platforms is a big concern. Many women and girls were targeted mainly who were vocal on political and social issues such as journalists, activists, and lawyers.

There is an urgent need for a better law which protects the dignity and independence of the users. Nobody has the right to defame others. The legislature can make a law but it must respect the Right to Free Speech. 'Article 19(1)(a)' is a part of the Basic Structure of the Indian Constitution. We should use such platforms in a responsible way. The Constitution of India promotes dignified life for everyone. The women or girls have the right to express their opinion without any hesitation.

If anybody malign the image of anybody online, the action must be taken in a timely manner in the interest of the Constitutional Values. We should use Social Media positively. The virtual world must be safer and more democratic. *Democracy and Rule of Law both exist in the virtual world as well.*

ROLE OF N.B.D.S.A.

It is an independent self-regulatory body in India. It deals only with Television and Digital News Broadcasters. The N.B.D.S.A. has authority to take action against the members for non-compliance with the rules and regulations. This authority can impose a fine up to *1 lakh* on the violator. The N.B.D.S.A. can issue warnings and censure the news item as well. It has insufficient powers. The members of N.B.D.S.A. should take some further steps to make it more powerful.

ROLE OF PRESS COUNCIL OF INDIA (P.C.I.)

It is an autonomous, statutory, quasi-judicial body. It was established in the year of 1966. It is a watchdog over the print media such as newspapers. The Press Council of India consists of 28 *members with a Chairman*. It protects press freedom and plays an important role in maintaining ethical standards in the print media. It can take action against the violators and the power to censure is also vested in the PCI.

CONCLUSION

Media trials may undermine the image of the judiciary amongst the public. Truly, the media's role is to investigate, report, and highlight the issues which are unknown to the public. But such practices must be ethical. All the stakeholders should respect the soul of our constitution. The Constitution of India promotes fairness. The Accused should get a fair chance to defend itself. I know the importance of journalism because it is well known that several cases are highlighted by the media.

The power of *Suo Motu Cognizance* of the information and such information flow with the help of journalists. Checks and Balances must be maintained between the media and judiciary. The Due Process must be followed in the interest of the Rule of Law in India. Baseless attempts to malign the image of anybody must be penalized. The new term “Supari Journalism” is becoming popular due to baseless allegations imposed by several media groups such as:

1. Glorifying Extrajudicial Killings
2. Anti-minority Narrative
3. Cooked(Fake) Stories in the Name of Real One
4. Insulting Judges in the Television Debate
5. Undermine the Human Rights

Such practices can be discouraged by the stringent laws and their honest and effective implementation. No one is above the law. *There is an urgent need for strict guidelines for Police because it has no right to display the accused persons in an undignified manner over Social Media. We have seen handcuffed, tied by ropes, forced to kneel photographs, videos of accused persons over Social Media.* This fashion is violating the Presumption of Innocence Until Proven Guilty. *Right to Dignity is a fundamental human right.*

The duty of the Police is to produce the accused persons in the court in a dignified manner. We must remember *India is a Constitutional Republic, not a Police State*. There is no doubt that the Media has a legal as well as Constitutional right to cover the events. Today, many media outlets are involved in live reporting from the courts.

In the case of *R K Anand v. The Registrar, Delhi High Court*¹⁵, the Apex court noted that concurrent trials by media outlets have no legal standing in our judicial system. *The Media Trial in parallel creates conflict between the right to free speech and the right to a fair trial*.

The media coverage within the limit is legally and morally correct; but when it crosses the limit and only generates sensation and to draw profit out of it. It becomes a problem. It must be curtailed by law.

India needs a responsible way of journalism. *A true Journalism values Facts instead of Fiction*. Several mainstream television channels and newspapers are also a part of serving propaganda in the name of reporting. It must be stopped.

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