

MEDIA TRIAL - THE JUDGEMENT BEFORE JUDGE

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ABSTRACT

The participatory approach of media is considered as the foundation of our democracy. In many things that affect the collective conscience of society, the media are both facilitators and accelerators. To name a few, such as the Priyadarshini Mattoo case, the Jessica Lal case, and the Tehelka case. Although the media plays an undeniable positivist role to a large extent, the role of the media in media trials for sexual crimes is questionable. Sensational journalism is the reality of the media industry. For the TRP, precise details of sexual crimes are disclosed in the public domain, which leads to violations of victims' privacy or unfairly condemning the alleged attackers, likewise as in the Kathua rape case, Hauz Khas rape case.

In every society, a vital role has been portrayed by the media in shaping social views. It can change people's overall view of various events. Heinous crimes must be condemned, but media cannot tamper with the judiciary functions and deviate from objective and fair reporting.

This article will scrutinize the positive impact of the active role of the media, as well as its legal implications, such as infringing on the privacy of victims, depriving the right to a fair trial, and being in public based on unacceptable evidence generate prejudice and interfere with judicial procedures by influencing sentencing procedures.

INTRODUCTION

In a democratic country, media is considered the fourth pillar of democracy and Legislative, Executive, and Judiciary. Media have depicted a vital role in molding and shaping social views. It can change people's overall view of various events. However, the media played an active role in bringing the accused to justice. Especially in the last two decades, the emergence of cable television, local broadcasting networks, and the internet has dramatically increased the influence of mass media communications. The distribution of English-language newspapers and magazines and various vernaculars has also been increasing in our country. The proliferation of circulation on demand of readers has resulted in media communication's prodigious role in shaping public views coupled with modern technology.¹

Art.19(1) (a) of India's Constitution grants freedom of speech and expression to India's citizens. However, it has not limited to a citizen only, but it is ambit covered the concept of media power. It also grants freedom of the press. In a democratic and mixed culture society like India, the permanence of a free-spirited, unconventional and persuasive media is the core. It is not only an instrument or mechanism to demonstrate one's outlook, perspective, and thoughts but also involve a sense of accountability and responsibility as held in the case of Keshavananda Bharti v. UOI². It acts as a tool for establishing opinions on various topics of national, regional, and international portfolio.

¹ Constitutionality of Media Trials in India: A Detailed Analysis by Kanchi, Academike, available at https://www.lawctopus.com/academike/media-trials-india/#_ftnref54 (Last Accessed on 16th Sep 2020)

² Keshvananda Bharati v. Union of India, (1973) AIR SC 1461

It plays an essential role as a conscious guardian, an overseer of social workers, and tries to solve our system's errors by making everyone understand and hope to correct it. Undoubtedly, the unprecedented media revolution has brought tremendous gains to the general public in many ways. Even the country's judiciary has benefited from ethical and fearless news. However, according to the 200th Report of Law Commission of India³ Trial By media has also stated that reliant on their reports and news to highlight grave human rights violations, they have self-identified these matters under various circumstances.⁴

However, there are two aspects of every story. Due to the increasing role and importance of the media, it cannot fully emphasize its accountability and professional needs in the report. There is no right to freedom in civil society, no matter how precious it is, it can be considered absolute, unlimited, or unconditional under any circumstances. Nevertheless, this freedom guaranteed under the Constitution comes with some reasonable restrictions and must be used within those reasonable ranges. While owning rights, they are also given significant responsibilities. Similarly, the freedom in Art.19(1) (a) is related to the obligation not to violate any law.⁵

Trials are conducted through the media, regardless of whether the court makes any rulings, television and newspaper reports will arouse a broad sense of perception, which will affect personal reputation. There is a heated debate between those who support the press's uncensored freedom and prioritize personal privacy and fair trial rights. In public, the media is often accused of inciting an atmosphere of public hysteria similar to lynching and violent public hysteria. It makes it almost impossible to conduct a fair trial and means that regardless of the trial's outcome, the defendant will not be able to censor it without strict public review. The opposite argument is that the mob's ideas exist independently of the media, and the media are merely expressing opinions that the public already has. There are many reasons for the media to pay special attention to legal cases: first, the intensity of the crime, such as rape cases, child pornography, or sex trafficking, are heinous and shocking to some extent; second, it involves celebrities, whether they are victims or accused.

Although buzzwords were created recently, the idea that popular media can have a powerful influence on legal procedures can undoubtedly be traced back to the advent of the printing press, perhaps far beyond that. It does not include the use of state-controlled news media to criminalize political opponents. However, it covers all situations where non-political publications on the surface have a severe impact on personal reputation in its commonly understood meaning. When things involve celebrities, the problem is even more apparent. In this case, media reports can sway popular sentiment in both ways.

BACKGROUND OF MEDIA TRIALS

³ Trial By Media Free Speech and Fair Trial under Criminal Procedure Code, 1973 200th Report Law Commission of India available at <http://lawcommissionofindia.nic.in/reports/rep200.pdf> (Last Accessed on 16th Sep 2020)

⁴ 200th Report on Trial By Media Free Speech and Fair Trial Under Criminal Procedure Code 1973, Law Commission Report, available at <https://indiankanoon.org/doc/42810882/> (Last Accessed on 16th Sep 2020).

⁵ Trial By Media: A Need To Regulate Freedom of Press, Hon'ble Mr. Justice G.S Singhvi, Bharat Law Review, available at <http://docs.manupatra.in/newslines/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf> (Last Accessed on 16th Sep 2020).

The history of media trials can be traced back to the 20th century. Although the term was coined only recently, its meaning originated from the 1921 case of Roscoe "Fatty" Arbuckle⁶. He was found not guilty by the court, but he was declared "guilty" in the media. After that, his reputation and job were lost. Another well-known case is O.J. Simpson⁷ (Simpson). In 1995, the media publicized the case, which affected the audience's thinking and went far beyond the court's status. Generally, it can be said that media reports reflect the views of a person walking on the street. However, as the media is increasingly subject to legal scrutiny, people believe that the media should only publish facts about anyone based on reliable sources after adequate proofreading. However, the use of the media has both benefits and detriments.

Another instance is the case of Stephen Downing⁸ in Derbyshire in 2002, a local newspaper editor's campaign retrial the case, and after 27 years of conviction, he successfully appealed and released the criminal. It can usually be said that reports in the press reflect the views of people on the street. However, printed materials usually have a higher value. It can be said that the judiciary has increasingly scrutinized the responsibility for reporting and leaking secrets about the trial, and journalists are calling for higher standards. The debate about the impeachment case of U.S. President Bill Clinton, it is an investigation by prosecutor Kenneth Starr and how the media handled the trial by reporting lawyer's statement that influences public opinion⁹.

LEGAL IMPLICATIONS OF MEDIA'S TRIAL¹⁰

The influence of media allowed it to portray events that must be kept secret successfully. Although the media acts as a watchdog and provides us with a platform where people can understand what is happening in society, it is essential to know that this will only cause the whole world to be biased towards one community or one person.

Media can affect the judicial process in the following manner:

1. **Unabridged Reproduction of Victim Statement** - The media immediately placed it in the public domain victim's initial statement in the form of a verbatim record, which leaves victim with no option other than to agree and rely on the original statement, because any changes to the original verbatim statement that is available in the public domain will weaken the prosecuted case. The victim's initial statement may be in a state of shock and may have left out

⁶ The Fatty Arbuckle scandal, Will Hays, and Negotiated Morality in 1920s America, Aaron T. Whitehead, Western Kentucky University, available at <https://core.ac.uk/download/pdf/43647339.pdf> (Last Accessed on 16th Sep 2020).

⁷ The O.J Simpson Verdict: A lesson In Black and White, Christo Lassiter, University of Cincinnati College of Law, Michigan Journal of Race and Law, available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1260&context=mjrl> (Last Accessed on 16th Sep 2020)

⁸ R. v. Stephen Downing (2002) EWCA Crim 263, Networked Knowledge Law Report, available at <http://netk.net.au/UK/Downing.asp> (Last Accessed on 16th Sep 2020)

⁹ A Newshour with Jim Lehrer Transcript, Legal T.V., available at https://www.pbs.org/newshour/spc/bb/media/july-dec98/lawyers_10-19a.html (last accessed on 16th Sep 2020).

¹⁰ Media Effects on the Judicial Process Definition, LawTeacher, available at <https://www.lawteacher.net/free-law-essays/judicial-law/media-effects-on-the-judicial-law-essay.php> (Last Accessed on 16th Sep 2020)

some key facts. If the victim changes the original testimony, the defender will argue at the trial that the complainant is not credible; modify the facts; the version is exaggerated, etc. Therefore, the prosecution may eventually lose the critical testimony of one of its main witnesses.

2. **Right to privacy** - there are several circumstances where the media trial exists based on leaked information from not a credible and authoritative source. For instance, in Sushant and Rhea's case, PCI remarked that It is not advisable to publish official investigations based on gossip. It said: "It is not recommended to report a large number of crime-related issues every day and to comment on the evidence without finding out the factual matrix," he added that this reporting method would produce inconsistencies in the process of fair investigations and trials. It also advised the media not to publicly announce victims, witnesses, suspects, and defendants, as this would infringe their privacy rights.¹¹
3. **Mental Torture** - The sexual offense was put in the focus of public attention by these media reports. The report added complex details to explain the problem, even if the real name is not disclosed, it can show the victim's identity. Although under the Anti-Rape Law, this position has been changed through Sec.228-A of IPC, Sec,327(3) Criminal Procedure Law and the Evidence Law. Due to physical and mental trauma, the victim may not want to discuss or view the details of the incident again, and because of this out of court trial, she may never be able to move on.
4. **Neglect Fair Trial** - Through the media's trial, a scenario of a tug of war has been created between two conflicting principles, namely, freedom of the press and free trials. The public is too interested in this. The media goes beyond its rights and enjoys publications related to the accused or suspect's character, such as publications about his/her character, confession, and publications that comment on the case, photos, police activities, and innocence. Fair trial means that every individual should be provided with equal opportunity and the right to be heard without prejudice. In **Zahira Habibullah Sheikh v. the State of Gujarat**¹², the Supreme Court explained: "A fair trial means a trial before a fair judge and a fair prosecutor, and a peaceful atmosphere of justice. A fair trial refers to the elimination of defendants or prejudice of the witness or reason for trial.

POSITIVE IMPACT OF MEDIA'S TRIAL IN THE SOCIETY

With the rise of technology and mobile applications such as Times of India, Inshorts, cable television, the Internet, newspapers in almost every regional language, and the emergence of shorts on the radio, the media put their network on almost all citizens they come into contact.

This tremendous influence makes people worldwide aware of events happening worldwide and regularly informs them of public affairs.

¹¹ Media Effects on the Judicial Process Definition, LawTeacher, available at <https://www.lawteacher.net/free-law-essays/judicial-law/media-effects-on-the-judicial-law-essay.php> (Last Accessed on 16th Sep 2020)

¹² (2005) 2 SCC 632

The media trial plays a crucial role in decreasing white-collar crimes, wealthy industrialists, corrupt officials, and celebrities trying to eliminate court trials by bribing police officials, who later refused to file against them a First Information Report. The media is the monitor of this contemptuous behavior, plays an essential role in exposing the dark side of Bill Clinton's scandal, later leading to the impeachment of Bill Clinton.¹³

The media plays a vital role in shaping contemporary people's thinking and has done an incredible job of getting criminals into trouble. From the most influential business tycoon to an ordinary teenager in college, everyone is afraid of being exposed and publicly humiliated. Now they all know their actions and the consequences of their actions. To some extent, it can suppress the number of crimes that occur every day.

There is no doubt that the media has played an enormous role in bringing justice to vulnerable groups. Because of its heroic role in cases commonly referred to as Bila Ranga, Baba Nirankar, "Sudha Gupta, and Shalini Malhotra.

Without active media, the voices of the brutal Kaph murder victims in Haryana are unheard of. Due to Kaph's fear and the support of police and political figures, this barbaric tradition lasted for a long time, until they appeared before the world through the media. Due to media recognition, many other cases, such as the Arushi Murder case, Jessica Lal Murder case, Ruchika Girhotra case, and even the games played by IPL Row, beget into broad daylight. It is undoubtedly a very positive and welcome behavior from the media.

LANDMARK JUDGEMENTS

1. **Papnasam Labor Union v. Madura Coats Ltd. (1995) 1 SCC 501** - Supreme Court placed forward some principles and guidelines, and at the same time considered the constitutionality of a statutory provision that challenges the unreasonable restriction imposed following the provisions of fundamental rights guaranteed by Article 19(1)(a) to (g).
2. **D.C Saxena v. Chief Justice of India (1996) 5 SCC 216** - The Supreme Court ruled that no individual, including media, has the right to accuse the judge of misconduct, bias, or incapacity. The purpose of this protection is to ensure the independence of the judiciary so that judges can decide cases without being favored by fear because the courts are established following the Constitution to achieve judicial justice.
3. **Rajendra Sail v. M.P. High Court Bar (2005) 6 SCC 109** - The editor, publisher, newspaper reporter, and petitioner as a union activist were all punished by the Supreme Court on the offense of making disparaging remarks against High Court Judge at a worker's rally, and sentenced to six months in prison. These remarks mean that the decision of the High Court is rubbish and inadequate. However, the Supreme Court maintained the court of contempt allegation in appeal and revised and reduced the accused's sentence.

¹³ David A.Graham & Cullen Murphy, The Clinton Impeachment, as Told by the People Who Lived It. The Atlantic, available at <https://www.theatlantic.com/magazine/archive/2018/12/clinton-impeachment/573940/> (Last accessed on 16th Sep 2020).

4. **Y.V Hunumantha Rao v. K.R Pattabhiram, 1973** - A curfew was imposed in a small area in Andhra Pradesh. It was contended that the curfew imposed is arbitrary, and there is no law to maintain the curfew. During the suit pendency period, the "Deccan Chronicle" published the curfew law's historical background and its reasons and explained all the case contents. It was believed that no comment should be made on the lawsuit when it is being heard because this may cause the danger of causing significant damage to any trial, such as damage in a judge's decision, witness, or any other public who has access to news from such media. In this case, it is also pointed out that even if the person posting such news believes that their opinion is valid since the fact has been established before the judgment is made, it should still be regarded as a court case.

CONCLUSION

Whether it is a legislature, administrative agency, judicial agency, or bureaucracy, any institution can abuse its power if it exceeds its legal jurisdiction and functions. Nevertheless, sometimes, these ultra vires activities are disguised as blessings, just like judicial activism. Like the revolutionary with an attack, the media trial is also a considerable effort because it closely monitors the administration system's investigations and activities. However, there must be reasonable self-limitation on its stage, a fair trial should be given due attention, and court procedures must be respected with a proper sense of responsibility. The media should acknowledge that any content they publish will have a significant impact on the audience. Therefore, it is the moral responsibility of the media to show the truth at the right time. Self-censorship guidelines will well regulate electronic media, and we will retain "completely free news," according to our first prime minister's dream.¹⁴

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