

THE LAWWAY WITH LAWYERS JOURNAL
VOLUME:-20 ISSUE NO:- 20 , MARCH 27, 2025
ISSN (ONLINE):- 2584-1106
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INDIAN CONSTITUTION AND MEDIA IS MEDIA TRIAL ENDANGERING JUDICIAL INDEPENDENCE IN INDIA?

Abstract

Media trials have become one of the most integral parts of news landscape in the contemporary scenario. Media plays critical role in making public informed regarding a wide arrays of matters. However, its impact on both judiciary and society raises some important questions concerning fairness, rule of law and ethics. Judicial bodies are responsible for running trials to decide specific cases. When media runs such trials on its own before judgement of court, these are called media trials and in some cases, they portray accused or mere suspects as criminals, which violate the law completely. Media trials often highly influence public opinions about the accused or even about the victims by creating an environment of mob-lynching. In a few cases, trial court judges are sometimes bound to take into account the media criticisms and their trials as the extra-judicial trial conducted by media already ends up forming public opinions in a particular way that influences the witnesses and their testimony. The judges therefore, stay under extreme pressure and although media criticisms do not necessarily influence the final decisions made by the judges, these trials affect the perceptions of public and also pressurize the victims that sway their statements. The article has provided a detailed analysis of the ways media trials are interfering with judicial proceedings in India and the adequacy of the present legal framework in governing media behaviour.

Keywords: *Janta Adalat or Public Court, NBSA or News Broadcasting Standard Authority, Contempt of Courts Act, 1971, Article 19(1)(a), Fair Trial, Article 21, Administration of Justice*

Introduction

Media Trials, as the name suggests, are trials that the Media conducts in any case even before the court trials take place. The process of trial by the media in India gained momentum in late 20th to early 21st century, though it was active in this country since 18th century when newspapers used to play a significant role in influencing public opinions and shaping their thought processes. However, these earlier instances were more focused on ensuring justice through campaigns rather than being focused on sensational trials. A major transformation took place with the emergence of alternative means of disseminating information, one of which is Television.

Television took a dominant position in 1990s as the news channels started gaining the attention of a big audience by bringing live-coverage of the on-going high-profile cases. This marked a shift towards dramatization in the reporting of judicial proceedings. There exists a significant difference between the opinions of people supporting uncensored and free media and those prioritising the Right to Privacy for fair trial. Media has already asserted itself as “**Janta Adalat**” or **Public Court** and has started exercising its power to interfere with judicial proceedings. Now, the question arises regarding the extent to which this media trial procedure influences the judicial system and the actual scope of it in so influencing. In most cases, media trials result in the generation of prejudiced public views regarding a case, and it affects the judicial functioning of a State.

Indian Constitution and Media Freedom

Media is considered to be the 4th pillar of democracy in India, and freedom of the Press and Media revolves around Freedom of Expression and Speech guaranteed under the **Article-19(1)(a)** of Indian Constitution. As per Article-19(1)(a) of the Indian Constitution, the media is responsible for ensuring fair expression and speech to create awareness and shape societal views in a positive way. Although Press Freedom falls within the ambit of Article-19(1)(a) of Constitution, the scope of freedom is often crossed, especially when the media takes suo moto coverage of information of the victim and the accused through various mass-media modes, having a detrimental pre-judicial impact on judges as well as the public.

It is true that media coverage in a positive way could enhance public confidence and trust in the judicial system and its outcomes. It is sometimes argued that media, by enhancing the pressure on the judges through professional questioning media can ensure their accountability, resulting in a significant increase in legitimacy of the courts. However, in some cases, media trials compel the judges to make decisions in accordance with the follow-up of the media criticisms. In past decades, an exponential growth in the influence of media has been witnessed in process of accessing justice in a number of cases related to murder, corruption, terrorist activities and much more.

It is pertinent here to note that media often ends up degrading the reputation of mere suspect and sometimes tagging these people guilty before judges even before they take cognizance of the cases by emphasising one-sided delegations to attract more viewers rather than trying to discover the reality. Thus, it influences the verdicts of the judges, limiting the scope of fair trials. The right of fair trial has been mentioned impliedly under Right-to-Life, which is protected by Article-21 of Indian Constitution. Hence, media trials often interfere with fair-trial procedures in a detrimental way, causing a violation of Article 21. In this regard, a few cases could be analysed to shed light on the ways media trials often infringe human rights and the importance of fair trials of the accused.

The case of “*Aryan Shah Rukh Khan Vs Union of India*” could be taken into consideration to determine the ways media could sway the opinions of the public at large that could have potential impact on judicial decisions. In this case, Aryan Khan was detained on the suspicion that he was

possessing prohibited drugs during a raid by Narcotics-Control Bureau. This detention of the son of a Bollywood star piqued the interest of media, and some channels started reporting on his personal character, family history and his probable engagement in the aforementioned case. Despite the absence of strong evidence supporting his involvement in the case, a few media outlets started portraying him as a pampered child of a star while finding its unreasonable connection with the alleged drug case.

From this case, it is evident that the major focus on media was on his family and personal life, causing a serious infringement of his Right of Privacy under Article-21 of Constitution. According to a few legal experts, the media coverage in this case influenced public opinion and their viewpoints, which could have potentially affected judicial outcomes. This case highlighted conflicts between media freedom and the right of the accused to a **fair trial**. Media can indeed play a supportive role. However, it is equally important to acknowledge the independence of judicial system as outcomes of the matters are dependent on rational and logical judicial decisions. Media often tries to foster anticipation of a specific result, which causes the society to expect that particular kind of outcomes that might be the coming from court. Media claims right of investigation and uncovering the true facts under Fundamental Right to Freedom of Expression and Speech. Hence, pre-trial coverage is one of its rights as per Article-19 of Constitution. Moreover, an individual's Right-to-Privacy under Article 21 is an important right, which moderates any other right.

Potential Effects of Media Trials on Judiciary

Media Trials could influence judicial procedures significantly by influencing public in shaping their thoughts and opinions. Especially in high-profile matters, media coverage impacts public opinions significantly, raising a concern regarding the ability of the judicial system to cope with this outside pressure that may have an adverse impact on judicial decision-making.

Pressure on Jury and Judges

Fair judicial system depends on impartiality, where the judges are always expected to make decisions based solely upon the facts along with the circumstances involved in a specific case. Moreover, the media often ends up portraying a mere suspect as guilty or an accused as innocent based on its own pre-trial procedures, which often influences the decisions of the jury as well as judges due to this media-induced pressure upon them. In some cases, "Kangaroo-Style Media-Trials and hate speech against Honourable judges have also been reported which clearly indicates that media often goes beyond the scope of free expression that has been allowed under Article 19. A study has shown that 11 petitions have been filed against the Press on the grounds of hate speech against the judges. It is mostly evident in cases where the decisions of the judges have not been influenced by the expectations set by the pre-media trials in specific cases. The judges and juries are, therefore, always under media-induced pressure, specifically while dealing with high-profile cases.

The case of "*Rhea Chakraborty vs. The State of Bihar*" could be taken into consideration to provide an understanding of the ways media trials

influence judicial proceedings. In this case, Rhea Chakraborty, a Bollywood actress was arrested on the grounds of her suspected involvement in drug-related offences and the death of her partner, Sushant-Singh Rajput. Media based on some unjustified and unverified accusations against Rhea Chakraborty, the media started portraying her as a person solely responsible for the unfortunate death of the actor, and this caused severe damage to her reputation. Despite the absence of proper conclusive evidence supporting her connection with the demise of the actor, the media's coverage on criminal charges against her shaped public opinions in a significantly negative way often undermined her Right of fair trial.

It is true that the public viewpoints have no major influence on the final decision; however, the media trials could sway the jury and could even intimidate the witnesses that might indirectly interfere with the judicial proceedings. Therefore, media trials potentially affect judicial outcomes.

Impact on Witnesses and Evidence

The testimony of witnesses is essential in legal proceedings as the final decision of the court is dependent majorly upon this. However, media trials sometimes influence the witnesses as they feel pressured or threatened by the media, especially when these people are subject to rigorous scrutiny. During media trials, their identities are disclosed to the public, and therefore, saying something before the court, which is different from the stories created by the media, could threaten the witnesses' image in the society as media influences the public opinions in a significant way. The Bombay HC, in the case of Sushant-Singh-Rajput, highlighted the potential of media coverage and narratives to influence the witnesses and their testimony in a negative way as several media channels in the case conducted parallel investigation in the case and cross-examined the witnesses, which often influenced or skewed the witnesses' statements.

Present legal framework in India to govern media behaviour

Contempt of Courts Act, 1971

The aim of enacting this Act was to prevent media, along with others from publishing information, which could interfere with proper judicial administration. This Act prohibits all kinds of broadcasts or publications, which could lower judicial authority or prejudice the process of fair trial. According to this Act, court can take actions against the media agencies, which publish reports likely to affect outcomes of pending cases or on-going trials.

The "*Rao Harnarain Singh Sheoji Singh vs Gumani Ram Arya*" case serves as an important precedent in demarcating the boundary between the freedom of Media and media entities' obligation to uphold the authenticity of the judicial proceedings. Rao Harnarain, along with others in this case, have been facing criminal charges under **Section 302** (murder), **Section 201** (evidence obstruction) and **Section 306** (Rape) of the IPC, 1860. The Respondent was the printer, editor and proprietor of a daily newspaper (Mewat). During pendency of Rao Harnarain's trial, it was found that the newspaper was running a defamatory campaign aiming at prejudicing

public opinions in relation to the matter concerning Rao Harnarain's criminal charges that had the potential to interfere with his fair trial.

The newspaper published some inflammatory comments and headlines that affected the accused in a detrimental way. As a result, Rao Harnarain filed an application against the Respondent under "**Contempt of Courts Act**". The issue that arose was whether the newspaper publications constituted contempt-of-court and interfered with justice and fair trial or not. High Court examined all the publications of the said newspaper that allegedly defamed the accused even before the trial was initiated. The court contended that the Respondent's conduct clearly fell into the category of Contempt-of-Court.

In the recent case of "*Rujira Banerjee vs. Union of India*", the court issued strict guidelines directing a media agency to withdraw all its petitions affecting the Right-to-Privacy of Rujira Banerjee. In the alleged recruitment scam, the petitioner had to face some reputational damage, as the media agencies published information that resulted in her personal character assassination even before the trial process took place. The disclosure of information regarding witnesses or suspects in this case interfered with the judicial proceedings and affected a fair trial, which was a contempt-of-court. The court contended that the media had no right to interfere with the privacy and fair trial processes and that it is necessary to understand the scope of media's freedom of expression and speech.

Therefore, in both of these cases, the court highlighted that the media got the right to conduct pre-trial process; however, this could never imply that the media could interfere with fair trial procedures and judicial proceedings. Thus, although Freedom of media is an important right of the Constitution under Article-19, the right is not absolute. Therefore, it must always be subordinate to the Right of an individual to fair trial and proper judicial administration.

News Broadcasting-Standard-Authority

NBSA has also been established to govern media behaviour, and it plays a crucial role in ensuring that media agencies and challenges comply with all the ethical standards. It has issued several guidelines for the reporters and broadcasters concerning matters related to privacy, rights of individuals to fair trials, sensationalism and so on. For example, in the **Sushant Singh death** case, NBSA directed a few channels, such as Aaj Tak and News 24, to apologise, as these channels repeatedly tried to highlight his mental health and also started to find a link between his mental health and his death. This caused a violation of the Right-to-privacy of the actor and his family. This also influenced the statements of witnesses majorly that impacted fair trials to a significant extent.

Sufficiency of the present legal framework in controlling the behaviour of the Press and Media

The discussion above has given a detailed insight into the ways NBSA has played a crucial role in ensuring media compliance with its guidelines related to fair trials and sensationalism. Moreover, there are still cases where media hate speeches against the judiciary are often overlooked. The

fair trial processes are also impacted negatively, when media trials start to undermine judicial processes. For example, in “**Arushi Talwar-Hemraj Murder case**”, Arushi and Hemraj were murdered in 2008. The media started questioning her character and also held that her affair with the household worker, Hemraj, triggered her parents, which was the reason behind them committing the murder of their daughter, although there was no strong evidence in this case.

The parents of the deceased girl were punished with life imprisonment on the grounds of committing murder of the said people, though there was no strong evidence for the same. Many critics in this case argued that the entire case was totally based on weak evidence and the aggressive interference by the media trials impeded proper identification of the accused. Later on, Allahabad HC acquitted Arushi’s parents as the judges contended that the evidence in this case was circumstantial and CBI that investigated the case could not prove that the Talwar couple committed the murder of their daughter. Thus, media trials seemed to have influenced the case to a major extent reflecting the insufficiency of the legal framework in India to prevent media interference in judicial system.

Unreasonable and exaggerated publicity in media, characterising a specific individual as guilty also when final decision or even the trial is pending before the court, amounts to media’s undue influence on the process of fair “administration-of justice”. Therefore, the establishment of a stringent governing framework is necessary in India to control the activities and behaviour of media and ensure judicial independence. The most effective way of governing media behaviour is to penalise for conduct that amounts to contempt-of-court. The legislature, while drafting the governing laws, must take into consideration the importance of including preventive measures in the provisions along with the inclusion of corrective measures.

Conclusion

Media’s indispensable role in the society is undeniable and it functions as the democracy’s fourth pillar alongside judiciary, executive and legislature. It provides crucial information to the audience fostering awareness of people and shapes public opinion about a wide range of issues. In India, media has emerged as a force amplifying the voice of public. Article-19(1)(a) of Constitution impliedly includes media freedom; moreover, some channels and media house agencies have recently come under scrutiny by the courts for running some contentious shows amounting to violation of the rights of the accused or witnesses involved in a particular case. The courts have stressed it multiple times that the freedom of right of free expression given to media is not absolute and this right does not give media an unrestricted license.

The courts have further highlighted that media while conducting their own trials must stay within a responsible limit that will make sure that such kinds of trials, which are often based on some mere assumptions, do not interfere with the impartial trial in the court. Judiciary has further recognised the ways media trials influence rights and dignity of victim and accused. In various cases, it has been found that media trials have influenced witness testimony in a way that has further affected judicial

outcomes. Thus, while media-trials could be seen as reflection of a developing media landscape, the detrimental impact of media-trials on judiciary and society calls for careful consideration. Balancing need for fair trial and right to disseminate information amongst public is essential to maintain people's trust in legal system and media. Through commitment of media to ethical guidelines and responsible reporting it will be possible to navigate intersection of judiciary, media and the society.

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