

UNDERSTAND THE CONCEPT OF MEDIA TRIAL VS. FAIR TRIAL.

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ABSTRACT

A fair trial is sometimes questioned due to the influence of print and digital media on opinion formation. The authors of this work have made an attempt to demonstrate an awareness of the differences between a media trial and a fair trial. On the other hand, the media does not stay silent when it believes justice has been mishandled; such outcries have an impact on the court system. Fair trial with a public record of legal fees for the press

Key Words: media trial, fair trial, prejudice, sub judice, free press, law of contempt and Freedom

INTRODUCTION

In the late 20th and early 21st centuries, the phrase "trial by media" emerged to describe how media coverage may influence public perception of a person's guilt or innocence before or after a court judgement has been made. This is especially important when high-profile defendants are on trial, as it raises concerns that the jury's impartiality may be affected by extraneous information, so breaking due process and perhaps leading to an unjust trial. The primary goal of India's criminal justice system is to provide every person who has been arrested in India with a fair and impartial trial. A criminal trial in the United States is conducted using the adversarial system. The burden of proof for the accused's guilt beyond a reasonable doubt is with the prosecution under this system.

The right to a fair trial is guaranteed to anybody who stands accused of a crime. It's well accepted by the general populace. A fair trial by an unbiased jury is a basic human right, with its origins going all the way back to 1215 and the Magna Carta. Both the Universal Declaration of Human Rights (Article 10) and the International Covenant on Civil and Political Rights (Article 14) recognize the right to a fair trial wherever in the world. The right to a fair and public trial is enshrined in Article 21 of the Indian Constitution. *Rattiram v. State of Madhya Pradesh* was a case decided by the Supreme Court that highlighted the significance of a fair trial in criminal law. The Supreme Court declared in the case of *Himanshu Singh Sabharwal v. Madhya Pradesh* that if it is persuaded that the prosecuting action has not been conducted by a fair trial, it has the jurisdiction to seek justice under Section 311 of the Code or Section 165 of the Indian Evidence Act, 1872. A public trial is a constitutional right, as established by the Supreme Court in *Naresh Shridhar Mirajkar v. State of Maharashtra*. Article 21 of the Indian Constitution, as interpreted by the Supreme Court in *Moti Lal Saraf v. Union of India*, ensures the right to a fair and quick trial.

The news is often dominated by discussions about media legislation. Stories that include a politician or celebrity suing for libel or invasion of privacy, an inquiry into an alleged broadcasting fraud, or the downloading of terrorist material or pornography

from the Internet get national and, increasingly, worldwide attention. This article examines how the free press affects the administration of justice by examining the issue of prejudiced media coverage. The press and broadcast media are generally barred from publishing information that might affect the result of pending or ongoing judicial processes in most countries. The risk is that the jury will be prejudiced against the defendant because they heard or read anything that made them think he was guilty of the crime before the trial ever began. In England and other commonwealth countries, publishing such information is a criminal offense. Concerns have been raised concerning the efficacy of contempt of court laws, especially in light of the rise of new technologies that are more difficult to regulate than the press and licensed broadcasters. However, there are situations when the contempt law might unreasonably restrict press freedom.

The media used to be a blessing that informed the public about what was happening in the globe. The Indian press must uphold the values outlined in India's founding document. The media has joined the legislative, the executive branch, and the judiciary as the "three pillars" upon which our democratic system rests. It draws attention to the nation's societal, legal, economic, and cultural issues. The media has become a Janta Adalat's, or "public court," and has begun to intervene in legal cases. While "guilt beyond a reasonable doubt" and "presumption of innocence until proven guilty" are often discussed in the media, the fundamental distinction between a convict and an accused is seldom addressed. What we are seeing now is a media trial, an independent probe conducted by the media. In addition to gathering evidence, this phase involves turning the public against the suspect or accused well before the court has jurisdiction. The public's bias causes the accused, who should be treated as innocent until proven guilty, to be treated as a criminal and to have his rights and freedoms violated.

LITERATURE REVIEW

Tulishree pradhan,shuvro prosun sarker (2018) While the influence of print and digital media in shaping public opinion cannot be overstated, their potential effect on the integrity of the judicial system is often debated. In an attempt to show that the court and the media are not at odds with one another, this study argues that they are, on the contrary, mutually supportive in a democratic society. It examines the many channels through which the influence of media trials on court judgments may be seen. By examining the impact of media coverage of trials throughout the world, this study demonstrates the public interest in the fair administration of justice.

Dr. Dipali a. Purohit (2017) A free press, with all its potential for mischief, is preferable to one that is stifled or restricted in my opinion. In the late 20th and early 21st centuries, the term "trial by media" came to be used to characterize the effect of media coverage, television and print media in particular, on a person's reputation by creating a public perception of guilt apart from any decision in a court of law. Everyone has the legal freedom to freely express their opinions and ideas in a democratic state, such as India. In addition, citizens must be involved in all aspects of governance and state administration. In a democratic society, the media plays a crucial role. The media today play a crucial role in shaping public opinion by reporting on and debating timely topics such as crime, corruption, politics, the economy, and the finances. This provides the public with the information it needs to form an informed

opinion about how these issues are being handled by the government and its agents. The media has an obligation to uphold the right to personal privacy. But self-controlled and self-disciplined media is preferable than media governed by the court and the state in the name of democracy.

Dr. Seema yadav (2019) The press is often cited as a key component of a healthy democracy. The media has several important functions in modern life. The media has a significant impact on shaping public opinion and may drastically alter how individuals see the world. It's to the media's credit that they've begun a pattern of actively assisting in the capture of the guilty. The right to freely disseminate information about public affairs is fundamental to individual liberty. People need a transparent and honest description of events so they may draw their own conclusions, make their own contributions to the conversation, and choose their own next steps toward realizing this goal. Article 19 guarantees citizens the right to freedom of expression. That's why the media can be so influential in a democratic society when it comes to issues of law and justice.

Srishti Ramchandani (2020) The study's goal is to examine media trial's constitutionality in India in great detail. The study will focus on Article 19 of the Indian Constitution, which guarantees the right to protects free speech and expression, including the press freedom, but limits the rights of the press, but also inhibits the accused's right to a fair trial-accused, will be the primary focus of the research, representation, privacy, etc., in an adversarial judicial system. The paper's other goal is to highlight the ways in which media trials undermine the functioning of the judicial system and may lead to distortion and injustice. The media has been given a great deal of power to affect the public, thus it is essential that they remain objective in their reporting. The paper's ultimate goal is to provide a remedy that would have the judicial system deliver justice and the media report the news without prejudice.

Bhaswat Prakash (2020) It has been compiled after extensive research and consideration of several relevant sources, including but not limited to articles, papers, periodicals, press releases, books, interviews, and others. This research paper examines the many ways the media portrays trials, evaluates their quality, and provides examples. It also reveals the motivations behind and facets of the media's trials of high-profile cases including those involving crime, politics, scams, and other topics that have become staples of Indian citizens' entertainment and gossip. The goal of the modern world is to have the most cutting-edge methods of mass communication. Now that we are well into the 21st century, we have seen a dramatic movement away from more conventional forms of mass communication such as newspapers and television, and toward more cutting-edge forms of media such as social networking websites. Article 19(1)(a) of the Indian Constitution guarantees the right to free expression; as a resultEven though it may compromise the integrity of the case and prejudice the outcome, the media regularly frequently reports on and publishes articles based on interviews with witnesses and other parties in cases that are currently pending in court, even if doing so could compromise the integrity of the case and prejudice the outcome. because Article 19(1)(a) of the Indian Constitution guarantees the right to free expression. The media's coverage of high-profile cases, including investigations and updates, has the potential to sway public opinion in a way that compromises the impartiality of the court and leads to a miscarriage of justice. The judge is required to base his or her decision solely on the facts and

evidence presented in court, but media coverage of the case can make it more difficult for the judge to remain objective. Trial by media shows This paper explores the different aspects of the society and the community ways in which at all directly impacts the Judiciary System of any Constitution, and it can't be denied media trials can compromise an accused person's constitutionally guaranteed right to a fair trial. It is undeniable that India is a big prime example for the same as it is the biggest sufferer in field of Judiciary of the problems that arise when a country's judicial system is under siege, and this paper focuses on how such trials conducted by the media affect the right to fair trial of the accused. Uses the country as a case study. You'll find a range of Case Studies here, along with expert opinions on how media coverage of trials influences the administration of justice. You'll also learn where various national and international committees and administrations stand on the issue of media trials, as well as the relevant rules and sections. According to the findings, many attorneys think that judges changed their decisions because of media pressure, and that "intense case analysis by media before completion of the legal procedure" affected the outcome of cases. According to the research, "for a long time, India's criminal justice system has been unenthusiastic about granting free providing unfettered media access to its operations and deliberations," the report states." When any external circumstances taint the decision-making process, the consequences for people might be devastating. The impact of the media on ongoing trials has been studied. According to the studies, trial by media is a dynamic process in which persons are exposed to public opinion and convicted without a chance to defend themselves. According to the studies, Without a fair trial, innocent people are often found guilty by the public after being portrayed in the media.

MEDIA TRIAL IS TOLL ON FAIR TRIAL

The administrative bodies of India, including the legislature, the executive branch, and the legislature, the judiciary, and the media make up the "fourth pillar" of American democracy. The media is crucial because it is the vehicle through which information may be stored and disseminated to a wide audience in a short amount of time. It is that watchful group that acts as a watchdog on governmental and social officials, bringing lawbreakers into the light.

In today's high-tech world, "trial by media" has emerged. Opinions formed via media coverage often have a negative effect on the impartiality of a trial. Before the relevant court can actually pronounce decision, the media focuses on the reputation of the government and society by creating a widespread sense of discomfort, anger, or chastity.

Present scenario

The right to a fair trial under Article 21 of the Constitution is at jeopardy as a result of a counterclaim under Article 19 (1) (a) of the Constitution. There has to be a middle ground between these two fundamental rights, and the time has come for courts to set reasonable guidelines for media reporting. Because these rights and equality rights are not equivalent and do not exclude one another, the courts have no choice but to impose re-equitable standards and decisions based on the parity that results from the Constitution's treatment of the two rights as equivalent.

Section 19 (2) of the Indian Constitution grants the government broad authority over the press, which is at odds with the United States Constitution. It has come to light in recent times that news organizations have signed agreements with companies and corporations to avoid publishing or airing information that may be seen as negative to their reputations.

The media should not provide inaccurate or incomplete news or sensationalize the news for the purpose of TRP, but instead should adhere to the appropriate constraints and the module of these news outlets. People tend to believe what they see on television, and because media outlets rely on advertising revenue to stay afloat, they have a responsibility to maintain high standards of conduct in the workplace and to promote a positive working environment for its employees. The modern media has been criticized for using tragedies like the SSR case, the Hathras rape and murder, the Ayushi murder, and the Sarvjeet Singh case for ratings and clicks.

CRITICISM OF MEDIA TRIAL

In a free society, the press is crucial. Each democratic institution should be able to do its job without interference from the others. Media coverage of high-profile criminal cases, such as those involving Indrani Mukerjee, Jessica Lal, etc., has gone too far. The participation of the media results in the release of some of the accused. A three-judge panel headed by India's Chief Justice R. M. Lodha called the situation "extremely severe," adding that the Court will explore a few recommendations to strike a fair balance between the interests and rights of the many parties involved. The Court follows these rules of procedure:

There has been a rise in media trials, when the accused is publicly shamed before a trial has even commenced based on evidence provided by the prosecution and police. The Supreme Court should investigate this trend.

The Courts have taken the reports of a press conference held by the police and other investigative authorities very seriously. Nothing should be done to compromise the confidentiality of the investigation. As Article 21 of the Constitution covers all of them, there must be some controls over them.

It is inappropriate to have a trial by media when a trial is already underway in court. Guidelines for the media's coverage of criminal proceedings and briefings by investigative authorities are currently anticipated to be drafted by the Supreme Court. A newspaper's choice to undertake an independent investigation into a crime for which the accused or suspect has been arrested and publish the findings of such investigation would be malicious, according to the Supreme Court's ruling in *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr.*, 1961. This is malicious because trial by newspapers should be banned whenever a case is being heard in one of the country's established courts. This is due to the belief that every investigation conducted by a newspaper has the potential to obstruct justice, regardless of whether it favors the accused or the prosecution.

The Delhi High Court ruled in *Sushil Sharma v. The State hi and Ors.*, 1996 that a person's guilt or innocence cannot be determined by what was reported in the media but rather by the evidence in the case file. The judge presiding over the case is expected to maintain impartiality. The petitioner will argue that he or she was denied a

fair trial because the judge seemed biased based on what was reported in the media. The charge should be crafted in accordance with the evidence already in the file, regardless of how much or how little information is really accessible.

With the passage of time, media's function has changed. In most circumstances, rather than just reporting the facts, the media actively interferes with the work of the court. The termite of corruption has eaten away at the judicial system's core base in the greatest democratic nation. The attorneys use unethical measures, such as paying public officials to falsify the evidence or pressuring the defense to drop the case, in an effort to prevent the accused from being convicted. There has been extensive anticipatory media coverage of criminal prosecutions because of this massive institutional disparity. The media has successfully influenced public opinion by using a sensationalist approach to the news.

MEDIA TRIALS VS FREEDOM OF SPEECH AND EXPRESSION

Article 19(1) of the Constitution of India guarantees citizens the right to free speech. In shaping public opinion on economic, social, and political issues, the right to free expression plays a key role. In light of this, According to Venkataramiah, J. of India's Supreme Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* (1985), press freedom lies at the heart of social and political interchange. Especially in the developing world, where not all segments of society have access to contemporary means of communication like television, the press has stepped into the role of public educators, making it feasible to provide instruction on a massive scale.

The press's duty is to serve the public interest by disseminating information necessary for a democratic electorate to make an informed decision (Government). Newspapers, being the people's source for news and opinion, affect government policy and often publish content that is offensive to officialdom. In light of the Supreme Court's above declaration, The importance of a free press to a functioning democracy is without dispute. Everyone has the right to take part in our democratic system, which is based on the belief that government should be run by and for the people.

A free and open debate of public issues is necessary for every person to be able to make an informed decision while exercising their democratic rights. This is a constitutional interpretation of press freedom in India. When determining whether or not a limitation on freedom is reasonable, courts in India look to Articles 19(1)(a) through (g) of the Indian Constitution. The Supreme Court of India outlined some guidelines and principles that should be kept in mind while doing so in the case of *Papnasam Labour Union v. Madura Coats Ltd*, 1994.

MEDIA TRIALS V. FAIR TRIAL

As a component of the right to life and freedom, Article 21 of the Indian Constitution guarantees the defendant a fair trial. The "Right to Fair Trial" is a key principle of Indian law that holds that the outcome of a trial should not be affected by anything other than the facts of the case at hand. Article 129 and Article 215 of the Indian Constitution, as well as the Contempt of Courts Act of 1971, provide this right. If someone is accused of a crime in the United States, they will be treated as innocent until proved guilty in a court of law. The media's duty is to report the news without bias; thus, journalists should avoid passing judgment and instead focus on reporting

the relevant facts. There is currently a fierce rivalry between the print media and the electronic media for readers' dollars and viewers' TRPs.

The Press Council of India has instructed the media to refrain from providing undue attention to the victim, the accused, or the witnesses, and from making public any sensitive information that might compromise or delay the inquiry. If the media publicly names a witness, that person is more likely to become hostile, and they also shouldn't hold their own trial in parallel to the real one, which might put too much pressure on whomever is doing the judging.

The Supreme Court's decision in *Zahira Habibullah Sheikh v. State of Gujarat*, 2006, upheld the concept of a fair trial, which is defined as one that takes place in a quiet courtroom before an impartial judge and a fair prosecutor. A fair trial is one in which neither the witnesses nor the accused nor the cause being tried are treated unfairly. According to the case *Vijay Singhal and Ors. vs. Govt. of NCT of Delhi and Anr.* (2013), the purpose of trials is to accomplish the goals of justice; if, however, the right to free expression conflicts with the right to a fair trial in achieving those desired results, the latter would be given precedence.

Increasing public trust in the fairness and openness of the judicial system, the Supreme Court ruled in the 2012 case *Sahara India Real Estate Corporation Ltd. and Ors. vs. Securities and Exchange Board of India and Anr.* that the media has the right to know what is happening in courts and communicate this information to the public. In certain cases, such as a murder trial, an accurate and unbiased reporting of the trial might lead to a significant danger of prejudice in other, unrelated trials. The delay not only helps minimize probable media scorn, but it also protects the fairness of subsequent or related trials.

The trial by media on the sub-judice matter has been criticized by both the Supreme Court and the High Court in a number of cases for potentially influencing the judge or jury's decision and, in certain situations, on similar cases in the future. In their most recent version of the Norm of Journalism Conduct (2010), the Press Council of India likewise recommended that journalists avoid engaging in such sensationalist practices.

MEDIA TRIALS V. RIGHT TO BE REPRESENTED

The media has created an environment where lawyers are reluctant to defend the accused, violating his constitutional right to be represented in court by counsel of his choosing. There is just another manner in which media trials undermine the principles of natural justice. For instance, when famous lawyer Ram Jethmalani represented accused printer Manu Sharma in the Jessica Lal murder case, he received harsh criticism from the general public. In another instance, attorney Kamini Jaiswal was labeled "an anti-national" for defending Delhi University professor SAR Geelani, who was suspected of involvement in the 2001 Parliament assault. Prashant Bhushan, the attorney representing Yakub Memon, was also met with opposition.

Lawyers are unable to meet their ethical duties to offer legal help in criminal proceedings when their safety is compromised. Hence, the concept of natural justice is compromised by trials covered by the media.

THE CONTEMPORARY ROLE OF MEDIA:

Let's talk about how the media portrays victims currently. There is a long tradition of media outlets, both print and online, being unsympathetic to victims. It is common for the media to report on the scene of a crime, including the blood of the victims and graphic depictions of the corpses of the deceased. Television cameras are also often present during funerals, when they attempt to get interviews with distraught parents. Is there really a need for all this to be seen by the public? Is the media telling the truth about what they find? Do we really need to know every gory detail of a terrible murder to grasp the tale or the bigger problems at hand? Probably not, yet we are constantly bombarded with examples like this. Although some victims claim a negative interaction with the media, others report a positive one, and the statistics demonstrate that both sides are equally represented. Only the victim who is speaking with the media at the time may explain the level of sensitivity provided to the victim, and that level varies from case to case. Common criticisms victims direct towards the media include:

Table 1: Common Objections

i)	Blaming the victim for the crime,
ii)	Printing information that would negatively impact the victim's credibility,
iii)	Inappropriate/ aggressive questioning,
iv)	Discussion of gruesome details,
v)	Interviews at inappropriate times, such as funerals,
vi)	Footage/photographing child victims,
vii)	Glorifying the violent act or the offender and,
viii)	Naming the victim and proving access to them.

While the public has a right to information, it is not made clear how far this right may be used. Should they be expected to remember the minute-by-minute details of a murder victim's last seconds?

Do these reports serve the public's "right to know" or are they only an attempt to generate clickbait headlines? The issue remains, even if the public has a right to know, of what good this information will do for society or how it will improve the public's grasp of the crime. So, it is possible to recommend that victims should be granted certain rights while interacting with the media. Victims should be afforded the dignity of privacy while they engage with the media, including the ability to mourn in private. Lawmakers have been lenient in letting the media police itself, but many have pointed out that the industry has done nothing to further self-regulation. As a matter of fact, there is no established protocol for properly training reporters and photographers on how to appropriately interact with victims. Victims' rights would be granted in a manner that does not compromise the capacity of the media to gather relevant information. These protections shouldn't come at the expense of telling the truth or keeping the audience interested in the topic at hand. The media might facilitate a smoother recovery for victims and their families by doing things like:

Table 2: Media efforts

a) Fair presentation/coverage of both side stories,
b) Avoid Inappropriate/gruesome photos,
c) To deal with the victim(s) carefully; with respect and dignity,
d) While they are grieving, leave the families alone. E.g. funerals,
e) Respect their privacy and wishes,
f) Just to create news don't humiliate or paint the victim in a bad light,
g) Avoid glorifying/ sensationalizing violence,
h) Graphic details are not required always,
i) Victim(s) blood or body bag is not necessary to be shown

Fortunately, there is a rule that prevents victims' identities from being made public during criminal trials. This is a positive development, especially for the survivors of sexual assault and the children who saw the crime. The media are barred from reporting on certain facts and details that the fair has deemed confidential.

Facts of the trial process, such as the identification of a victim or the testimony of a child witness. Our most pressing concern, however, is whether or not the media may report on any topic at all in the absence of a specific rule for the protection of news reporting. Details and personal information about the victim and perpetrator were highlighted by the media as reasons for the story's newsworthiness. Yet, media outlets often emphasize gruesome aspects of a murder scene in order to sell articles and sensitize viewers or readers. When there are several victims or perpetrators, or when the crime is particularly horrific, the media is more likely to publish the story in an effort to distort and twist the details for public attention. In reality, the most prevalent crimes tend to get the most attention and coverage.

When the public has the impression that crimes are more frequent and violent than they really are, it contributes to a climate of unrest. The public feels they are at a higher risk of becoming victims because of media sensationalism. The media, in particular, is subject to restrictions on reporting some facts in order to safeguard the identities of victims, minor witnesses, and adult victims of sexual assault. The offender's name shouldn't be released either since it may lead to the victim being recognized. The release of the identities of the victims in sexual assault cases has both beneficial and bad effects, as it may prevent other victims from coming forward out of fear of being named public ally. Maybe we need to realize that concealing the victims' identities is cruel and adds more humiliation to their ordeal. We need to run our campaign on the principle that there is "nothing to hide," rather than trying to conceal it. Because this is such a horrific act, it is only right that the identities of the victims be made public.

In truth, many sexual assault victims want their identities made public so that their abusers may be held accountable for their crimes. Misrepresentation in the media may lead to the victim of a sexual assault being held accountable for the crime. One research indicated that viewers' attitudes toward the victim of a crime may be affected by the media's coverage of the event. The victim's clothing may be used as a proxy for their character and as evidence that they were the instigator of the crime if it is reported. Another ludicrous example would be the promotion of victim blaming in the case of a lady who, despite being mistreated by her husband for years before his eventual death, stayed in an abusive relationship with him.

CONCLUSION

At a trial, the Court, not the press, must preside. Media scrutiny during a trial is undeniably disruptive to the administration of justice. The freedom of the press must take a back seat to the accused's right to a fair trial before the trial of the current case may begin. A public trial undermines the rule of law. The media's impact turns out to have been more divisive than constructive the media should be subject to competent judicial regulation. As legal processes are not a sporting event, the courts should not provide the press complete access to them. The use of contempt of court to punish those who violate the fundamental code of conduct is the most effective method for governing the media. The Supreme Court has allowed lower courts to utilize its contempt powers against the press on many occasions. The media's right to free speech must be limited when it threatens to influence the outcome of the trial.

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