

MEDIA TRIAL: AN ONGOING VIOLATION OF HUMAN RIGHTS

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*Media has been playing a vital role in moulding the opinions of society since forever. The last decade has seen an advent of press, local radio and the growing use of social media platforms by the masses. Media has also played an active role in scrutiny of judicial cases. However, there is a need for its accountability and professionalism which cannot be emphasized enough. In order to grab the attention of the viewers, the media misreports the facts and tries to make it more sensational. Along with the search for evidence, the media passes its judgments. And this process we are well aware of as **Media Trials**. The impact of television and newspaper coverage on a person's reputation creates a widespread perception of guilt regardless of any verdict in a court of law. But what about the principle of **Presumption of Innocence**? A person is innocent until proven guilty. This phrase has lost its credibility in the eyes of the media.*

Key words: Media Trial, Reputation, Presumption of Innocence

If democracy has to be meaningful and function effectively, then a free press is its *sine qua non*. It is visibly evident how freedom of press acts as an oxygen for the democratic society. Since the independence of our country, we have seen a free and vigilante media that has acted as a vital force to curb corruption and injustice. It has strengthened and empowered democracy and has acted as a fundamental base of the society. (Learned Hand, 1942). The right to free press does not exist independently. It has been incorporated in the Right of Freedom of Expression under Article 19(1)(a) of the Constitution of India, which makes it a fundamental right.

We have seen media trials since the case of *K.M. Nanavati v. State of Maharashtra*, where the press gathered huge sympathy amongst the public for Nanavati who shot dead Prem Ahuja, the person with whom his wife had an extra-marital affair. The jury which heard his trial was sympathetic to his suffering and declared him as 'not guilty' by a majority of 8-1. In India, trials by the media have assumed a significant proportion and have had both positive and negative implications.

Some famous criminal cases that may have gone unpunished but for the intervention of the media are the cases of *Priyadarshini Mattoo*, *Jessica Lal*, *Nitish Katara murder* and *Bijal Joshi rape*. The media however, drew flak in reporting the *Aarushi-Hemraj murder* case where it claimed that the deceased's own father, Dr. Rajesh Talwar and possibly her mother, Nupur Talwar were involved in her murder. The Central Bureau of Investigation or CBI later declared that Rajesh was not the killer and the Hon'ble Allahabad High Court acquitted them of the charges.

Media can be seen passing judgments about the right and wrong even before the courts do. Recently, a large section of the media has declared that Rhea Chakraborty has used the famous Bollywood actor Sushant Singh Rajput as her financial backer and also abetted his suicide. The CBI has recently taken over the case and the Hon'ble Supreme Court has ceased to rush into anything as police investigations are still going on. But you can ask anyone, they have already made up their minds and convicted Rhea Chakraborty of his murder. Fair criticisms are allowed but damaging a person's life and career beyond repair is unethical. The media contributes in framing the mind-set of the people. When the media does so, it hampers the scope of a fair and just trial. It creates an environment where people come out with their own judgments. Hence, putting a person's rights to be heard impartially at stake.

Right to a fair and just trial

Free and fair trial is an important pillar of the judicial system. At the international level, UDHR upholds such a right. A fair trial needs an atmosphere of judicial calm. When the buzz is all negative about one

party, it tends to disrupt the fair trial procedure. To this effect, the Hon'ble Supreme Court in *Zahira Habibullah Sheikh v. State of Gujarat* held:

“the principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices....a fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.”

The concept of a fair trial cannot be limited to a statute. It is a violation of a person's fundamental right under the spirit of Right to life and liberty. The objective and purpose of which is to ensure a free, fair, just and reasonable trial of charge in a criminal case.

Right to reputation

Reputation is an important part of one's life. The Supreme Court in *Smt. Kiran Bedi v. Committee of Inquiry* upheld the fundamental rule- *“good reputation is an element of personal security and is protected by the Constitution, equally with the right to the enjoyment of life, liberty, and property”*. Hence, the Right to Reputation comes under the scope of Article 21. The media trials deliberately destroy the reputation and goodwill of a person in the eyes of the society. By the time the court comes to a conclusion, the harm done to a person's goodwill is irreversible. The Indian judicial attitudes demonstrate the implicit recognition of privacy-dignity-reputation as a constitutional paradigm. One can say that the media along with the general public have the freedom of expressing their opinion but there is an extent to which it can be done.

The International Covenant on Civil and Political Rights, 1965 or ICCPR, recognizes the right to have opinions and the right of freedom of expression subject to the right of reputation of others. Media is followed by the masses. It is indisputable that if the media is tilted towards or against one of the parties, the public is going to think the same way. Since the advancement of social media platforms, people are more vocal and expressive, which is certainly a positive aspect for a democratic nation but it also adds fuel to spread of false facts and rumours.

Right to free press.

Right to free press is a part of freedom of expression under Article 19 (1)(a) . In *Union of India v. Naveen Jindal* echoing the decision in *Reliance Petrochemicals v. Proprietor of Indian Express*, it was held that when Article 19(1)(a) is juxtaposed against the minimum restriction regime enshrined by First Amendment in the US, it can be said to allow for restrictions permissible under Article 19(2)(a). Thus, the rights of the media, although viewed as essential to our democratic framework, are not sacrosanct inasmuch as they have not been granted any special privilege or immunity from law. To express oneself is an unborn instinct of every human being. However, according to the principles of Jurisprudence, no right or freedom or liberty can exist absolutely without restrictions. Hence freedom of press is also not an absolute one.

In the *State of Maharashtra v. Rajendra Jawanmal Gandhi*, the court cautioned the judges to guard themselves against the pressure generated by a trial by press by way of a public agitation. This was held to be the very anti-thesis of rule of law, often leading to a miscarriage of justice.[15] Media coverage is helpful but they also do great harm to a person who is innocent until proven guilty. The way the media portrays the image and character of the parties is disproportionate. Even if the person gets acquitted further on, he still has to go through all the mental torture and societal pressure.

Right to remain silent

The right to remain silent has various facets. One of which is, an accused is presumed to be innocent till he is proved to be guilty. The right is protected by Articles 20(3) and 21 of the Constitution and sections 161(2), 313(3) and 315 of the Code of Criminal Procedure, 1973. It is a legal right of the accused in a criminal trial. This has been included in the Universal Declaration of Human Rights, 1948.

This right has been granted to us but is it still prevalent in the practical approach? We are living in an era where an accused is assumed of committing the crime even before a court starts the proceedings. The instant case of Sushant's death and declaration of Rhea's guilt without a trial, is a case in point. This has reflected the degrading standards of journalism. Sensational journalism has become a reality of the media industry.

Conclusion

We can see how the aforementioned rights get violated once the media interferes in a case. The huge power which has been vested in the freedom of press and media is becoming a threat to our protection from false allegations and mishaps. Our rights are only a fable for the media now. The principles enshrined in the Constitution ensures the administration of justice to one and all. Media should propagate these principles instead of becoming a hurdle in the way of providing justice. The press has the role of a public educator. It is a moral duty of the media to represent the truth at the right time. The media has been given the status of the fourth pillar of a democracy and it should maintain the dignity of it by being fair and honest.

References

- [1] Billings Learned Hand, *Proceedings in memory of Justice Brandeis* (1942).
- [2] Article 19(1)(a) of the Constitution of India states that- *Protection of certain rights regarding freedom of speech etc.- All citizens shall have the right: to freedom of speech and expression;*"
- [3] Freedom of press: the constitutional perspective.
- [4] Shobha Ram Sharma, *Judicial activism of India* (2010).
- [5] AIR 1962 SC 605.
- [6] Article 10 of the Universal Declaration of Human Rights states that: *"everyone entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his legal rights and obligation and of any criminal charges against him."*
- [7] (2004) 4 SCC 158, ¶¶33-36.
- [8] Article 21 of the Constitution of India states that: *"Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law."*
- [9] 1989 AIR SC 714, ¶25.
- [10] *D.F. Marion v. Davis*, 55 ALR 171.
- [11] *State of Bihar v. Lal Krishna Advani*, (2003) 8 SCC 361, ¶6.
- [12] (2004) 2 SCC 510.
- [13] (1988) 4 SCC 592.
- [14] (1997) 8 SCC 386.
- [15] Sneha Mohanty and Vrinda Bhandari, *R.K. Anand v. Registrar, Delhi High Court: An Examination of the Law on Media Trials*, (2010) 5 NSLR 130.