
MEDIA TRIAL: A CONSTITUTIONAL BLUR IN THE CONTEXT OF FREEDOM OF SPEECH

Gaurangi Kaushik, BBA. LLB (Hons.), The NorthCap University

ABSTRACT

In the comprehensive apprehension of the Indian Constitution, one may recognize the distinct decipheration made between the various organs of the state, each meticulously guided in pursuit of their code of conduct. Why is then that the Indian Media, as of late particularly, is found running circles around what had been stamped as the discharge of judicial and criminal administrative functions? Is this eclipse of the Judicial and Media functions in light of determining guilt constitutionally acceptable or is the Media merely communicating in the language of hyperboles? This essay thereby, aims at the scrutinization of Media Trials and their constitutionality in light of various legal provisions in an unbiased and free of prejudice mechanism. The essay molds into exploring the possibility of rightful duty discharge on the part of the media before maneuvering into the questionable spectrum of illegality and unconstitutionality of Media Trials. All whilst simultaneously analyzing constitutional doctrines, textual and linguistic examinations of the fundamental rights and further decipherations, prior to ultimately concluding as to whether the common practice of Media Trial, in all ideality, stands firm on a ground concreted with the Constitution or not.

“The More the Merrier...”

It would be fairly safe to surmise that one and all have apprehended the phrase “the more the merrier” time and time again. Not only that, one may evidently have seen its literal and rather undeviating implementation in the habitual lives of his own and those around him. From countless smartphone alternatives to now perhaps another independent organ of the state- The Media. Conventionally, the judiciary exercises all its jurisdictions as an independent body and authority yet as of late, the media is found keen on spreading its wings into the courtrooms of the country. In the present climate, media trial has seamlessly become a very symphonious set of words to our ears. One may find him or herself fairly accustomed to hearing this phrase especially post the 14th of June 2020, at the dawn of the late actor Sushant Singh Rajput’s unforeseeable death and the unfortunate advent of the mushrooming debate revolving around the constitutionality of media trial. However, contrary to popular belief, media trial is in fact not a novel concept as far as the Indian media is concerned, and has unequivocally and unabashedly endured and prevailed within the nation even prior to the aired dissection of all things Rhea Chakroborty¹.

The Underlying Element of Article 14, In the Implementation of Article 19

The question then arises not merely on the applicability of a single fundamental right guaranteed to us by the Constitution of India in Article 19², the right guaranteeing freedom of speech, but also that of equality before law as mentioned in yet another pivotal fundamental right, Article 14³. Irrespective of the habitual application and enforceability of these fundamental rights, how is it that every citizen of this nation finds him/her or itself exercising the fundamental right of freedom of speech, yet the Media collectively is socially and perhaps even legally prohibited from employing the corresponding? Where does Article 14, the right to equality, lie in a state of affairs wherein the media itself is unable to precisely convey its judgements and school of thought? Are the fundamental rights subjectively used as a shield by

¹ Shekhar Gupta, *Media trial of Rhea Chakroborty by TV channels is a potboiler based on conspiracy theories*, The Print, (Sept 8, 2020, 02:45 PM), <https://theprint.in/opinion/media-trial-of-rhea-chakroborty-by-tv-channels-is-a-potboiler-based-on-conspiracy-theories/498171/>

² The Constitution of India, *available at*: <https://indiankanoon.org/doc/1218090/> (Visited on July 2nd, 2022).

³ The Constitution of India, *available at*: <https://indiankanoon.org/doc/367586/> (Visited on July 2nd, 2022).

many and scarcely accessed by others? Or are they merely employed as supporting paradigmatic legal reasonings without legitimized application?

The Indistinct Boundaries of Journalistic Freedom of Speech

It hence becomes crucial in such a circumstance to suitably comprehend the stipulations of freedom of speech. The term itself is home to a dynamic application, having differentiated meanings for the Media and perhaps differently interpreted meaning in the courts. On the Journalistically front, an implication of freedom of speech reveals that activities must be guided by ethical conduct. A firmly established and well acknowledged concept of law rightfully states “innocent until proven guilty” which may also be termed as the presumption of innocence and should, in all ideality, find meaning in the Indian Media as well. Further, the courts tend to pursue a pivotal paradigm, known as “Beyond Reasonable Doubt”. Under such a criterion, there must not exist any other logical explanation behind the commission of a crime, except for the very fact that the defendant has certainly and without scope of any possible contradictions, committed it. Without such reassurance, the defendant shall not be held guilty irrespective of where one’s moral compass may point. Journalistic ethical conduct in such a situation would imply respecting not only the reputation of the defendant but also resonating with the universal doctrine of natural justice at the very least.

The role of the media in the enjoyment of Article 19, the fundamental right embodying freedom of speech, is primarily concerned and colored with the bias of the media towards the governments and the involvement of the latter with the former. Herewith, journalistic activities must not be intended towards disproportionately presenting matters in the favor of a party concerned, and must certainly not be influenced or imposed by the State. The freedom of speech of and exercisable by the media does not however correlate to excessive publicity, invasion of private rights, or the presumption of guilt as opposed to innocence- the purest definition of a media trial. When we speak in favor of the media trial, we aim at not conducting any breach of the media’s legal rights. Having said that, we must also ensure that the right to a fair trial in the process of pronouncing justice is obtainable to all defendants prior to their unofficial established guilt, in the eyes of the public. After all a man’s most precious ownership is his reputation, beyond which even the flavor of legitimized innocence may taste bland.

Under which implication does the media presume that the right to be free from the involvement of the state directly corresponds to publicly pronouncing defendants guilty, even prior to the

dates of their courtroom hearing? Does the media unknowingly cross borders of its jurisdiction in the blinding aim of providing news? Or is this an act pursued in furtherance of developing public opinion and keeping them at par with recent developments of high profile cases? Rather, why does the media believe it holds the license to decide, decipher and scrutinize on the facts of a case, while the sovereign organ of the state, namely the Judiciary, securely deduces the final verdict? One doesn't find the judiciary asking what the nation wants to know.

“Familiarity does not breed Contempt; Familiarity is Contempt”

The media acts as a highly influential pillar of democracy. It is thoroughly capable of not only and solely influencing the sentiments of the general public but also overturning them all together. It has always been regarded and harnessed as a tool to address, rather, a tool to speak to the public. Under such light, the media may even be held answerable and liable for sowing the seeds of a tendency to commence uprisings. Either way, it is the right of the general public to remain in fashion regarding all matters of citizenry concern. The media in such an environment plays a cardinal role, in providing the same public with a truthful account of events, in order to facilitate the formulation of their own outlook. The freedom of speech, be it of the collective media or for individuals at large, is not an absolute freedom and is subject to a variety of exceptions as mentioned in sub-clause 2 of Article 19. Article 19 palpably does not enclasp the freedom to commit contempt of court⁴.

The media has time and again conducted this contempt of court whilst considering themselves to be the “Janta Adalat”. Be it the Priyadarshini Mattoo case, Jessica Lal case⁵, or the Bijal Joshi rape case- the media has been employing sterling disrespect and disobedience by defying the authority and dignity of the court through pronouncing judgements for ongoing trials, the demeanour of which lies entirely out of the media's jurisdiction.

“The Road Not Taken”...an Alternative Stance from a Divergent Perspective

As far as the rights of the defendant are concerned, the media, through the practice of its own delusional conception of ‘freedom of speech’ per se, proceeds to further violate the rights of a defendant during criminal trials. Primarily, our constitution, like many others, is

⁴ Nimisha Jha, *Constitutionality of Media Trials in India: A Detailed Analysis*, Lawctopus, (Nov 13, 2015), <https://www.lawctopus.com/academike/media-trials-india/>

⁵ Vanya Verma, *Famous Cases of Media Trial in India*, ipleaders, (Mar 10, 2021), <https://blog.ipleaders.in/famous-cases-media-trials-india/>

based on the fundamental doctrine that precisely states “Let a hundred guilty be acquitted but one innocent should not be convicted”. Through the self-diagnostic ways of the media, not only do they happen to violate the right of the defendants to free and fair trial but also deprive them of their established right to privacy. All of which are constitutionally guaranteed to all citizens of this country.

“...The Fewer, The Better Fare”

Whilst we aim to protect and promote a vaguely understood right of the media, let us predominantly understand that wherever there is a right, there exists a duty. A duty to respect the rights of another. Which suggests that through no conduct of ours must we breach their rights. Although the media at large is entitled to Article 19, the right to freedom of speech, the presumed enjoyment of this very article must not interfere with the administration and discharge of justice, at any expense. The drafting committee of the constitution has very conscientiously laid out the duties, responsibilities, and provisions of the various organs of the state. One must not get too far ahead of themselves by overlapping our duties and functions in the name of constitutional elements. Owing to the fact that, when we say “the more the merrier”, “the fewer, the better fare” is often silent. The judiciary was and shall always remain an independent organ and the only determinant authority within the premises of India, that is Bharat.