
MEDIA TRIALS IN INDIA: A CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

As important as forming public opinion, holding the government accountable, and ensuring it is transparent in whatever manner is necessary, media in India attains a fourth estate status, often referred to as the "fourth pillar of democracy." This role is constitutionally protected under Article 19(1)(a) of the Indian Constitution, which guarantees¹ freedom of speech and expression, thereby stretching such protection to the press². However, this freedom is also curbed by the Constitution through Article 19(2), which grants permission to place reasonable restrictions on grounds such as public order, decency and national security.³ The said checks are specifically significant in the case of media trials wherein the press acts in a quasi-judicial role by broadcasting cases that are ongoing. Thus, even though the media had the most influential role in producing crimes and raising public awareness, unchecked media influences in the active course of trial proceedings risk challenging judicial impartiality and the fundamental right of a fair trial under Article 21.⁴

¹ Srivastava, N. (2014). Open government data for regulation of energy resources in India. <https://core.ac.uk/download/228789960.pdf>

² Constitution of India, art. 19(1)(a). Freedom of the press is implied under the right to freedom of speech and expression.

³ Constitution of India, art. 19(2)

⁴ Constitution of India, art. 21.

1. Introduction:

In India, protection is provided to the institutions of the media/press by a constitutional provision known as freedom of the press. This is so because the media, as the 'fourth pillar' of democracy, is central to the functioning of any governing system that professes to be democratic.⁵ Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression⁶, which should embrace 'freedom of the press' to inform, investigate and express opinions on matters of public concern,⁷ but such freedom is not absolute. This is because Article 19(2) further states that such rights may be subjected to reasonable restrictions in the interests of justice, public order, decency, and the security of the state, among other things.⁸ Therefore, the right to free expression must also be reconciled with the right to fair trial as provided in Article 21 which guarantees right to life and personal liberty but which has been construed by the courts to include fair hearing, which is a cornerstone of justice has been the constant stance of the judiciary that every right is important within a democratic setting and that freedom of the press is no exception but it should not be exercised in a manner that abuses the right to fair hearing, which is a component of personal freedom. There must be a quelling of the press on the judiciary's activities.

Yet, it is delicate to maintain, mainly because the media actively moulds public opinion surrounding litigation matters. It gives journalists the freedom to inquire, report, and publish on many topics or issues, including controversial court cases.⁹ However, freedom might change the public view on matters already being judged and influence judicial decisions, especially if the case is controversial. Media trial' connotes the meaning of a trial involving high publicity through exaggerated and wild reporting that affects the public's opinion and is violative of fair trial principles of the accused, sometimes causing miscarriage of justice.¹⁰

Media trials, for example, are pretty ordinary instances of the near-total intrusion of the media

⁵ Walter Lippmann, Public Opinion 1-2 (1922)

⁶ Subramanian, S., Gokani, N., & Aneja, K. (2022). Right to Commercial Speech in India: Construing Constitutional Provisions Harmoniously in Favor of Public Health. <https://doi.org/10.1017/jme.2022.53>

⁷ India's Supreme Court upholds the right to freedom of speech and expression | Majmudar & Partners. https://www.majmudarindia.com/indias-supreme-court-upholds-the-right-to-freedom-of-speech-and-expression/page/2/?et_blog

⁸ Id. Art. 19(2)

⁹ Rajeev Dhavan, On the Law of the Press in India 29-32 (2008) and Nayak, N. (2023). Legalizing executive control: On the law of online journalism in India. *Indian Law Review*. <https://doi.org/10.1080/24730580.2023.2266979>

¹⁰ Justice K.K. Mathew, Contempt of Court and the Press, in *Essays in Honour of Justice Krishna Iyer* 57, 60-62 (1982)

into the process of law in modern society, where most significant cases receive considerable media coverage, and coverage spills over into the courtroom. This is because, in most cases, everybody becomes a subject of external commentary before the media, including the accused and the witnesses.¹¹

The press usually provides primary information, even during the trial. It works like a machine that builds ideas of guilt or innocence regarding the people involved even before justice is passed, and its conclusion reached, a situation popularly known as “trial by media”.¹² Although the importance of the media towards unearthing crimes and calling for accountability cannot be ignored, such intervention may also result in biases which in turn affect the impartiality of justice and the principle of “innocent until proven guilty”.¹³

2. Historical Context and the Evolution of Media Freedom in India

The story of press freedom in India is as old as the colonial rulers who sought to suppress nationalistic movements and dissidence. The most recognized colonial act represents the Press Act of 1910, enacted as a response to growing nationalist movements. This enabled the government to impose robust control over the publications, making them eligible for demanding security deposits from owners, seizing their printing presses, and blocking any seditious publication.¹⁴ This was a period of repression when freedom of expression had been minimal, and the media had generally faced huge curbs under the British regime.

The independence movement saw the press as an essential instrument in communicating opinion against colonial rule. It gradually resulted in more demands for greater freedom after India gained independence in 1947. In adopting a constitution after independence, this right to freedom of speech and expression was extended to the press under Article 19(1)(a), which grants this protection. This was a significant shift from the restrictive policies of the colonial era, which now focused on the role of the press in nurturing democracy. According to them, the free press is a must for a workable democracy since it makes the government responsible by bringing issues of public interest to the fore and, thus, brings about transparency.¹⁵ While that

¹¹ Prabhu Chawla, Trial by Media in India: An Analytical Study, 46 I.J.P.L. 241, 242-43 (2020)

¹² Id. at 245

¹³ Article 11 of the Universal Declaration of Human Rights, 1948 and K.M. Nanavati v. State of Maharashtra, AIR 1962 SC 605

¹⁴ Press Act of 1910, Act No. I of 1910 (India)

¹⁵ A.K. Gopalan, The Fundamental Right of Free Speech, 6 I.J. Const. L. 45, pp.47-49 .

was freedom, this freedom came with its limitations; Article 19(2) permits reasonable restrictions on freedom of speech and expression in the interest of security, public order, decency, and morality, thus aiming to balance freedom with responsibility.¹⁶

Doubtless, judicial precedents in India have proved to be an effective institution in laying down and safeguarding press freedom. The importance of press freedom was highlighted for the first time by the Supreme Court in the case of *Romesh Thappar v. State of Madras*¹⁷. During the case, the government of Madras proscribed the circulation of the magazine *Cross Roads*, against which *Romesh Thappar* happened to be the editor. *Thappar* challenged the restrictions that he said infringed upon the constitutional guarantee of Article 19(1)(a) relating to freedom of expression. The Supreme Court held his view and said, "Freedom of speech and expression is a foundation of democracy."¹⁸ The court observed that if the press is not freely able to criticize the government, then such freedom of speech is redundant as the first function of acting as a watchdog, holding those in power accountable and taking them to task for corruption.¹⁹ This case established that any attempt to curb press freedom must meet the "reasonable restrictions" requirements outlined in Article 19(2). In this respect, *Romesh Thappar* laid the foundation for press freedom as an integral part of democratic governance in India.²⁰

The Court later elaborated, in *Brij Bhushan v. State of Delhi*, the balance between the liberty of the press and national security concerns. On its behalf, the government had issued pre-censorship orders regarding *The Organiser*, an organ of opinion highly critical of the way the state allowed communal conflicts to flare up. *Brij Bhushan* challenged this pre-censorship order because it violated his freedom of speech.²¹ To this end, the Supreme Court upholds the principle of a free press; however, it assumes that freedom is fundamental yet recognizes the need for reasonable restrictions imposed on it where these relate to national security.²² The Court emphasizes that while the press must be free to report and critique government actions, such freedoms must operate within the confines established to protect public order and security.

¹⁶ Constitution of India, art. 19(2)

¹⁷ AIR 1950 SC 124

¹⁸ AIR 1950 SC 124, p.127

¹⁹ Id.

²⁰ *Shiv Kant Shukla v. ADM Jabalpur*, AIR 1976 SC 1207- Reaffirming the need for clear justifications for restricting press freedom

²¹ AIR 1950 SC 129

²² AIR 1950 SC 129, p.130

This decision reiterated that the right of freedom of the press could not be considered absolute and could be limited in circumstances where the publication had the potential to cause harm to national security or to disturb public order. Nonetheless, the restriction shall be carefully constructed so that an unreasonable curtailment of the free press does not arise.²³

3. Article 19(1)(a) and the scope of the Free Speech in Media Trials

Article 19(1)(a) of the Indian Constitution said: "Everyone has the right to freedom of speech and expression."²⁴ Democracy thrives through and free speech and freedom of expression serves as the pulse of a democratic dispensation devoid of all forms of obscurity and accountability.²⁵ Article 19(1)(a) gave the prevailing societal framing of media the status of the "fourth pillar" contributing to the dynamics of power by enabling the distribution of vital information to the masses and also containing the abuse of power.²⁶ However, this freedom is not absolute; Article 19(2) authorizes the state to impose "reasonable restrictions"²⁷ on this freedom in certain situations for the betterment of society. This will include defence, public order, decency, morality, defamation, incitement to an offence, and contempt of court.²⁸

As stated in Article 19(2) of the Constitution, media trials are regulated to safeguard the rights of the accused and ensure respect for the independence of the judiciary. Excessive or disproportionate media attention may skew public opinion and influence judges, jurors, and witnesses.²⁹ This potentially prejudicial effect may be understood to infringe the restraint of "contempt of court" as it may bear upon the dispensation of justice. Article 19(2) provides a basic freedom against this possibility that the speech shall not jeopardise the rights of the accused toward an unbiased trial under a fair judicial process.³⁰

²³ Shankar Shambhu v. State of Rajasthan, AIR 1974 SC 1073

²⁴ Subramanian, S., Gokani, N., & Aneja, K. (2022). Right to Commercial Speech in India: Construing Constitutional Provisions Harmoniously in Favor of Public Health. <https://doi.org/10.1017/jme.2022.53>

²⁵ Subramanian, S., Gokani, N., & Aneja, K. (2022). Right to Commercial Speech in India: Construing Constitutional Provisions Harmoniously in Favor of Public Health. <https://doi.org/10.1017/jme.2022.53>

²⁶ Bhushan, P., 2004. Freedom of the Press in the Indian Constitution, 2 Indian Journal of Constitutional Law, pp. 23-26.

²⁷ The analysis of 'Reasonable Restrictions' under Article 19(2) - TheLawmatics. <https://thelawmatics.in/the-analysis-of-reasonable-restrictions-under-article-192/>

²⁸ Constitution of India, Article 19(2)

²⁹ Chandrachud, D.Y., 2017. Media Trials and Judicial Independence, 5 Law and Society Review, pp. 105-109.

³⁰ Seervai, H.M., 2008. Constitutional Law of India, 4th ed. New Delhi: Universal Law Publishing Co.

4. Right to a Fair Trial under Article 21³¹ and Judicial Concerns in Media Trials

Article 21 of the Indian Constitution endows people with a fundamental right wherein the right to life and personal liberty exists, which could even reach the extent of a fair trial³². A fair trial forms an integral part of the justice system, wherein the trials are conducted based on evidence and legal principles rather than on influence.³³ Media trials, especially those conducted while a case is sub judice, can seriously compromise this right. Where the media creates a public narrative around a case, often portraying the accused as guilty before a judicial verdict, there is a grave risk of tainting the judicial process, infringing on the presumption of innocence built into the Constitution for the accused.³⁴

The Landmark judgment given in *Sahara India Real Estate Corp. Ltd. v. SEBI* is a peep into the judiciary's approach vis-à-vis media restraint. The Supreme Court recognized that unbridled reporting in the media about the trials in courts can be damaging, especially in matters of great public interest. During the judgment, the court provided guidelines to the press, advising them to exercise restraint and avoid publishing information that could adversely affect an ongoing trial.³⁵ It was reiterated by this judgment that Article 19(1)(a), guaranteed freedom of the press cannot trump the rights ensured in Article 21, most especially the right to a fair trial. The Court made it clear that though free to report on whatever it feels like or likes, coverage must not sway the judiciary into giving the wrong judgment or violating the rights of an accused towards having an impartial trial.³⁶

The Sahara judgment further increased the need for a "neutralizing device" to avoid prejudicial reportage, which appeared to recommend the simple reporting of facts by the media concerning sub-judice matters rather than passing judgment on guilt or innocence. The decision made by the court encouraged the formulation of guidelines that would protect the sanctity of the judicial process by minimizing undue influences.³⁷ The principles in Sahara establish that rights under

³¹ Chowdhury, M. J. A. (2021). Judicial Review of "Internal Parliamentary Proceedings": The Dialogic and Non-dialogic Approaches. <https://core.ac.uk/download/548503665.pdf>

³² Constitution of India, Article 21

³³ Seervai, H.M., 2008. Constitutional Law of India, 4th ed. New Delhi: Universal Law Publishing Co.

³⁴ Chandrachud, D.Y., 2017. Media Trials and Judicial Independence, 5 Law and Society Review, pp. 105-109.

³⁵ Seervai, H.M., 2008. Constitutional Law of India, 4th ed. New Delhi: Universal Law Publishing Co.

³⁶ Bhushan, P., 2004. Freedom of the Press in the Indian Constitution, 2 Indian Journal of Constitutional Law, pp. 23-26.

³⁷ (2012) 10 SCC 603

Article 21 must be protected even if there may be reasonable restrictions on the freedom of the media to report cases before the courts.

5. Media Trials and the Erosion of Judicial Impartiality

Media trials with a lot of publicity and sensationalized reporting about the trial process risk exposing the judiciary's impartiality, but tragic as it may be, they usually violate the rights of an accused to a fair trial.³⁸ Presumption of innocence is one of the bedrock principles of the criminal law system, and it would be set at nought if a media narrative transforms an accused person into a putative guilty party even before a verdict is delivered.³⁹ For instance, in the cases of Aarushi Talwar and Jessica Lal, the media had stirred up the public. They created an ambience of guilt to be assumed before judicial processes were over.⁴⁰ These examples showcase how the media narratives create a context wherein the judiciary is also nudged to reflect them in its judgments.

Public demands for justice are often amplified by high-profile cases, sometimes calling for severe or retributive punishment. The Nirbhaya case was one such case in which public outrage peaked, along with media attention, putting immense pressure on the judiciary to deliver a verdict in line with social expectations.⁴¹ While laws were still governing the court, the heavy media and public opinion portrayed the challenge of trying to deliver judicial independence in trials where the public had expectations.⁴²

The hallmark of media trials is seen in the victim and the convict, where public opinion shifts in favour of them, thus challenging the judiciary to deliver their role independently despite the powerful expectations of the public. Media trials go ahead to influence the trial process, from the accused person to the witnesses. The Supreme Court, in *R.K. Anand v. Registrar, Delhi High Court*, examined the implications of media overreaching and warned that sensationalism would breed bias - not merely among the common crowd but even among judges.⁴³ Herein, it

³⁸ Chandrachud, D.Y., 2017. Media Trials and Judicial Independence, 5 Law and Society Review, pp. 105-109.

³⁹ Seervai, H.M., 2008. Constitutional Law of India, 4th ed. New Delhi: Universal Law Publishing Co.

⁴⁰ Bhushan, P., 2004. Freedom of the Press in the Indian Constitution, 2 Indian Journal of Constitutional Law, pp. 23-26.

⁴¹ Chatterjee, A., 2013. The Nirbhaya Case: A Turning Point in Indian Legal and Social Discourse, Indian Journal of Legal Studies, pp. 88-92.

⁴² Mukesh & Anr v. NCT Delhi (Nirbhaya Case) (2017) 6 SCC 1

⁴³ R.K. Anand v. Registrar, Delhi High Court, AIR 2009 SC 620.

was held that unbridled media trials could lead to prejudice in judicial decision-making and, consequently, violate the accused's right to be tried before an impartial court.

Excessive media attention may also lead to reputational damage and psychological agony for the defendant, complicating the defence of the accused and lessening fairness in the outcome.⁴⁴ Witnesses often find themselves in a difficult position when it comes to testifying. The overwhelming attention from the media often exerts pressure on them. It makes them unwilling to divulge their actual experiences, which is still detrimental to the cause of justice, especially regarding the trial since their testimonies are fundamental to ensuring justice.

It is very important to strike a healthy equilibrium between the right to free speech and the enjoyment of justice.

6. Case Studies of Media Trials and Their Consequences

Media trials have conveyed considerable impacts on judicial proceedings and public perception. As such, media trials have mainly influenced the course and outcome of cases in ways that reflect the weaknesses in weighing free press with judicial integrity.⁴⁵ One prominent instance is the murder case of Jessica Lal⁴⁶, which was widely discussed in the media and there were concerns that it could influence the public and the judiciary. Jessica Lal was murdered at a gala event. The suspect was pronounced innocent, which outraged the masses, however, a campaign for justice and endless coverage did ensure sufficient public anger for a retrial and conviction of the suspect.⁴⁷ This case embodies the power of media to raise attention to perceived judicial failures. However, the high incidence of public influence had everyone questioning whether judicial processes were being run fairly in such scrutinized circumstances.⁴⁸

The Aarushi Talwar-Hemraj double murder case⁴⁹ is still another example where the media played a paramount role, but this time with even more troublesome implications. Within no time, the killing of the teenage girl Aarushi Talwar and her family's domestic help, Hemraj,

⁴⁴ Chandrachud, D.Y., 2017. Media Trials and Judicial Independence, 5 Law and Society Review, pp. 105-109.

⁴⁵ Chandrachud, D.Y., 2017. Media Trials and Judicial Independence, 5 Law and Society Review, pp. 105-109.

⁴⁶ Manu Sharma v. State (NCT of Delhi), 6 SCC 1- Jessica Lal Murder Case

⁴⁷ Bhushan, P., 2004. Freedom of the Press in the Indian Constitution, 2 Indian Journal of Constitutional Law, pp. 23-26.

⁴⁸ Seervai, H.M., 2008. Constitutional Law of India, 4th ed. New Delhi: Universal Law Publishing Co.

⁴⁹ Dr. (Smt) Nupur Talwar v. State of U.P. and Anr. (1984) 2 SCC 627- Aarushi Talwar Murder Case

was sensationalized in the media, with speculations being broadcast that would lead the general public to believe the parents, Dr Rajesh and Nupur Talwar, committed the crime, but there was no evidence for it.⁵⁰ Public judgment fueled by the media's depiction of the Talwars has become a shadow that will never leave the family for good. This was more of a profile case of privacy issues by focusing on how media inculcates narratives affecting reputation as well as mental health that the accused and their families undergo. Even when they were acquitted later, the image of the family had already been tainted, and the perception of society had already been influenced for so many years due to biased reports, demanding sensitivity in media covering such cases while they were still underway.⁵¹

A further concern about the case of Sushant Singh Rajput can be the manageable sick media narratives containing even more unfortunate repercussions. There was enough media hype over the death of an actor in the extensive coverage of the investigation into the actor's death. This case brought to light many conflicting stories, each filled with accusations against various individuals close to him, which only sparked wild conspiracy theories. As the investigation unfolded, it fuelled a frenzy of misinformation and led to doubts about the competence and fairness of law enforcement and the judicial system. In the process of investigation, scepticism of law enforcement and the judiciary then took a back seat as the investigation caused an outbreak of erroneous information.⁵² There was a lot going on, people angered and trust was thin in the public. The ambiguity of this case greatly influenced public perception of the investigation: an emotive discussion on the intersection of mental illness and criminal justice arose but was pillared on shaky evidence. This pertains to an important problem: that when media is left unchecked by relevant authorities, it transforms from being informative to being speculative and more opinionated than it should. This shift can complicate investigations, hinder progress, and ultimately undermine the integrity of the judicial process.⁵³

7. Recommendations for Balancing Media Freedom and Judicial Fairness

Maintaining a healthy balance between safeguarding the judicial process and upholding media freedom is essential for a thriving democracy. One important step we could take to achieve this

⁵⁰ Chatterjee, A., 2013. Trial by Media: The Aarushi Talwar Case, *Indian Journal of Legal Studies*, pp. 72-75.

⁵¹ Baxi, P., 2015. Public Opinion and Judicial Independence in India, *Journal of Media Law and Ethics*, pp. 201-210.

⁵² Rhea Chakraborty v. Union of India & Anr, AIR ONLINE 2020 BOM 1252

⁵³ Sharma, R., 2021. Media Ethics and the Law: Reflections from the Sushant Singh Rajput Case, *Journal of Media Studies*, pp. 188-193.

balance is to enhance the quasi-judicial powers of the Press Council of India (PCI). This would not only empower the PCI but also ensure that the media can operate freely without undermining the integrity of our legal system. Currently, it is not effective on the enforcement front because it can, at best, only admonish the offenders. Granting quasi-judicial powers to PCI to meet punishments for sensationalising the report that may vitiate the right to a fair trial will cause more accountability.⁵⁴ This would not only amplify the authority of the PCI but also serve as a deterrent against irresponsible reporting, thus preserving the integrity of judicial processes.⁵⁵

After enhancing the capabilities of regulatory bodies, it's crucial to implement mandatory training for journalists. This requirement helps ensure that journalists are well-equipped to navigate the complexities of their role. Sensitivity training on ethical standards in reporting, especially on matters of sub-judice, would help reporting professionals understand the aftermath of reporting on judicial fairness. Journalists, for sure, play a very influential role in moulding opinion, and thus, unbridled and discriminatory reporting would affect the conduct of justice.⁵⁶

In addition to education, professional development programs can really help journalists navigate the complexities of reporting on sensitive issues while still respecting the integrity of the judicial process. These programs would focus on the responsibilities that come with media freedom, encouraging journalists to embrace a culture of responsible reporting that honours the fairness of trials. This way, they can uphold their duty to inform the public while also safeguarding the rights of individuals involved in legal matters.⁵⁷ Judicial autonomy would be guaranteed by providing a clear outline of how media behaviour in reporting cases underway does not surpass accepted limits. Provisions under such acts may include penalties or restrictions as to content that compromises fair trials, providing statutory frameworks of checks on biased reporting.⁵⁸ The judiciary's role in checking media overreach will be strengthened, helping to protect the integrity of both media freedom and the fairness of the justice system.

⁵⁴ Press Council Act, 1978, Act No. 37 of 1978 (India).

⁵⁵ Seervai, H.M., 2008. Constitutional Law of India, 4th ed. New Delhi: Universal Law Publishing Co.

⁵⁶ Chandrachud, D.Y., 2017. Media Trials and Judicial Independence, 5 Law and Society Review, pp. 105-109.

⁵⁷ Bhushan, P., 2004. Freedom of the Press in the Indian Constitution, 2 Indian Journal of Constitutional Law, pp. 23-26.

⁵⁸ Sharma, R., 2021. Media Ethics and the Law: Reflections on Self-Regulation, Journal of Media Studies, pp. 188-193.

8. Conclusion

In a democracy, the freedom of the press is vital in creating, enhancing, and maintaining trust among the citizens. This implies that all stakeholders must recognize that the media has a fundamental role; however, it must be moderated with due respect to the processes of law, more so when a person is in the dock. Media excesses in reporting on cases tend to abuse the rights of the accused, erode the moral presumption of innocence, and create unwarranted strains on the judges and jurors. Thus, It is also essential to understand that there should be a productive conflict between the media, in as much as it is given room to work and the judicial system in as much as justice should be administered without fear or favour. In this manner, both institutions will be able to carry out their primary functions without overrunning one another.

The judiciary plays a key role in maintaining and sustaining fairness and integrity in the delivery of justice. Courts must also be places where there is protection from all bias during trials for both protectors and accused in equal measure. Just recently, judgments like *Sahara India Real Estate Corp. Ltd. vs. SEBI* (2012) 10 SCC 603 have shown how courts appreciate the call for press restraint in dealing with issues which is rather contentious. This is all geared towards preserving the integrity of the system and the rule of law within the legal systems. Although there is such an order, the judicial system seeks to protect the public's faith in the system by closely monitoring how the media presents these cases. Media reporting and the courts' processes should not be treated with extremes. The society has a right to know what is happening to them, but this should never infringe on an individual's right to a fair hearing. Care should also be taken in the sense that the freedom of the press has its limits, which must not be cross-examined in the name of justice.