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TRIAL BY MEDIA – A QUEST FOR LAWS- Aravind Shaji¹**Abstract**

This article focuses on Media Trials and their legal aspects. This article will discuss media trials, legal elements, merits, demerits, and suggestions for the future. The secondary aim of this article is to illuminate some case laws related to media trials and the inferences from that. It will briefly analyse how media should and shouldn't work. It will cover the legal system's approach to these trials. Trial by media is a phenomenon by which media trials an accused even before the court's verdict and is on a high. As media trials are high, everyone needs to understand the concept and its various aspects and the pressing need for reforms to reduce media intervention in criminal trials.

This article seeks the attention of readers chiefly to the core content of how persons get affected by trials and the need for new laws to administer this phenomenon. According to the available content, a media trial can make a person guilty without even being heard in a court of law. Until his guilt is proven in the courts, he is innocent, and thus, by forming a separate panel to judge an accused and commencing a trial, making him guilty of an offence is a violation of his/her fundamental rights. It can have legal as well as moral consequences. This study seeks to answer whether media trials are legal and how to regulate them. This article highlights such a process, its legalities and the quest for a new way to administer the trials by media. Additionally, I have a few suggestions as well.

Introduction

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Trial by Media or the media trial has been a talking point for a long time. It's a matter of concern nowadays. Media and laws are close to each other. There are laws concerning the working of these media. Law and order make media a controlled, regulated act of journalism. For quite a long time, there's been a quest for laws for the new phenomenon in the contemporary era known as Trial by Media. It has been a rising trend in our country's media for a long time. Media are the biggest asset to society as well as to a nation. Law and order and media must cop together for nation-building. As a medium of mass communication, the media has already significantly influenced the public. A quest for new laws is always there to control and regulate these acts.

The Concept, Pros & Cons

Trial by Media, or the media trial, is a process by which the media conducts trials on persons accused of criminal offences. It concerns whether he is innocent or guilty, whether his punishment is apt or not, whether his past or present is good or bad, etc. It is a trial in the so-called 'non-judicial courts' called 'media'. The judiciary, the law interpretation body, can be told under scrutiny and perusal of the media for the judgements they take or the guidelines they provide. The problem with media trials is that they are conducted before the court of law pronounces their verdict. Even before the courts deliver the verdict of the accused or innocent person, media trials are in a run. It is an indirect attack on the judicature of the country as well. It can be a challenge to the independence of the judiciary as there are high chances for the judiciary to be influenced by what the media argues or demands during these trials. Judicature is very careful about this, as all of these are assumptions or conceptions put forward by the media, which are neither believable nor reasonable. It also has merits because it can attract courts' attention to numerous issues that are not being put up on the top stage. However, in many instances, trials might be conducted to achieve fame, popularise the content, and achieve better reach. It never provides reliability and lacks credibility, as well. So, it is not at all a just act which we can't ratify and is not suitable for the media fraternity of this country. The media's right is to provide the people with righteous information. It is the right way to express their right to freedom of speech and expression. Trial by Media is both a merit and a demerit in a democracy. It can bring the general public an understanding of what's happening around the globe. These trials can reveal more about the laws in our country to the people. Media can argue and can seek public attention

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to cases regarding human rights violations, attacks on women, hate speeches, etc... Even the legislature and judiciary find it useful in many instances. The media can bring to the attention the judicature of such happenings. It helps them take actions on their own, such as Suo Moto cognisance. Media will showcase better discourses and discussions on contemporary topics in our country. However, more than merits, demerits dominate. Demerits encompass the attack on a person's dignity and character and privacy infringement. As these trials progress, they will include a lot of debates and discussions against the accused person. It will discuss his personality, character, past and present, and maybe family background without prior permission and limits. It can create a draconian feeling against the person or the community in a society. It will never sound good for a democratic country. As with the accused, the witness will also face problems. Media trials are a direct attack on the privacy of a person. It can even lead to character assassination as well. There are legal remedies against this on the grounds of defamation under the Indian Penal Code (IPC)². Under the current cyclone of social media, the trial by media should be free and fair; if it's not, then it is an attack on the constitutional values of a country. If the debates, discussions, arguments, or revelations are politically motivated, then there is no scope whatsoever for fairness and freedom. It is unjust, legally and morally. Such unfair acts can make society vulnerable to them as social media has undeniably become a part of our daily routine, and no one is blamed.

Legal Analysis

The legality and constitutionality of media trials are significant factors for our democracy. Of course, a trial by media is a legal act. It is not at all illegal. It can be made unlawful by the acts of the media itself. Checking the constitutionality, it's clear that it is also constitutionally valid. Not at all invalid. It comes under the scope of Article 19(1)(a) of the Indian Constitution³. It deals with the freedom of speech and expression. It is a fundamental right guaranteed by the constitution to every citizen of the country regardless of colour, class, caste, sex, gender, social background, etc... It can't be taken away at any cost. Media enjoy it very well, but is it absolute? Is there any need for restrictions? Do media trials infringe on the right to privacy as well? Media

²Indian Penal Code, 1860, § 499, Acts of Parliament, (India)

³INDIA CONST. art. 19, § 1, cl. 2

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trials actually infringe on an individual's right to privacy. In the famous *K. S. Puttuswamy v. Union of India*⁴ case, the Supreme Court opined that privacy is a fundamental right guaranteed under Article 21 of the Constitution⁵. So, if depictions or portrayals of an individual and his details are wrong, it's a scathing attack on his privacy. It is, therefore, an infringement of the fundamental right. The right to a Fair Trial is enshrined under Article 21 of the Constitution. It is so unfair to trial a person just by assumptions and portrayals under the banner of a fair trial. Media trials can't cross the curbs or the boundaries of law. *Dr Shashi Tharoor v. Arnab Goswami*⁶ case accurately portrays what media should and shouldn't do. Delhi High Court opined that the media cannot convict anyone or state they are at fault. Be in your line and limit what we can incur from the opinion. Regarding media, freedom of speech and expression has some reasonable restrictions. It should be there because they may misuse it and cover up whatever they speak or publish under the shadow of freedom and expression. In the case of *Nilesh Navlakha v. Union of India*⁷, the Bombay High Court opined that any publication that disrupts the fair trial of the accused is liable for criminal contempt. It does have penal provisions. Similarly, in the case of *People's Union for Civil Liberties v. Union of India*⁸, the Supreme Court directed the Ministry of Home Affairs (MHA), within three months, to issue guidelines to police to brief media on online reporting on investigations to prevent biased reports, news, misinformation and diverting a case. It was a reformative move by the top court in this regard. Both these cases showcase freedom of speech and expression within the constitutional boundaries because free speech doesn't mean free publications of biased news, trials, reports and coverage. In a function at Ranchi, the former judge of the Honourable Supreme Court of India, Justice N.V Ramana, has referred to media as 'Kangaroo Courts' for showing biases in news reporting and for the agenda-driven journalistic acts in the country. This was a significant criticism against the media. It was because if such malicious practices move on, they will create hatred and dislike among the masses, which can further increase to the extent that we can't think of, as the social media influence in our country is way too high. In the 16th Ramnath Goenka Awards function held in Delhi, the Honorable Chief Justice of the Supreme Court, Dr D Y Chandrachud, opined that media trials make a person

⁴K. S. Puttuswamy v. Union of India AIR 2017 SC 4161

⁵INDIA CONST. art. 21

⁶Dr. Shashi Tharoor v. Arnab Goswami and Anr AIR 2019 (NOC) 134 (DEL)

⁷Nilesh Navlakha v. Union of India AIR ONLINE 2021 BOM 14

⁸People's Union for Civil Liberties (PUCL) v. Union of India (2014) 10 SCC 635

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guilty even before the court's verdict⁹. There is no scope for fairness but for business. It can genuinely divert a case as well as public opinion. Judicial interpretations regarding the media trials do have a lack of precedents. As the constitutional safeguards of free speech and freedom of speech and expression interplay with constitutional provisions of the right to privacy, equality and fair trial, the question of media trials and law remains unanswered.

Suggestions and Conclusion

The need for stringent media laws and guidelines in our country is very evident. Exercising your right is not the same as exploiting it. Enjoy your rights within the constitutional boundaries or as prescribed. It will come under the contempt of court and will be punished. Many regulations and media laws have been enacted in our country for administering media and its acts. As the media in India are self-regulated, there is a quest for new rules for the changing media environment and technological arena. It is to tackle problems easily. New legislation, guidelines or penal provisions for cybercrimes, etc., should be initiated as a part of it. It should comply with the Constitution as well. The legal fraternity of this country is very much concerned about such diminutions. Comprehensive legislation about penal provisions and offences concerned the media is a need of the hour. As social media had an out-and-out transition from a source of knowledge to a war ground of cybercrimes, it is very much needed. When society changes, laws, too, should have changed. Indeed, media are the fourth pillar of a democracy. Journalism is the foundational stone of that pillar. So, who else can be if it's not free and fair? Being the watchdog of the democratic institutions and the servant of righteous journalism, the role of media is to provide transparency of the democratic framework and not the opacity of faults and agendas. Favouritism has no place in journalism. They must be impartial. Journalism has a significant role to play in contemporary India, and the media are the ones who are vested with the responsibility to foster it and keep it moving forward. Media should uphold the actual values of journalism. It should maintain its code of ethics thoroughly. The virtues of a democracy can be understood just

⁹PRESS TRUST OF INDIA "*Media Trials make person guilty before courts decide*": Chief Justice NDTV (Mar 22, 2023, 10:35 PM) <https://www-ndtv-com.cdn.ampproject.org/v/s/www.ndtv.com/india-news/media-trials-make-person-guilty-before-courts-decide-chief-justice-dy-chandrachud-3884730>

by decoding the performance of its fourth pillar, i.e., the media. Media should maintain their social responsibility, and that's what the public wants. Be the servant of the society and the voice of those who are voiceless.



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