

THE MEDIA'S POWER AND INFLUENCE ON COURT CASES: AN ANALYSIS

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Abstract

In 2023, the media continues to lack an understanding of the limits when it comes to disclosing sensitive information regarding an ongoing court case. This article is a demonstration by researchers on the impact of media trials on various parties involved in a case. A case in August 2022, brought before the Madras High Court, has spurred researchers to reevaluate the phenomenon of media trials and their consequences for the accused, victims, and witnesses. The Contempt of Courts Act, 1971, was enacted with the purpose of addressing media interference in the administration of justice. The experts have also underscored the media's sway over the judgments of judges in certain instances. This article also discusses the incorporation of the rights to freedom of the press and a fair trial, as well as the potential conflicts that may arise when one person's rights impede another's. Several rulings have emphasized the necessity of maintaining an equilibrium between the rights of two individuals. This article also examines the establishment of the Witness Protection Scheme and its connection to safeguarding the anonymity of witnesses involved in a case. Lastly, the researchers conclude by summarizing previous jurist collective views on safeguarding confidential data from an ongoing project.

Keywords: *Media Trials; Rights; Judicial System; India.*

1. Introduction:

The fundamental differentiation between a crime and a wrong lie in the fact that a crime has a direct impact on the collective attitudes of society. Crimes such as robbery, dacoity, murder, kidnapping, rape, sedition, and treason disrupt the essential structure of societal institutions, leading to law-and-order problems and endangering the State's existence, which is a matter of universal concern. Consequently, these types of injustices are referred to as "public wrongs" or "crimes," which prompt the State to initiate criminal proceedings and the wrongdoer to be punished by a court of law¹. If an individual engages in an action that is classified as one of the offenses specified in the Indian Penal Code or any other legislation that classifies it as a "crime," such behavior would be seen to be detrimental to society as a whole. Consequently, the State intervenes to prosecute the perpetrator of such action.

Freedom of expression is a highly prized attribute in a society that is both free and democratic. The right to freedom of speech, encompassing freedom of the press, has extensive scope and encompasses the right to communicate ideas that may offend or shock any segment of the community, as well as those that are widely recognized and deemed acceptable. It is indisputable that the public has the right to demand the disclosure of criminal procedures on a public forum. The media, particularly social media, serves as a crucial public arena for disseminating information about various acts and procedures. Article 19 of the Indian Constitution grants individuals the freedom of expression, which encompasses the right to the Press² which is hereinafter referred to as “freedom of press” or “Media” that is to publicize the information to the Public. Media is considered as one of the pillars of the Democracy³.

Notwithstanding the aforementioned, the media should refrain from exceeding its limits. The media does not have a legal role in the criminal court system. The media has endeavored to sway public sentiment regarding various judicial rulings, especially those pertaining to criminal trials. They frequently exert influence on the verdict, therefore garnering recognition for their significant impact.

2. Background of the study

2.1. “Trial by Media” or “Media Trial”

The term “media trial” pertains to the coverage of a case, either civil or criminal, before and during the trial, which has the potential to bias the fair trial of the defendant⁴. It pertains to the public discussion of the merits of legal cases by the media, which is separate from reporting on the actual court processes. Put simply, when individuals who are legally obligated to speak remain silent, those who are legally obligated to investigate fail to do so, and those who are obligated to take action choose not to, the public has the right to be informed when the path of justice is impeded or hindered. When the media engages in this action, it is perceived as a media trial⁵. Moneybags and prominent bigwigs may have the chance to frequently use the law by paying witnesses, deleting (or changing) evidence traces, and occasionally even bribing the judge⁶. On important occasions, the media often get involved and exerts influence on the court’s decision, often leading to the correct ruling⁷.

The media’s involvement did not begin recently, but this is an old narrative with roots dating back to the 1950s. In India, the case of KM Nanavati was one of the first cases where the mainstream press impacted the jury’s decision⁶. The media impacted this case in such a manner that the jury was forced to acquit KM Nanavati, and the jury sided with the accused 8:1 because to the compassion generated for him by the media⁷. The case was so riveting since it involved an upper-class family that it distressed the entire nation, while bringing tremendous and maddening media interest to the courts⁸. This case has paved the way for the removal of jury trials owing to

the possibility of grave injustice, as media has the ability to influence the ideas of jurors as well as exert pressure on their minds.

3. The existing legislative framework to address the problem of media trials

Walking through the precedents, there were few options regarding the way the media trials may be handled:

- Contempt of Courts Act, 1971
- Postponement Orders

3.1. The Contempt of Courts Act, 1971: The timeline (through precedents)

To address these risks, the Contempt of Courts Act, 1971 (hereafter referred to as “the Act”) was introduced. Supreme Court of India in *Perspective Publications (P) Ltd. v. State of Maharashtra*⁹, while stating the principles of the Act, has also put forward the following test that, *the key question in each situation is whether the contested publication is just a defamatory assault on the judge or whether it intends to obstruct the fair administration of justice or the law by his court. Only in the latter scenario would it be subject to a contempt penalty*¹⁰ and also, the question will instead be, whether the judge was personally harmed or the general public? The public will be harmed by the publication of a defamatory statement, if it seeks to undermine public confidence in the integrity, competence, or fairness of the judge, discourage litigants from relying entirely on the court’s administration of justice, or puts the judge in a position of personal embarrassment as he or she performs his or her judicial duties.

Perspective Publications is the landmark decision on this subject. But only deals with the situation where media opinions affect the judges.

In *R.K. Anand v. High Court of Delhi*¹¹, the lawyers and litigants going to press or media in a sub judice matter is another question that was at the fore. While hearing this matter, P talked to the press and media. The statement which was made by P, pursuant to the order dated 20-08-2020, was also published well in advance in extenso, word to word, in the newspaper and media. Such a statement being made public in advance in a case that is still pending is improper because it has the effect of obstructing the judicial process and fair decision-making. It also clearly represents an effort to influence the court’s decision through the media and newspapers, which cannot be said to be conducive to the administration of justice fairly. It would also amount to excessive interference with the independent judicial process, which is the very foundation of the system. It almost equates to using a venue or platform that is not intended to be utilized ethically and legally if such a course of action is taken in a sub judice proceeding, especially when it comes from an advocate who is being charged with criminal contempt. More so, it suggests that

the Court's patience is being put to the test without justification by using dishonest tactics in a severe case of criminal contempt, especially after the court has recorded the conviction.

Section 4 of the Contempt Act, assures Article 19 (1) (a) in a way that, if a person publishes a fair and accurate report of a judicial proceeding or any stage of a judicial proceedings, then that person shall not be guilty under the Act. Also, Section 5 of the Act says that, a fair criticism of a judicial act does not amount to contempt. Also, if a person publishes any comment upon the merits of the case, it does not amount to contempt.

The above sections in the Act have given a wide scope for the freedom of speech and there is also a great chance that the language of the section can be misused in order to tarnish the reputation of a person who is involved in the trial, particularly the reputation of the accused can be tarnished. One of the instances where this can be observed is the case of Sanjay Dutt.

3.2. Postponement Orders: Judicial history

- *Sahara India Real Estate Corpn. Ltd. v. SEBI case*¹²

These facts of the case are that a TV Channel gave unsolicited media publicity of a private communication between the appellant and the respondent when the matter was already pending before the Supreme Court of India. On the suggestion of the Court, the parties were negotiating on the security in the form of an unencumbered asset, which the appellant should offer to the respondent, Securities & Exchange Board of India ("SEBI") in order to obtain stay of the two impugned orders passed by SEBI. However, one day before the next date of hearing, a TV channel flashed details of the proposal made by the appellant to the Respondent. The TV channel also named the valuer who had valued the assets proposed to be offered as security. The Supreme Court took exception to unnecessary media interference and decided to clarify the law relating to media reporting of Court proceedings.

Orders to postpone publicity should be seen in the perspective of Article 19 (1)(a) not being an absolute right. The idea of delay orders is to avoid potential contempt. Of course, courts should consider the claimed offending publication's content and impact before granting delay orders. These delay orders take effect after real publication. Such orders mandate the publication's temporary deferral. As a result, it is evident from reading Article 19 (2), Article 129/Article 215 and Article 142 (2) that Courts of Record are endowed with all legal authority, including the ability to punish. This means that Courts of Record may postpone publicity in appropriate circumstances as a preventative measure without affecting the content of the publicity. Such procedures shield the media from prosecution or punishment for engaging in contempt while also achieving a balance between opposing public interests via the use of neutralizing devices or tactics developed by the courts. Such directives would also alert the

media to potential disobedience. It would be possible for Media to dispute such orders in the proper processes, though. The delay order is a precautionary step rather than a punitive one. Therefore, such postponement orders satisfy the justification requirement under Article 19 (2) in the absence of any other alternatives, such as venue changes or trial postponements. They also assist the courts in balancing competing societal interests, such as the right to know versus another societal interest in the administration of justice. Postponement orders are covered by Article 19(2) and pass the reasonableness test¹³.

A court may order a new trial, a change of venue, the overturning of a conviction on appeal, or other neutralizing measures in the event that irresponsible journalism causes damage to the proceedings. In *Sahara India Real Estates Corpn. Ltd. (supra)*, the Supreme Court considered the width of postponement orders in matters which are *sub judice* and how far such orders constitute a restriction under Art. 19 (1) (a) and whether such restriction is saved under Art. 19 (2). The Supreme Court said that collision between freedom of expression (including free Press) and the right to fair trial as applied in US will not apply to the Indian Constitution since Art. 19 (1)(a) does not confer an absolute right.

In some situations, even the accused seeks publicity (not in a metaphorical sense), as openness and transparency form the cornerstone of a fair trial in which all parties involved in a dispute, including the judges, are subject to scrutiny while also allowing the public to learn what is happening in the courtrooms. The “postponement order” does this, subject to specific limitations, when rights of equal weight conflict. When this happens, courts must develop balancing approaches or measures based on recalibration that provide both rights equal space in the constitutional framework. The right to a fair trial is protected under the constitution’s Article 21. According to Article 19 (1) (a), this restriction on free expression is legitimate.

The Court said that if postponement orders curtail freedom of expression of third parties, such orders have to be passed only in cases in which there is real and substantial risk of prejudice to fairness of the trial or to the proper administration of justice. However, such orders of postponement should be ordered for a limited duration and without disturbing the content of publication. They should be passed only when necessary to prevent real and substantial risk to the fairness of the trial if reasonable alternative methods or measures such as change of venue or postponement of trial will not prevent the said risk and when the salutary effects of such orders outweigh the deleterious effect to the free expression of those affected by prior restraint. Only in circumstances where the balancing test would otherwise favor non-publication for a brief time period would the order of delay be acceptable. These delay orders are only necessary to strike a balance between competing public rights or interests under Part III of the Constitution. They also meet the Constitution’s requirements for justification found in Articles 14 and 21. Orders for

postponement protect the fairness of the related trial. The principle underlying postponement orders is that to prevent possible contempt. Court also said that excessive prejudicial publicity leading to usurpation of functions of the court not only interferes with the administration of justice, which is sought to be protected under Art. 19 (2), it also prejudices or interferes with a particular legal proceeding. Through such a context, courts have an innate obligation to safeguard the presumptive innocence, which is now recognized as a human right under Art. 21, subject to the applicant demonstrating deflection of such a presumption in suitable processes. Such delay orders must be inextricably linked to the outcome of the proceedings, including the accused's guilt or innocence. Court held that postponement orders fall under Art. 19 (2) and they satisfy the requirement of reasonableness¹⁴.

- **Vidya Dhar v. Multi Screen Media (P) Ltd., 2013¹⁵**

Pursuant to an inquiry by CBI into certain irregularities in the recruitment of junior basic trained teachers in the year 2000, the three petitioners herein, including the then Chief Minister of Haryana, and one S, the then Director of Primary Education were prosecuted and convicted by the Trial Court. The Petitioners were sentenced to 10 years' rigorous imprisonment in respect of conviction under Section 120-B IPC and for the period of 7 years of rigorous imprisonment in respect of Section 13(2), Prevention of Corruption Act, 1988. At the relevant time, they were detained in judicial custody.

The petitioners filed thereagainst an appeal as well as an application under Section 389 of the CrPC before the High Court of Delhi. While it was pending, the commenter suggested that a dramatized version of the "*JBT Teachers Scam*" be featured in an episode. Following that, the petitioners filed a lawsuit with the Delhi High Court seeking a permanent order to stop the respondent from airing/telecasting the aforementioned show. Until the application under Section 389 CrPC was resolved, a single judge barred the respondent from airing or telecasting the aforementioned programme.

The Division Bench set aside the said order of the Single Judge. The petitioners then filed the present SLP thereagainst.

Before the Supreme Court, the petitioners contended that the proposed telecast of the episode will have a prejudicial effect on their right to fair trial as an appeal from the judgement of conviction was a continuation of the trial. That the entire projection created a detailed similarity between the actors and the situation in which they performed, with the actual events, which led to the conviction of the petitioners. That the same had the potential of destroying the petitioners' political career. That the right to freedom of speech did not include within its scope the right to create a hostile environment when the petitioners' pending appeal comes up for final hearing.

- **Kerala High Court's Observations: *Indo-Asian News Channel (P) Ltd. v. T.N. Suraj***
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The issue of media trial was discussed in the case of *Indo-Asian News Channel (P) Ltd. v. T.N. Suraj*. Justice Mohammed Nias has opined that half-truths and misinformation cannot be the basis of publications or telecast¹⁷. This issue was brought before the Kerala High Court. It involved a request for an injunction during the ongoing litigation to prevent the publication or broadcast of information related to the case. The pertinent details of the case are as follows: despite the investigating officer modifying the charge from Section 120B to Section 120 B (1) to include an offense under Section 302 IPC, the petitioner remains identified as the third accused in the case for allegedly committing offenses under Sections 116, 118, 120-B, and 506 read with Section 34 of the Penal Code, 1860. One of the investigating officers acted as the de facto complainant. At first, there were just 7 individuals implicated in the case. However, later on, Mr. Gopalakrishnan, who is the petitioner's brother-in-law and a film star, was also included as the 8th accused. One of the respondents utilized his online news platform to broadcast information about the situation, creating further accusations against the petitioner regarding things that were under legal consideration in the ongoing trial and pending investigation.

The Honorable High Court of Kerala has affirmed that in a democracy governed by the rule of law, media interest and debate are permissible, with one exception: the media is prohibited from suggesting, publishing, or broadcasting during a trial or investigation that individual's "A" or "B" are guilty, or that individual's "C" or "D" are untrustworthy or dishonest witnesses. These assertions of guilt or innocence or creditworthiness of a witness, etc., are not allowed because they exceed the media's legal rights.

The Court explicitly instructed electronic media players to fully adhere to the "Norms of Journalist Conduct" norms established by the Press Council of India in 2019. The Court has determined that the specific conditions of the present case justified the implementation of drastic measures, such as issuing mandates to the respondent to cease posting any content related to the petitioner. The Respondent is prohibited from disseminating or making public the Reports, as determined by the Bench.

- **Madras High Court: Pollachi sexual abuse and extortion case**¹⁸

Regarding this issue, a monthly publication named "Nakkheeran" had disclosed confidential records that the court had specifically instructed to be maintained under strict confidentiality. This measure was implemented to ensure that the victims and their families may testify truthfully throughout the trial without any disturbance or interference. Nevertheless, the public documents have furnished comprehensive details regarding the victims' testimonies, encompassing their

identities and the specific situations under which they encountered the accused, so putting their lives at risk. The Court noted that the release of the aforementioned information is not only inappropriate, but also goes against the fundamental principles of the order and constitutes a direct obstruction to the administration of justice. The report suggests that the weekly magazine “Nakkheeran” should be included as a party in this legal petition to show the importance of publishing the mentioned material. This is because the Court has explicitly stated that the State must enforce the Witness Protection Scheme to safeguard the interests of the victims and witnesses.

The Court has not impleaded the media to be respondents in the family, as the it had faith on the media that it would be mindful of its duty towards the citizens and had also hoped that the media might realize the turmoil which the victims and their family as they would be going through the aftermath of the offence committed against them, which is not only against them, but against the entire humanity. However, it has observed that *“its impressions are mere hallucinations and that the print and electronic media are not mortals to understand the implications of the act that they commit, which, in effect, affect the victims and their family members gravely, but are merely guided by the ratings and the monetary considerations that fall out of the news that they take to the palm of its citizenry”*.

Disregarding the potential impact on the trial’s outcome and the potential intimidation of the victim, which could lead to their silence due to concerns for their own safety and the safety of their family, the magazine disclosed the identities of the victims, along with their comprehensive statements provided to the investigators, and the names of the individuals accused. The Court has observed that if this happens, the perpetrators will go unpunished, and both the investigation mechanism and the justice delivery system will be criticized by the public and the media. During the trial, the Court decided to include Nakkheeran Publications and its Editor as defendants in the action. Additionally, the Court issued an order prohibiting the media from publishing any additional information regarding the victims, witnesses, or their family.

4. Freedom of Press and Right to fair trial

The researchers in this article aim to emphasize the cases in which the media’s freedom has resulted in defamation, disclosure of crucial witnesses, exposure of sensitive information about vulnerable victims, and other instances that have significantly impeded the parties’ right to a fair trial. The researcher examines the scenario in which two rights, namely “freedom of the press” and “right to a fair trial,” intersect, and how the exercise of freedom of the press has impeded the accused or victim’s right to a fair trial. Incident of sexual abuse and extortion in Pollachi (*supra*), the Madras High Court has issued an order prohibiting the Media from publishing any oral, documentary, or digital evidence that may be presented during the trial. This case serves as an

example of how the Judiciary should intervene in matters concerning the dissemination of information regarding criminal proceedings. In the current Indian context, contribute to the discussion of “media trials”. Media trials, conducted without a thorough understanding of the legal consequences, have the power to shape public opinion either in favor or against individuals. As a result, cases can be unjustly predetermined, leading to pressure on law enforcement agencies to obtain confessions from certain individuals. The courts, media, and, in certain instances, the general public are aware of it, yet no one steps forward to reveal the complete facade¹⁹.

4.1. In relation to WPS, 2018...

After many efforts and many judgements through decades, Witness Protection Scheme, 2018 (hereafter referred to as “WPS, 2018”) is the first document enacted as a legal measure to safeguard witnesses who would be exposed to harassment by the accused. If the existence of a witness in a case is exposed, that witness may be intimidated by the accused, which might also result in witness tampering. If the media publishes information about the witness on a social medium during the media trial, it might result in grave injustice to the victim.

The similar situation happened in the Pollachi sexual abuse case (supra). The year is 2022, and the media is still unaware of its own limitations. Enacting WPS, 2018 is a government effort, but it will be meaningless if the witness protection scheme cannot be implemented in consonance with the publication of important information out of an ongoing case.

Conclusion

The impact of media trials extends beyond the accused to include the victims and witnesses as well. There are no restrictions on the extent to which the media can cover a criminal trial. Various strategies can be employed to counteract the actions of the media, but these strategies can only be put into effect once the media disseminates the information. There are no methods to prevent the media from disclosing the material in advance. While an injunction may initially seem like a viable solution, it is quite likely that the information will inevitably be disseminated through the media. Given that media encompasses “social media” as well, there are now limited methods available to ensure the preservation of the advantages of an ongoing case.

There ought to be a novel technique implemented to inhibit the dissemination of sensitive information. Across the globe, the exercise of one individual’s freedom often infringes upon the rights of another individual. The Constitution of India is deliberately structured in such a manner, and regrettably, there are no alternative methods to rectify this. The main purpose of media is not oriented towards commerce, but rather towards the fundamental right to freedom of speech, specifically centered around the right to access information. At some stage, it is important to

consider how these rights can be maintained if one right obstructs the pursuit of justice for another.

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- ¹⁰ The Court has observed that, "*In each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that it will be punishable as contempt.*" which was followed by "*Alternatively, the test will be whether the wrong is done to the judge personally or it is done to the public. The publication of a disparaging statement will be an injury to the public if it intends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of Justice or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties.*"
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- ¹⁷ In Justice Mohammed Nias’ words, “Reports/telecast having the effect of prejudicing mankind against the parties and the court before the case is heard clearly interferes with the course of justice”.
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