

Influence of Media on Trail

Sunil Kumar, Research Scholar, Jagannath University, Jhajjar, Haryana.

Abstract

Media acts as facilitator along with being an expediter on many matters including those affecting the collective conscience of society. To cite a few, like Priyadarshini Mattoo case, Jessica Lal case and recently Tehelka case. Though media to a large extent plays irrefutably positivist role, role of media in media trials specifically of sexual offence is doubtful. Sensational journalism is a reality of Media industry, for the sake of TRP explicit details of the sexual offence are divulged in public domain which results in impinging of victim's Right to privacy or unfair denunciation of an alleged assailant. It is obvious that to run the democracy very smoothly, a free and healthy media functionary is needed. But most of the time the freedom of expression is engrossed the controversy by the sub clause (2), article 19 of the Constitution of India. It does not embrace the freedom to contempt of court. But according to the demand of current situation, media significantly involves when justice is totally denied or delayed. Though media helps in social, political changes but sometimes it is also seen frequently that media involves into the money making business. This paper is a humble effort to analyse the need of media involvement and playing a crucial role in establishing the justice in the society.

1 INTRODUCTION

Media imparts a very vital role in Indian democracy and hence it is called the 'fourth pillar' of the democracy. It is expected from the media to provide impartial and unbiased news as it plays a vital role in shaping the opinions of the society and is competent in changing the whole viewpoint through which people perceive various events.

Indian government understood the importance of press and its impact on the people of India. Press had played a very important and productive role in the independence movement, through its strong support for the popular movement of Satyagraha and abdication of foreign goods and other similar forms of freedom struggle. Such was the impact of the print media that it frightened the British, as it gave a picture of a strong India, though the reality was a disintegrated India ruled by princely kings and people in deep poverty. The framers of our Constitution knew the immense power vested in the print media, therefore they imbibed the Freedom of Speech and Expression in Article 19(1)(a) of the Indian Constitution from Article 19 of the UDHR, and also reflected similarly in Article 19 of the International Covenant on Civil and Political Rights 1966 (ICCPR).

The strength and importance of media in democracy is well recognized. Article 19(1) (a) of the Indian Constitution, which gives freedom of speech and expression includes within its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India. Media is not only a medium to express once feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda.

The only saving grace, it seems is that the Lady of Justice is blind. If she could see the slow but steady decline of our moral standards as a society surely her head would hang in shame. The Fourth Estate has been regarded as one of the sentinels guarding the existence of the society. However, it is troublesome to observe that from what has been exhibited recently, it has fallen far from grace. The media slowly became victim to the same mob mentality that it initially generated in the public. Entertainment was incentivised and an entire nation fell prey to the stupor of a real life thriller unfolding before their

1.1 Fourth Pillar of Democracy

Hannah Andret - "The moment we no longer have a free press, anything can happen. What makes it possible for a totalitarian or any other dictatorship to rule is that people are not informed."

The true test of vibrant democracy is the independence of media. Over a past few year media in our country has become advocates of different political parties and voice of corporates. What happened in the electronic era is that mainstream media became corporatized to spread its business as well as to acquire advanced infrastructure. To corporatize, it required corporate financing.

Former Indian President Pranab Mukherjee resoundingly made point to the Indian media that “discussion and dissension are crucial for a spirited democracy, and it must hold public institutions accountable for all their actions and inactions. There should always be room for the argumentative Indian, and not the intolerant Indian. The media must be the watchdog, the mediator between the leaders and the public”.

Recently, an Indian news channel ‘Republic Bharat’ has been fined almost rupees 20 lakh by the UK communications regulator for a programme on Republic Bharat ‘Poochta Hai Bharat’ that contained ‘un-contextualised hate speech’ seen as potentially ‘highly offensive’

When a case is being conducted in the Court, it is presumed that Court will do fair Justice in the matter. Nothing should interfere in that especially the media. Media should not conduct a parallel trial of sub judice matters. A judge shall decide the matter on the merits of the case and objectively. This is not possible when there is so much discussion in the matter through the media, as it creates a clouded atmosphere disturbing the serenity. In *Saibal Kumar v. B.K. Sen*⁶⁰ the Supreme Court held that it is improper for a newspaper to conduct parallel investigation into a crime and publish its results. Trial by newspapers must be prevented when trial is in progress in a tribunal of the country. The reason being, that this interferes with the cause of justice.

2 HISTORY OF MEDIA TRIAL

The history of media trials goes back to the 20th century. In the case of American silent movie star Roscoe “Fatty” Arbuckle (1921), who was charged with the death of a woman, he was acquitted by the court, but lost his reputation and job after the media declared him “guilty”. Another famous case is the trial of former National Football League player, broadcaster and actor OJ Simpson who was tried and acquitted on two counts of murder for the June 12, 1994, deaths of his ex-wife, Nicole Brown Simpson, and her friend Ron Goldman. But the media influenced the mind of viewers and declared Simpson guilty. Media trials have caused wrongful portrayal of the accused and helped in destroying their careers.

Some infamous cases would have led the court to declare the accused innocent. Two of them are the Jessica Lal murder case, 2010, and the Bijal Joshi rape case, 2005. Media trials led to widespread coverage of the guilt of the accused and led to a certain perception about him. It created hysteria among viewers in high-profile cases, making it nearly impossible for the trial to result in a fair judgment.

2.1 Freedom of Speech and Expression vs. Freedom of Media

“A free press lies at the heart of our democracy and its preservation is essential to the subsistence of liberty. Any inroad made upon the constitutional protections of a free press tends to undermine the freedom of all men to print and read the truth. *Carig v. Harney*, (1947) 331 US 367

“The tension between courts and media revolves around two general concerns- the first is that there should be no “trial by media” and second is that it is not for the press and anyone else to prejudice the case. Justice Demands that people should be tried by courts of law and not be pilloried by the media” Devika Singh, *Media Trial: Freedom of Speech*, Volume 20 Issue 5,

The Preamble to our Constitution gives prominence to the concept of liberty of thought and expression along with various other liberties such as liberty of faith, belief and worship.^[35] Part III of our Constitution i.e. the Fundamental Rights, further provides for Freedom of Speech and Expression as contained in Article 19(1) (a). Freedom of speech and expression in the context of public interest is the Press –the print media and the broadcast media. It has taken the responsibility to inform the public about the functioning of the elected government. This includes all other matters in which public have a right to know. Right to discussion and criticize forms an active part of this right. In *Romesh Thappar v. State of Madras*, the Supreme Court has included press in the definition of freedom of speech or expression. The press enjoys the privilege of sitting in the Courts on behalf of the general public to keep them informed on matters of public importance. The journalist therefore has the right to attend proceedings in Court and publish fair reports. This right is available in respect of Judicial and Quasi-Judicial tribunals

Even though, freedom of press is essential, it cannot be deduced that collective right like freedom of press is greater than individual rights like Right to Fair trial and personal privacy. It is agreed that justice delivery system in our countries is slack and media coverage expedites the process. But, it is humbly submitted that the expected role of news reports is to bring matters in the view of society and not to pass judgment on guilt and innocence of persons.

The media is under the duty to ensure that any information disseminated to the public is accurate. Implicitly, limits are also levied according to Article 19(2) of India's Constitution the form of:

- right to integrity
- right to privacy
- limitation imposed by way of contempt of court

3 RIGHT TO A FAIR TRIAL

The right to report legislative proceedings is also a part of the press freedom. In a democratic society it is necessary that the society shall be a part of the discussions on policy matters. They need to know the details of debates, as transparency in governance is a must for the proper functioning of a democratic society. This right of the press to true reporting of parliamentary proceedings is protected by the Constitution¹¹. It also gives protection to true reporting of the proceedings of State Assemblies.¹² A similar protection is provided in the Parliamentary Proceedings (Protection of Publication) Act, 1977.

Fair trials are the only way to prevent miscarriages of justice and are an essential part of a just society. Every person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But it's not just about protecting suspects and defendants. It also makes societies safer and stronger. Without fair trials, victims can have no confidence that justice will be done. Without fair trials, trust in government and the rule of law collapses. The Media must allow the procedure established by law to take its own course. The Media must report cases but within the bound of law. It must restrain itself from passing value judgement which result in instant presumption of guilt or innocence.

3.1 Sources of Law for Fair Trial

- Article 14 of the International Covenant on Civil and Political Rights: All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Article 10 of the Universal Declaration of Human Rights (iterates the same mentioned above).
- Article 21 of the Indian Constitution: No person shall be deprived of his life and personal liberty except according to procedure established by law.
- The right to be defended by a legal practitioner, flowing from Article 22(1) of the Constitution has further been fortified by the introduction of the Directive Principles of State Policy embodied in Article 39A of the Constitution and enactment of Sec 304(1) of the Cr.PC (Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State).

3.2 General Principles of Fair Trial

1. Presumption of innocence - 'Every accused is presumed to be innocent until proven guilty.'

Dataram v. State of U.P., (2018) 3 SCC 22 wherein it was held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty.

The Supreme Court of India, in the case of *Gangadhar v. State of Madhya Pradesh* comprising of Justice R.F. Nariman and Justice Navin Sinha acquitted the man accused in possession of 48Kgs 200gms of ganja (Cannabis) and held that Right to fair Investigation is a Right to Fair Trial guaranteed to accused under Article 21 of the Constitution of India.

2. *Autrefois Acquit and Autrefois Convict* - *Autrefois Acquit and Autrefois Convict* are the French terms literally meaning "previously acquitted" and "previously convicted" respectively. This doctrine has been substantially incorporated in Article 20 2 of the constitution and is also embodied in section 300 of the Cr. P.C.

In *Kalawati v. State of Himachal Pradesh* a person accused of committing murder was tried and acquitted. An appeal by the state was preferred against the acquittal. It was held by the court that the accused could not plead Article 20(2) against the appeal. Hence the principles of double jeopardy do not apply to appeal. Article 20(2) does not apply when there was no punishment for the offence at the earlier prosecution.

3. Impartial Judge - The Constitution of India, unlike the USA, does not follow the doctrine of Separation of Powers, but it has been reiterated in many cases that the independence of the judiciary is a basic part of the constitution. For the judiciary to be independent and impartial to serve the constitutional goals, the Judges need to act fairly, reasonably, free of any fear and favor. The judiciary stands between the citizen and the State as a rampart against misuse or abuse of power by the executive.

The report of the investigation of a sexual harassment complaint against the CJI was not even made public citing Indra Jaising vs. Supreme Court. The judgment was delivered by the Hon'ble bench on the basis of a report which was not shown to anyone. It is clear infringement, in my view, of the principle of natural justice that the report on which the allegations were denied was not even shown to the accused

In the matter of State of Maharashtra v. Rajendra Jawanmal Gandhi; (1997) 8 SCC 386 the Supreme Court while considering the issue of sentencing observed that a trial by press, electronic media or public agitation is the very antithesis of the rule of law. This may very well lead to miscarriage of justice and therefore, a Judge should guard himself against any such pressure and should strictly be guided by the rules of law.

3.3 Where does Press Freedom Ends and Trail by Media Begin

Freedom of press is not specifically mentioned in article 19(1) (a) of the Constitution and what is mentioned there is only freedom of speech and expression. In the Constituent Assembly Debates it was made clear by Dr. Ambedkar, Chairman of the Drafting Committee, that no special mention of the freedom of press was necessary at all as the press and an individual or a citizen were the same as far as their right of expression was concerned.

In Mahmood Moosa Tarani better known as the Black Friday case, a film which was publicised as a "true account" of the Bombay blasts was enjoined by the Bombay high court from being screened while the trial was on. The visual medium has been seen as more potent, and despite their training, judges could not be expected to remain immune from public opinion, roused to indignation by a purported exposure of those "truly" guilty"

Romila Thapar v U.O.I. The media 'trial' happens when the media starts conducting parallel proceedings, and asserting its view as the correct view, over those statutorily entrusted with the task of investigation or adjudication

Most recently the Delhi high court on September 22, 2020, in the case of Harper Collins Publishers PVT Ltd v Sanchita Gupta @ shilpi and others was dealing with an ex parte injunction passed against a book on Asaram Bapu and his co-accused. While recognising the importance of the rights of individuals to reputation, the court held that if there is fair discussion, which is based on established facts and which is not ex facie malicious, there can be no bar on the discussion or publication.

A media trial ensues when the media seeks to appropriate the role of the courts in charging, convicting or acquitting the accused. As the Supreme Court said in Sahara v Sebi, that which affects the "presumption of innocence" must be enjoined, if there is an ongoing adjudication. However, a factual reporting is protected even by the Contempt of Courts Act.

4 SOCIAL MEDIA AND JUDICIARY

'Justice should not only be done but also appear to be done', clearly puts the onus on the judges, on their demeanour, overall communication, social etiquette and conduct. A solemn denial of social media is not feasible but a selective, well-intentioned approach is the need of the hour.

During the media trial social involvement in the case as agitation like the case of Nirbhya whole country not only country but international platform raise the issue resulting pressurise the government to form a special Act, everybody known Nirbhya Act. It is the direct impact of media trial on society. In the another case Yaqub Memon case elites persons of the country define another type of human right definite another type of elite protest who is the human and what are the human right a criminal or those 257 person who killed in Bombay blast. Support of judicial use of social media is made apparent in the words of Union Law Minister Ravi Shankar Prasad;

"I am a great supporter of social media and freedom. I know it is empowering, but (there) is a dangerous trend. Judges must be left completely independent to give judgement as what they think is the correct mode in accordance of the rule of law."

The Bijal Joshi rape case and Nitish Katara murder case gave credits to media where the accused would have gone unpunished if media wouldn't have intervened, but on the other side media also pinpointed innocent people in the case of Malegaon blast and Maria Susairaj case ignoring the importance of accuracy.

4.1 Misuse of power by media

In recent cases we see a great misuse of power by media which even cause breach of right to privacy of various people. Present age is considered as the age of media as it is the biggest watchdog on public and governmental actions. Along with these powers came as great responsibility. It is usually said that media is more powerful than nuclear devices. So it should play its role responsibly rather than misusing its power.

Honourable Prime Minister Narendra Modi said that there was freedom in the country to write but it did not include the freedom to be 'factually incorrect'. And further added that to misuse press freedom was "criminal."

Justice Katju stated in the letter to the broadcasting ministry that a new practice has been started to defame people, community, religion, etc. through social media.

Cut throat competition is today's reality and same is true for Mass Media. Primary role is to address economic considerations, which are derived through advertisement. Advertisements are aired on the channels based on their Television Rating Points (TRPs). With surge of Competitiveness and need to remain relevant, news networks took up new initiatives for the 'public at large'. While majority of media campaign are positive, role of media in investigative journalism of matters pending trial is doubtful.

Sushant Singh Rajput's death case, The Bombay High Court asked if the current mechanism for self-regulation of the electronic media was enough to maintain a balance between right to freedom of speech and expression and the right of the accused to a fair trial and reputation. "It takes years of hard work to build a reputation and with just one stroke it is brought from top to bottom. Without being punished, there is stigma on their forehead till the trial is completed, no matter if they are cleared of the charges,"

Activist lawyer Prashant Bhushan argued that releasing the names of suspects even before the FIR was filed in some cases in press statements results in pre-judging a case. Often the reputation of totally innocent people is smeared beyond repair.

4.2 Legal Implications of Media's 'Activist Role'

The investigative reports of the Media result in causing more harm than benefit in trial of sexual offence. The result of the Media trial on decision in courtroom is effected in many ways, such as:

- **Mental trauma** – The media reports bringing offence of sexual nature in focus of the general public to debate. To give a face to the story, intricate details are added in the report, which reveals the identity of the victim even though actual name isn't revealed. Though after Anti-Rape law, position has changed in this respect by amendments in Criminal Procedural Code and evidence Act. It may be possible, that victim may not be willing to discuss or see the details of the incident again due to physical as well as mental trauma. Due to debate by public at large, she may never be able to move on in her life.

- **Verbatim re-production** – Media instantly places in public domain initial statements of the victim in verbatim form. The initial statement of victim might be in state of shock and there might have been crucial facts left out. But, the victim has to agree and rely on the initial statement as any alternation from the original verbatim statement which is available in the public domain will weaken the case of the prosecution at trial. If initial testimony is modified by the victim, then at trial defense will argue that the complainant is not trustworthy; is embellishing facts; the version is exaggerated etc. Same is the case with television interviews given by victims/witnesses. These public statements made by victims/witnesses can be used during the trial, if there are contradictions. Hence, the prosecution might end up losing crucial testimony of one of its key witnesses.

- **Breach of personal privacy** – Many times media trial is based on leaked information from anonymous source. Like, in the Tehelka case, an e-mail of the complaint was leaked in the media which due to the sensationalism took suo motto cognizance of the incident. The mail was for the purpose for an internal complaint purpose and the victim did not want to initiate a criminal case. But due to widespread coverage of the incident in media. Police took suo motto cognizance of the event and registered a FIR against Mr. Tarun Tejpal for sexual assault. In the instant case, victim personal choice has been violated. For the sake of TRPs, victim has to unwantingly be part of the trial as key prosecuting evidence. Also, there are cases in victim wants to take alterative course of action and doesn't want to file a criminal case. The victim may want to file

for a sexual harassment case or a civil case. By over reporting, women's agency is violated by not letting her choose from the available course of actions.

• **Bias in public opinion** – Journalism is a very powerful process which affects and moulds the public opinion. News agency wields considerable power on the common person. Sometimes for sake of sensationalism, produce inadmissible evidence in public opinion which influence resulting in instant denunciation of alleged accused. In, Khurshid Anwar case, which happened when India Tv reported uncorroborated testimony to the police. This created bias in public that it's correct. Evidence law has rules regarding what facts are admissible and what are not. But For instance, a statement made to a police officer is not admissible, nor is a confession made to a police officer. The rationale is the perceived danger of coerced police statements. A court cannot consider inadmissible evidence when adjudicating a case. By publishing inadmissible evidence and bringing it into the public domain, the media might bring to the attention of the judge (and the public) facts that cannot be considered in adjudicating the case. These facts might subconsciously influence the judge's decision.

• **Interference with sentencing process** - Media reporting can also impact the sentencing process. The Supreme Court has been relying on tests such as “the society's cry for justice” and “the collective conscience of the society” to determine whether death sentences should be imposed or not. Although the “test” was proposed in the early 1980s, the reliance on it in the recent past has increased. In some cases, the Supreme Court (and courts subordinate to it as well) seem to have implicitly relied on media portrayal of a particular incident/individual to assess whether “collective conscience” has been shaken. Death sentences have been imposed in cases where the media seemed to suggest that for a crime of a particular nature, the death sentence is warranted.

5 REMEDIES

Litigation is not always a search for truth. According to philosopher Charles Taylor, it is a “zero-sum game”, where the law only says “either A or B is right”.

The trial on television has the tendency to portray anyone as an accused and any accused as a culprit. This can influence the judicial process, though it should not. Some studies have shown that conviction rates in celebrity crimes are relatively higher. Prejudice, bias and fear of ‘public opinion’ are impediments to the juridical process. Every news channel is after TRPs and no one wants to actually get justice for the accused. It is time for the media to be regulated so that the strict standards and ethics of journalism are maintained. Contempt of Court happens not just when judges are criticized but also when matters which are sub judice are discussed and criticized in the press. This results in lowering the role of the judiciary in the administration of justice. When the issue is before the Court, it is considered the duty of the media to allow the course of law to take place. They can report the matter in Court in a fair manner and not critically. They should wait for the final outcome of the case. This is the object behind the reasoning given by the Court in *Rajendra Sail v. M.P. High Court Bar Association*⁶⁶. The Supreme Court warned the media against sensationalizing of the issues and stressed that the press needed a strong internal system of self-regulation. It said that the reach of the media is very large and large numbers of people believe it's reporting to be true

- Apart from section 151 of the code of civil procedure, the high courts have the inherent power to prohibit publication for a temporary period and that power has been provided under Article 129 and Article 215.
- The courts have the power to conduct court proceeding in camera, under its inherent power and also to incidentally prohibit publication of the court proceedings or evidence of the cases outside the court by media.
- All courts have inherent powers and can issue prior restraint orders or proceedings and such power do not violate Article 19(1)(a)
- Pre-censorship per se is not unconstitutional because - already restriction laid down in Article 19(2)
- The meaning of the words “contempt of Court” in Articles 129 and 215 is wider than the definition of “criminal contempt” in section 2(c) of the 197 Act with object not only to punish, it includes the power of Courts prevents such acts which interfere, impede or pervert admonition of justice.
- Court can grant injunction against the press restraining publication of article on the issues which may prejudice the court proceedings, but preventive injection against must be based on reasonable grounds for keeping the administration of justice unimpaired.
- Doctrine of neutralizing device evolved by the courts to balance interests of equal weight age, viz., freedom of expression vis-a-vis freedom of trial the context of the law of contempt.

6 CONCLUSION

Media is the cornerstone of our Indian democracy which operates for the greater interest of society but legal process should not be hindered by the media coverage of a matter. The rule of law must prevail and the mandate of freedom of press must be construed to be limited to placing a matter in the consciousness of the society without any presumption being given. The Court is a competent forum for such decisions and these forums must be allowed to function without spreading prejudice in the public opinion. Right to free and fair trial under Article 21 of the Indian Constitution must be upheld.

Media has started functioning as a public court. It now conducts a parallel trial with the court. It fails to recognise the gap between an accused who is presumed innocent until proven guilty and a convict whose guilt is proved beyond reasonable doubt. Due to lack of Constitutional and legislative measures to protect privacy, the victims of press abuse had to take the help of tort law. Tort law did not refer to privacy but only other offences such as libel, slander, defamation, morality and decency. These different offences form part of the term 'Privacy' but individually these offences could never fulfill the need of protection of privacy faced by individuals. Even Indian penal code allowed punishment or penalty for the above offences but not for privacy.

Trial by Media generally refers to a practice where the media starts doing its own investigation and forms a public opinion against the accused even before a trial commences. In this way, it prejudices the trial thereby infringing the right of the accused to a fair trial.

During the Media Trial Society involve in the case as agitator like the case of Nirbhya whole country not only country but international platform raised the issue resulting government pressurise to form a special Act, everybody known Nirbhya Act. To achieve this objective, the people need a clear and truthful account of events, so that they may form their own opinion and offer comments and viewpoints on such matters and select their future course of action. Freedom of the media is the freedom of people as they should be informed of public matters. It is, thus, needless to emphasise that a free and a healthy press is indispensable to the functioning of democracy.

Reference:

- Del Vecchio, Philosophy of Law, (1953), the Catholic University of American Press, Washington, D C.
- D K Sen, A Comparative Study of Indian Constitution, Vol.2, (1966), Orient Longmans, New Delhi.
- Durga Das Basu, Law of the Press, (2002) Wadhwa Nagpur. Erwin Chemerinsky, Constitutional Law, (2006), Aspen Publishers.
- John Foley, The Media and Law, Times Mirror Press, 1977.
- Alvarez, L. (2011). Justice for Jessica: A Human Rights Case Study on Media Influence, Rule of Law, and Civic Action in India.
- Chief justice expresses concern at trial by media - Rediff.com India News.
- Katju, M. Media cannot reject regulation The Hindu.
- <http://www.thehindu.com/opinion/lead/media-cannot-rejects-regulation>
- Trial by media - Wikipedia, the free encyclopaedia.(n.d.)
- <https://www.indialegallive.com/cover-story-articles/focus/media-trial-pressing-for-charges>
- <https://lawcirca.com/critical-appraisal-of-media-trial-under-article-191a-of-the-india-constitution>
- <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-hints-at-end-to-media-trial/>
- Udwala, T. (2007, January 26). Media on trial (Opinion).