Media Trial in India: Legal Issues and Challenges

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Abstract:

The Media’s key role in democratic governance has been recognized since the late 17th century and remains a fundamental principle of modern day democratic theory and practice. It has played a very important role in shaping human minds. It is through media that people become aware of so many aspects of life of which they are normally ignorant. Democracy is meaningless without a free, neutral and active media. They act as a string between the government and the citizens of the country, people have faith in media as it has an impact on the audience. Media plays a vital role in shaping a healthy democracy. It is the backbone of a democracy. Media makes us aware of various social, political and economical activities happening around the world. It is like a mirror, which shows us the naked truth and harsh realities of life. The impact of media is really remarkable. Media gives positive as well as negative impacts in the society. As far as administration of justice is concerned, Media interferes in the domain of judiciary. The basic principle of criminal jurisprudence is jeopardized. The Researcher in the present paper highlights the legal issues involved in media trial in India.

Keywords: Media, Democracy, Administration of Justice, Justice delivery system.

Introduction

Media is regarded as one of the pillars of democracy. Media has widespread roles in the society. Media plays a vital role in moulding the opinion of the society and it is capable of changing the whole perspective through which people perceive various events. The media is considered as the backbone of the democracy. The media disseminates the unbiased information and empowers the masses with the power of knowledge. The media imparts knowledge regarding various subjects like political affairs, cultural affairs, world events, and crimes, policies of the government, sports entertainment, environment, science technology and development. The media identifies the problems in a society and serve as a medium for deliberation. The existence of a free, independent and powerful media is the keystone of a democracy, especially of a highly diverse society like India. The essential role of the media is its ability to activate the thinking process of millions. The freedom of speech and expression is very important for an effective democracy. This is so as in a democracy all the rights of the people are vested in the hands of the sovereign
and to put forward the use and misuse of the authorities an effective and truthful media is very essential. The Former Prime Minister Jawaharlal Nehru said, “I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press.”¹ Free press is the essential condition for liberty. A good democratic culture will build only by an unbiased media. Thus, “the survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press.”²

**Dimensions of Media:**

Media has taken the most essential position in a democratic setup and constitutes the very foundation of democracy. One cannot weaken the role of media in a democratic set up. The role of media in a democratic society has various dimensions:

1. As an unbiased informer
2. As an Educator
3. As a mentor
4. As a guardian of society

The main task of the media is to provide the masses with information. When the term ‘information’ is used, it has to be assumed that the information so provided by the press shall be unbiased. The first and foremost duty of the press is to be unbiased informer. The media should report freely and also it should be able to comment fairly. Unbiased information means that the facts or the interpretation of those facts are in existence. That means the information which the media passes on to the public should be supported by evidence. Any information which the media wants to gather, collect, disseminates and transmit should necessarily be to protect the public interest. Media should not impart such information to promote its selfish gains. As the media plays the role of the informant, it is obligatory upon the media to communicate the information only and only in good faith. The work of media is only to report any issue, and not to act as a judge and pass a judgment on that issue. Practically it shows that the media projects the news in such a manner as it wants to be seen by the public. Free media does not mean free from restrictions given under Constitution of India.³ If the media continues to adhere the practice of projecting any good or bad news based on the considerations received by them, then the whole spirit of democracy will fall down.

Media performs fundamental role in educating the masses. The most important role of the media is to educate the public through information. The central aspect of education through information is related to that section of society which is remotely placed or the illiterate section of the society. The media enables the individuals to know their rights. It is the media who makes the people aware of their rights. Media has played incredible role in the empowerment of women, and elevating the status of them. The children are also made aware of their rights by the media.

¹ Nehru’s speech on 20th June 1916 in protest against the press Act, 1910
³ Art.19 (2) of the Constitution of India.
The media is likely to play the role of a counselor. Media make the individual to think independently. Media encourage the spirit of brotherhood and inculcate the spirit of nationalism. The media is a powerful tool of influencing the masses, and hence is considered to be powerful mentor. The media carries with it a very huge responsibility in a democratic setup which it has to fulfill very carefully without any bias toward anyone by bringing out the real facts before the public. The media acts as a guardian of the society as it protects the rights of the people. Media through information and education makes the individual conscious of his rights.

Media as good governance

Conventionally and constitutionally, the media has no defined role in governance. It doesn’t have the power to change any decisions made by the various arms of a state—the legislature, executive and the judiciary. Yet, the media plays one of the most important roles in the functioning of any society. It amplifies the voice of citizens and communicates their opinions to the lawmakers. Media through any medium provides citizens with information regarding all the current affairs of any area at a large scale. According to the first Press Commission in India freedom of the Press refers to hold opinions, to receive and to convey information through the printed word without any intervention from any public authority. Press freedom, thus plays a essential role in the formulation of public opinion on issues of public importance. The decisive purpose of media is to serve the public interest. Thus media plays the role of communicator in democracy. They make people attentive and conscious of their state of affairs by providing them with in depth insight on significant issues concerning people.

Effect of media trial on Judiciary with specific reference to Media Trial

The power and importance of media in a democracy is well recognized under Article 19(1) (a) of the Indian Constitution. Art. 19 (1) (a) deals with Freedom of speech and expression. However the freedom is not absolute as it is bound by the sub clause (2) of the same article. Media is not only a means to express one’s feelings, opinions and views, but it is also responsible and helpful for building opinions and views on various topics of regional, national and international agenda. In progressively more competitive market for grabbing the attention of viewers and readers, media reports often turn to twisting of facts and sensationalisation. In recent times there have been abundant instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. The problem finds it’s most horrible sign when the media comprehensively covers sub judice matters by publishing information and opinions that are clearly prejudicial to the interests of the parties involved in litigation pending before the Courts. This observable fact is popularly called as media trial. Trial by Media it is the

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impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt regardless of any verdict in a court of law.

Thus, “trial” ordinarily means a proceeding before a Court of justice. If so, there cannot be a trial by the media. But these words are often used to denote an exercise undertaken by the media virtually taking up the role of a judicial forum for which such exercise has been earmarked by the laws of the land. The Supreme Court of India has had occasion to note the consequence of “trial by media” in the following words:-

“The impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial impossible but means that regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny”.5

In State of Maharashtra v. Rajendra Jawanmal Gandhi,6 the Apex Court observed as follows:
“A trial by press, electronic media or public agitation is very antithesis of the rule of law. It can well lead to miscarriage of justice”.

In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. Some famous criminal cases that would have gone unpunished but for the intervention of media, are Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case and Bijal Joshi rape case.

In Aarushi Talwar murder case, the media branded her parents as being guilty of her murder when the case was still under-trial. Parties have a constitutional right to have a fair trial in the court of law, by an impartial tribunal, uninfluenced by newspaper dictation or popular clamour.7 Right to a fair trial is absolute right of every individual within the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution of India. Needless to say right to a fair trial is more important as it is an absolute right which flows from Article 21 of the constitution to be read with Article 14. The right to a fair trial is at the heart of the Indian criminal justice system.

Media has now reincarnated itself into a “public court” which can also be referred as “Janata Adalat” and has started interfering into court proceedings so much so that it pronounces its own verdict even before the court does. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of “presumption of innocence until proven

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6 AIR 1997 SC 3986.
7 Cooper v. People (1889) 6 Lawyers Report Annotated 430(B)
guilty” and “guilt beyond reasonable doubt”. The Madrid Principles do place a limit on the media not to violate the presumption of innocence.\(^8\)

Trial by Media is Contempt of Court and needs to be punished. The Contempt of Court Act defines contempt by identifying it as civil and criminal. No publication, which is calculated to poison the minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt. Commenting on the pending cases or abuse of party may amount to contempt only when a case is triable by a judge.\(^9\) No editor has the right to assume the role of an investigator to try to prejudice the court against any person. The law as to interference with the due course of justice has been well stated by the chief Justice Gopal Rao Ekkbote of Andhra Pradesh High Court in the case of \textit{Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr} \(^{10}\), where in it was observed by the learned judge that: “…… When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings. To this general rule of fair trial one may add a further rule and that is that none shall, by misrepresentation or otherwise, bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint or defence. It is always regarded as of the first importance that the law which we have just stated should be maintained in its full integrity. But in so stating the law we must bear in mind that there must appear to be ‘a real and substantial danger of prejudice.”

The law commission also has come up with a report on \textit{“Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure”}\(^{11}\) The report has taken note of the failure of the Contempt of Courts Act, 1971 to acknowledge any contempt that might take place during the pre-trial period.

In \textit{Sahara India Real Estate Corporation Ltd. v. Securities and Exchange Board of India}\(^{12}\) case the Supreme Court of India grappled with the complex issue of laying down guidelines regarding reporting in media (print and electronic) of the matters which are sub-judice in a court including public disclosure of documents forming part of court proceedings. The Apex Court ruled that court can order postponement of publication or publicity of the trial as a preventive measure for fair and proper administration of justice. The test for determining the postponement of publication is that the publication (actual and not planned publication) must create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. The principle underlying postponement orders such order is that it prevents possible

\(^8\) In 1994, thirty-nine distinguished legal experts and media representatives met for three days in Madrid. One of the basic principles, enunciated in the Madrid Principles on the Relationship between the Media and Judicial Independence, is that: “It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence.”


\(^10\) \textit{AIR1975 AP 30.}

\(^11\) (Amendments to the Contempt of Court Act, 1971) [Report number 200 prepared in 2006]

\(^12\) 2012 (8) SCALE 541
contempt. Such orders direct postponement of the publication for a limited period. The Court noted thus: “Therefore, in our view, such orders of postponement, in the absence of any other alternative measures such as change of venue or postponement of trial, satisfy the requirement of justification under Article 19(2) and they also help the Courts to balance conflicting societal interests of right to know vis-à-vis another societal interest in fair administration of justice.”

Conclusion

The media cannot be granted a free hand in the court proceedings. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. Media should recognize the fact that whatever they publish has a great impact over the viewer. Therefore, it is the moral duty of media to show the truth and that too at the right time. The most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct. The media has to play the role of a catalyst rather than leaning the scales in favor of one or the other party. The trustworthiness of news media rests on unbiased, objective reporting. It is in the media’s interest to ensure that the administration of justice is not undermined.