

INTERFERENCE OF MEDIA IN JUDICIAL PROCEEDINGS

¹Aswathi.c, ²Dr.Shampa I DEV
¹Student, ²Associate Professor
¹Department of Law,
¹Christ University, Bangalore, India

Abstract : In a society, the media is a powerful tool. It derives its power from Article 19(1) of the Constitution, which guarantees freedom of expression and speech. It has a duty to use this right wisely as it's the fourth pillar of the state. The burden gets heavier because it has the power to shape public opinion and change how people perceive the justice system. If we look at media interference the problem of unrestricted use of this freedom can be seen judicial proceedings also. At the time of arrest itself, media declaring an accused as guilty, without any evidence and ignoring the doctrine of presumption of innocence. Thus, its high time to put reasonable restrictions on the media so they wouldn't be able to exercise their right to speak in an excessive manner and also media must be prevented from going beyond their legitimate jurisdiction. This paper is a sincere effort to analyze the role of media in judicial proceedings and also to examine the media's excessive interference in subjudice matters.

I. INTRODUCTION

In Part III of the Indian Constitution, freedom of the press is not specifically mentioned but in a number of judgments supreme court has interpreted that freedom of speech and expression also includes freedom of the press. The part of media has increased prominence in a country like India's rapidly changing socio-economic conditions, so it is often cited that the fourth pillar as "Media." Generally, Nobody can prejudge or harm his case until the trial is over. Due to excessive coverage, however, the media goes beyond its domain and publishes and covers interviews with the victim's witness or relative and prejudices the issue of the accused's guilty while the case is pending. This can affect the general public, the public prosecutor and the Court's mind.

Under Article 19(1)(a) of the Constitution, the right to freedom of the press has been recognized as fundamental rights and, under Article 21 of the Constitution, which describes right to life and personal liberty, includes accused or suspect and the civil litigant have a fundamental right to a free and fair trial. As a result, there should be a balance between the two fundamental rights and it is time for the courts to provide appropriate directions for reporting sub - judicial matters. If any clash arises between these two equal rights, the courts must develop balancing measures by which the constitution gives equal space to both rights.

The right to privacy is a fundamental, inalienable and inherent rights. The right to privacy is implied in Article 21, which indirectly guarantees the right to life. Media has crossed its limits in fair reporting, especially in sub – judice matters before the court. Press freedom is the inalienable part of the smooth working of democracy, So that is not possible to curtail the freedom of the press. Protecting press freedom is the responsibility of both government and journalists. More legislative provisions and protective mechanisms need to be developed in order to achieve freedom of the press. In many cases, the Supreme Court held that such media article would interfere with the functioning of the judiciary. Furthermore, The Supreme Court cautioned the publisher, editor, and reporter responsible for the article on the grounds that they were engaged in a media trial likely to negatively impact on the reputation of the judiciary and the judicial system.

The Judiciary and Media

Legislature, executive, and judiciary remain a state's three pillars while simultaneously considering media as the fourth estate. It is an institution with having immense power and influence and is thus accountable. It is universally accepted that the media is the best way for the public to learn about the judicial process. This may be in writing, as in the case of newspapers. Other media like TV, recorded videotapes and radio can never be left out, this mainly works at specified frequencies. All these media outlets have an

anonymous and relatively many audiences with different interests. There are those interested in the case for their own purposes of the study, while others are interested in evaluating the institutions of justice in a given country.

The legal process usually attracts a lot of public attention because people want to be informed about the case's progress. It is in the wake of these concerns that the media becomes instrumental, the media transmit the proceedings in the judiciary and the views of public on the verdict of the judge. The media often tend to influence the reception of any given topic by the audience. Media will identify the bias of the approach to the issue as well as focus on the irrelevant and unrealized justice that could stir up ill - feelings about the legal process among the public.

A number of issues have emerged as a result of the discussion on whether to advertise both television and electronic coverage of the court proceedings. The purpose of the discussion is to strike a balance between public access to this court case and the adverse effects in the courtroom. Some of these emerging issues include democracy and democratic values transparency, due process, separation of powers, education, security, and integrity observance in court proceedings.

It is clear from these issues that both opponents and supporters had their arguments and defenses. The supporters believe the media will make it easy for the public to access the lawsuit. According to them, it is constitutionally right to administer a fair trial to anyone, including appeals. It is, therefore, necessary to make the court proceedings open to the general public, taking this into account. This can only be achieved if the press is free to collect and publish the same through various media. Furthermore, some others believe that apart from open proceedings leading to fair trials, they are also raising up the levels of democracy in society. Opponents have a list of objections to the publication of the court proceedings. In essence, court proceedings advertising could give rise to a number of rights issues, which may affect the privacy of specific situations.

' Media trial ' is a well - known term used recently to denote a facet of media activism. "It means "the impact of television and newspaper coverage on the reputation of a person by creating a widespread perception of guilt irrespective of any verdict in the Court of Justice."¹ Especially on high - profile court cases, the media often provoke an atmosphere of public excitement similar to a lynch mob that not only renders a fair trial impossible but also means that irrespective of the outcome of the trial, the accused is already convicted and cannot live the rest of his life without intense public scrutiny. No legal system has given authority to try a case to the media. The trial is essentially a process to be conducted by the courts and is linked to the justice process. That the accused should receive a fair trial is the necessary component of any judicial system.

In India, media trials have taken on considerable proportions. In numerous cases, media have been accused of conducting the accused's trial and passing the ' verdict ' even before the court passes its judgment. Without an active media, the cries of the victims of *Manoj-Babli honor killing case*² in Haryana may be one unheard. The fear of khap and the backing of police and politicians allowed this barbaric tradition to continue for long till they came out in front of the world through the media. Many other cases like the *Arushi Murder Case*³, *Jessica Lal Murder*⁴ Case, *Ruchika Girhotra Case*⁵ and even the games played in IPL Row was brought out into public because of the efforts of media and press. Certainly, This can be considered as a very positive and welcome act from the part of the media.

In another angle, Press reporting can simultaneously create sensationalism of unwanted advertising. Sometimes the understanding of the justice system by the journalist may be flawed and reporting may be incompetent or misguided. This cannot be considered as service to the public. concurrent trials can also affect people's minds who may witness the case later. Throughout the course of the legal proceedings, media must ensure fair and accurate reporting, whether at the investigation stage, in court proceedings, and finally when the judgment or order is issued. This is really a concern because it is very common to find reports in

¹ Media Trial - General Knowledge Today, , <https://www.gktoday.in/gk/media-trial/> (last visited FEB11, 2019).

² Soutik Biswas, *Arrests over India "honour killings,"* September 19, 2013, <https://www.bbc.com/news/world-asia-india-24156835> .

³ Case Study- 2008 Noida Double Murder Case (Overview), , <https://www.linkedin.com/pulse/case-study-2008-noida-double-murder-overview-akanksha-roberts> .

⁴ Jessica Lal Killer Manu Sharma "Forgiven" By Her Sister, Is In Open Jail, , <https://www.ndtv.com/india-news/jessica-lal-killer-manu-sharma-in-tihars-open-jail-for-good-conduct-1841275>.

⁵ Vidushi Sahani, RUCHIKA MOLESTATION CASE: SC UPHOLDS RATHOD'S CONVICTION BUT REDUCES JAIL TERM [READ JUDGMENT] (2016), <https://www.livelaw.in/ruchika-molestation-case-sc-upholds-rathods-conviction-reduces-jail-term/> (last visited Mar 4, 2019).

which statements made by investigators or even discussions in the courtroom between judges and lawyers are either misquoted or quoted without their context being explained. This press action has a very high impact on the credibility of the judiciary.

There is also a compelling need in some cases to protect the identity and privacy of parties. As a rule, judicial proceedings should be open to public scrutiny, but in some. As a strict rule, judicial proceedings ought to be subject to scrutiny, but the same must be restricted in certain exceptional circumstances. For example, sexual offense victims' identity should not be disclosed. Furthermore, our procedural laws enable judges in camera proceedings to order family-related disputes and rape trials to protect victims and witnesses from undue pressure. Advertising for proceedings isn't always absolute.

A number of statutes restrict or authorize or necessitate that the court restrict, admit or publish certain proceedings before the court. Some of these special statutory prohibitions are listed below.

(a) Section 228A of the Indian Penal Code, inserted by the Criminal Law Amendment Act, 1983 which relates to publication of the name of a victim of certain sexual offenses, or of any matter in relation to any proceeding before a court with respect to such offense, without the permission of the court.⁶

(b) Section 53 of the Indian Divorce Act, 1869, providing that, under certain circumstances, the entire or any part of the proceedings under the Act may be heard behind closed doors. This Act, contrary to what its title seems to suggest, does not contain the entire Indian divorce law, but is confined to marriage causes between professors of the Christian religion.⁷

© “Section 14 of the Official Secrets Act, 1923, which provides that, in addition to the powers which the courts may have under any other law in that name, a court holding a trial under the Act may exclude the public from proceedings under the Act by order on the ground that the publication of any evidence or statement to be made during the proceedings would be detrimental to the public. But the sentence of the court must be passed in public.⁸”

(d) Under Section 33 of Special Marriage Act, 1954, which generally requires proceedings under the Act to be conducted in camera if either party wishes to do so or if the District Court considers it appropriate to direct it.

(e) Section 43 of Parsi Marriage and Divorce Act, 1936, which states that the case is to be tried in closed doors in any suit preferred under the Act if that is the wish of either party.⁹

(f) Section 22 of the Hindu Marriage Act, 1955 provides: “22 (1) A proceeding under this Act shall be conducted in camera if either party so desires or if the court so thinks fit to do, and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court. “(2) If any person prints or publishes any matter in contravention of the provisions contained in Subsection (1) he shall be punishable with fine which may extend to one thousand rupees”.¹⁰

(g) Section 17 of the Monopolies and Restrictive Trade Practices Act, 1969, Which provides that, while the hearing of proceedings before a commission established under the Act is ordinarily open to the public, the Commission may hear the proceedings or any part thereof in private and give instructions as to the persons who may be present there, if the Commission is satisfied that it is desirable to do so because of the confidentiality of any offense or matter or the confidentiality of any such proceedings.¹¹

These are some of the statues which prohibits publication of judicial proceedings.

the main concern is that sub - judicial reporting needs to be regulated. In particular, photographs are shown in criminal cases, factual situations are fictitiously recreated and an assumption is made without thorough verification, as in the case of the Aarushi murder investigation¹². This problem was recognized by the Supreme Court many years ago and observed in Saibal Kumar Gupta v. B.K. Sen “No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers,

⁶ Gaur, K.D., 2009. Textbook on the Indian penal Code. Universal Law Publishing.

⁷ Menski, W., 2013. Modern Indian family law. Routledge.

⁸ Neelamalar, M., 2009. Media law and ethics. PHI Learning Pvt. Ltd..

⁹ ibid

¹⁰ ibid

¹¹G.N. Ray:Reasonableness of restrictions on reporting on Subjudice matter

¹²Case Study- 2008 NOIDA DOUBLE MURDER CASE (Overview), , <https://www.linkedin.com/pulse/case-study-2008-noida-double-murder-overview-akanksha-roberts> .

when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution.”¹³

It's true that each judicial officer does his duty by not allowing his mind to be affected by what he has seen or read and heard outside the court, and he can not knowingly allow himself to be influenced by the media in any way. At the same time, it should be remembered and noted that judges are not free from faults. At the same time, it should be remembered that judges are not free from faults. It could be affected. The judiciary is not independent unless the courts of justice are able to administer the law in the absence of pressure from popular opinion.

In *John D. Pennekamp v. the State of Florida*,¹⁴ he had observed “...No Judge fit to be one is likely to be influenced consciously except by what he sees or hears in Court and by what is judicially appropriate for his deliberations. However, Judges are also human, and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process ... And since Judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print”¹⁵.

When we carefully analyze the judgment in *Reliance Petrochemicals v. Proprietor of Indian Express*¹⁶ in the light of the judgment of P.C. Sen, the Supreme Court has accepted that Judges are likely to be “subconsciously influenced”¹⁷ by the media publicity. There is a long-established principle of open and public legal proceedings. However, the law also recognizes that it will be necessary to curtail the reporting of legal proceedings in the interests of justice or to protect the rights of individuals, for example, to postpone court reporting, to prevent publication of the names of certain parties, or to prohibit or limit the nature of the evidence that is reported. There are also numerous and varied laws that restrict the reporting of legal proceedings. Many relate to child identification and sexual offense victims. In most cases, courts will order that children who are the subject of the proceedings or who are witnesses and also victims of sexual offenses cannot be identified. This is a complex area of law and at an early stage and certainly, before getting published details, legal advice must be sought. But many times reporting restrictions is infringed by media as resulted into committing a criminal offense.

The main legal remedy against prejudicial reporting on sub judge matters is that of the power of Judges to punish for contempt¹⁸. Article 19(2) of the Constitution gives power to court as a ground for inserting reasonable restrictions on the freedom of speech. The Contempt of Courts Act of 1971 establishes the power of the judges to punish for criminal contempt in cases of court scandalization, acts of prejudice and obstruction of justice.¹⁹ Also, the statutory grounds allow judges to act against harmful reporting, it is important to remember that the provision of contempt powers is a punitive remedy and not a preventive remedy. For example, courts may prosecute journalists and establishments for irresponsible reporting, but they can not undo the impact of harmful reporting. But at the same time, the press has argued repeatedly that some judges may misuse the powers of contempt to deflect personal criticism. The use of contempt powers has been said to have a negative impact on freedom of speech. It must be remembered that the power of civil contempt is used in all kinds of cases to ensure that parties comply with the directions and orders of the courts. Similarly, the power of criminal contempt is used only when the nature of media coverage is perceived to have or are likely to affect the impartiality of judges. In our judicial system, the courts have no authority to impose prior restrictions on the publication of harmful material during court proceedings pending. In our country, even the use of remedies such as injunction orders and postponement orders is not common in the case of reporting by media.

An important matter discussed in the 200th Report of the Law Commission concerns the vagueness in the Contempt of Courts Act of 1971 regarding the stage at which a matter can be considered sub - judge for the use of the power of contempt. Legislative certainty on this whole issue would be welcome, as media

¹³Saibal Kumar Gupta And Others vs B. K. Sen And Another on 13 January, 1961, <https://indiankanoon.org/doc/1379677/>.

¹⁴ (US pp. 357 & 366).

¹⁵(US pp. 357 & 366).

¹⁶Reliance Petrochemicals Ltd vs Proprietors Of Indian Express ... on 23 September, 1988, , <https://indiankanoon.org/doc/1351834/> (last visited Mar 4, 2019).

¹⁷ Id.

¹⁸ the contempt of courts act, 1971 .

¹⁹ id.

sources will then be better able to regulate their coverage where such a threshold is been crossed²⁰. Under existing law, the point of starting of the case is only from the stage where the court is actually involved, i.e. when a charge sheet or challan is filed under section 173 of the Criminal Procedure Code. Before such a stage, however, any harmful publication does not fall within the purview of the power to punish for contempt.

The Supreme Court had ruled on this point in *A.K. Gopalan v. Noordeen*²¹ argued that the filing of an FIR (first information report) could not be treated as a point of departure for criminal proceedings and that any publication made at that stage would not be considered to interfere with or obstruct the course of justice²². It was ruled that criminal proceedings begin at the point of arrest, and by this logic, one can argue that the power of contempt should be used against prejudicial reporting after the point of arrest. However, even this proposal will serve only a limited purpose and in civil cases where arrests are rare, it will not help.²³

The orders and judgments of the the the the Supreme Court, the orders of various high courts and even some district courts are currently freely available via a user - friendly website, i.e. JUDIS (Court Information System). Plans are being made as part of the e-courts project to facilitate access to court and tribunal orders and judgments at all levels. Also, there is a continuous push for the use of technology in the court, such as audiovisual recording of statements and maintaining video archives for subsequent reference by judges, researchers, and journalists. However, we also need to be aware of the future use of technology. For example, broadcasting judicial proceedings in a manner similar to those of the legislature will not be appropriate, as this may infringe parties' rights to maintain their privacy and to receive a fair trial.

The powerful and influential media agencies need to promote good news gathering practices and emphasize the importance of maintaining ethical standards for judicial coverage. Guidelines have been developed by bodies such as India's Press Council, India's Editors Guild address issues such as cross-checking and verifying facts before reporting, avoiding sensationalization and not commenting on subjudice matters. The Supreme Court, *Lohia v. State of W.B*²⁴, warned the media when the case is sub judice against indulging in public proceedings. In the absence of prompt legislative intervention, the judiciary can take the lead in framing guidelines for reporting on sub - judice issues.²⁵

No doubt, one of the ways to ensure a fair trial is giving publicity. If advertising is present, the judge would be careful to act without bias, prejudice or illegality. And it's well recognized that the trial may be prejudiced by the publicity of criminal cases, inducing feelings of hostility among members of the public and thus consciously or unconsciously building up pressure on the judge also. All such publicity can also discourage witnesses from going to court or-or from telling the truth at times. It may affect an investigation that is proper, just and truthful. This is also true of pre-trial or investigation publicity.²⁶

CONCLUSION

Even though Media is the fourth pillar of Indian Democracy and has a fundamental right pursuant to Article 19(1)(a) of the Constitution, it can not, at the same time, disobey its domain in the outfit of freedom of speech and expression insofar as it prejudices the trial itself and the time has come for legislation to control unrestricted media power. Unlike with the American Constitution, according to Article 19(2) of the Constitution, the Indian Constitution has a broad power to restrict and control media power. The court has recently laid down guidelines for the framing of so-called sub - judice matters, or those before the courts. In the absence of a law, it would lead to punitive action against erring reporters.

By appropriate mode of restraint and self - regulation, a balance between the two fundamental rights due to excessive coverage should be effectively invoked, those who violate the basic code of conduct should be punished under the 1971 Contempt of Court Act. In conclusion, it must be said that it is not good to

²⁰ Ibid.

²¹ *A.K. Gopalan And Another vs Noordeen* on 15 September, 1969, <https://indiankanoon.org/doc/203322/> .

²² ibid

²³ ibid

²⁴ *M.P.Lohia vs State Of West Bengal & Anr* on 4 February, 2005, <https://indiankanoon.org/doc/1511447/> .

²⁵ Ibid.

²⁶ Justice U. L. Bhat, *MEDIA INTERFERENCE IN INVESTIGATION AND TRIAL* (2016), <https://www.livelaw.in/media-interference-in-investigation-and-trial/> (last visited Mar 4, 2019).

allow Indian media and press to interfere without any restrictions in the judicial process. It is certainly an ideal proposition to enable controlled media reporting of cases once the media should arise from the profit and sensational considerations. Instead of playing a part for one party or another, the media must play the role of a facilitator.

