



A CRITICAL ANALYSIS OF MEDIA TRIAL AND ITS EFFECT ON INDIAN JUDICIARY

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ABSTRACT

Media gets freedom of press under Article 19(1) (a) of the constitution of India which provides for freedom of speech and expression, by the virtue of this freedom media goes on reporting the news and publishing the articles based on the interview of the witnesses and other parties regarding the matters which are sub jaundice pending before the court of law and by doing this the media can cause pre jaundice to the case and affect the administration of justice which will lead to the miscarriage of justice.

The part of role played by the Media in high profile cases through conducting the investigations and continuous reporting of the news can create so much of Publicity on the matters and causes prejudice or bias view which largely affects the administration of justice and sometimes the judges has to be neutral in passing the verdict only the basis of the facts and evidence produced in the Court of Law and further may force the judge to pass the verdict against the accused even though the accused is innocent.

This paper focuses on how such trial conducted by the media affects the right to fair trial of the accused and brings the conflict between the freedom of press, fair trial and independence of judiciary.

INTRODUCTION

The criminal jurisprudence followed in India is based on the theory that an accused is entitled to fair trial and is innocent till proven guilty beyond any reasonable doubt. On account of exclusive coverage media goes a long way to cover and publish interviews of witnesses, victim's relatives, comments of the members of legal fraternity etc. which may cause prejudice to a trial proceedings in particular the judicial mind. In fact this affects the perception of public at large because media reaches out to the mass promptly. In the last decade we have witnessed rapid growth of media influence in the process of access to justice in plethora of cases relating to corruption, rape, murder, sexual harassment, terrorist activities etc.

Media activism imposes an indirect pressure on the adjudicating authorities to deliver justice to victims who may interfere with the trial proceedings and may cause prejudice to the accused and the chance of proving his innocence. Trial by media means the impact of the newspaper and television coverage on a person's reputation by creating widespread perception of guilt regardless of any

verdict in court of law. Freedom of media in today's world is perceived to be the freedom of the People. Also, it is gratuitous to emphasize on the fact that every citizen has a right to be cognizant on all matters affecting them through media.

But it is thought provoking that the media in the present day is such a powerful entity that it manipulates and builds public opinion as the word it promulgates are presumed to be true without questioning its authenticity. Media overlooks the primary idea that governs trial in India which is **“Guilty beyond reasonable doubt” and “Innocent until proven guilty”**. In order to attract more viewers the media end up maligning and tarnishing the image of mere suspects and tagging them as guilty even before the judges.

Freedom of speech and expression is the most powerful key that helps the media perform its functions. The freedom of speech and expression is entailed in Article 19(1) (a) of the Constitution of India, however, it is not absolute freedom but it is subjected to restrictions established by law. Despite the reasonable restrictions of freedom of speech and expression, one can see the way in which the media abuses this freedom in the name of its own trial to interfere in the administration of justice which is punishable under Section 12 of the Contempt of Courts Act, 1971.

¹International Journal of Research and Analytical Reviews Research Paper the administration of justice amount to criminal contempt under the Contempt of Court Act and if in order to preclude such interference, the provisions of the Act impose reasonable restrictions on freedom of speech, such restrictions would be valid. Media's freedom to circulate one's views by word of mouth or in writing or through audio visual media which also includes Media, subjects the entire judicial process and the justice system to public scrutiny. Media is considered to be the watchdog of society and catalyst of reforms. For the smooth functioning of democracy under Article 19(1) (a) media impliedly claims the right to investigate, reveal, expose and criticize to create a constructive check. The media correspondingly has a duty to responsible and accountable journalism. Free and robust reporting, criticism and debate contribute to public understanding of the rule of law and for a better comprehension of the entire justice system.

In a democracy the freedom of press is very essential as the public has right to know and right to be informed. The media has to take utmost precaution while publishing news and cases pending before court as it would lead to media trial. The investigative role of press has been useful to set right the mal-administration of government, exposing crimes and unlawful acts and disseminating information of public interest. But the expression public interest has no fixed connotation.

The Media trial has become an acute problem with the ever expanding role of media. The phenomenal growth in technology ensures quick flow of information. The word, 'trial' has been defined as a formal judicial examination of evidence and determination of legal claim.

Due to the rapid growth and advent of electronic media, extensive media coverage and opening up of too many media channels in all medium and the high profile cases have led to changes in publication pattern of the media which are likely to have pre-judicial impact on the suspects, accused, witnesses and judges and on general administration of justice. Citizens have right to know & media is a gateway to channel the voice of masses. Media has reinforced its role, through which criminal justice hierarchy system is known. Media reincarnates public perception of order and disorder in the society. Sensationalism of media coverage has led to heated debates between free speech and fair trial as claimed by those who shore up for free person one hand and right to individual's fair trial as proclaimed by the judiciary.

Media in high profile cases through conducting the investigations and continuous reporting of the news can create so much of hype on the sub jaundice matters that can cause prejudice and will affect the administration of justice and may lead to miscarriage of justice, and such trial conducted by the media also affects the right to fair trial of the accused and brings the conflict between the freedom of press, fair trial and trial by media also affects the independence of judiciary, the judge has to be impartial and shall pass

¹ Tata Press Ltd. v. Mahanagar Telecom Nigam Ltd., AIR 1995SCC 139 State of Kerala and Anr.v. N.M.Thomas and Ors., AIR 1976SC 490.

the verdict only on the basis of the facts and the evidence produced in the court of law but the hype created by media prejudices the mind of judges and may force the judge to pass the verdict against the accused even though the accused is innocent.

MEDIA REPORTING OF CRIME AND FAIR TRIAL

Trial by media starts much before the actual trial in the Court. In matters such as Arrest, Bail, Confessional Statements, Interrogation matters the media conducts the parallel proceedings for increasing the movement or manipulating the justice. It puts burden on a trial Court which has a constitutional duty to minimize the effects of prejudicial publicity. Media and judiciary discharges public duties and should continue to enjoy independence and freedom of action without threats of intrusion.

The Court of Law while granting anticipatory bail to an accused in dowry death before the Kolkata Court, the Supreme Court has criticized the media who has published an article touching the facts of pending case; the article was based on the interview of the family of the deceased. While investigating it was found that the facts narrated by the media were on sides which might have been used in trial prejudicing the fair trial procedure.

Media played a leading role in recent times and the efforts of media to discover truth has played an essential role in delivering justice in some of the very famous cases which were pending for so long before This Hon'ble Court and justice was awaited in famous "**Jessicalal Case, Nirbhaya Case, Priyadarshini Mattoo Case, Sanjeev Nanda Case, Arushi Talwar Case, Sheena Bora Murder case**".

The intervention of media in recent times has drawn appraisal as constant effort of media to discover truth has played a pivotal role in delivering justice in the infamous Jessicalal Case, Nirbhaya Case. In Jessica lal murder case there was a delay in justice as all the witnesses turned hostile and the accused manu sharma was acquitted then the media through justice for Jessica campaign and Tehalka played a crucial role in delivering the justice.

In Mattoo case justice for Jessica campaign steered trial of the accused charged with rape and murder of the law student named Priyadarshini Mattoo and with the intervention of media investigation of the case was fast-tracked and the accused was convicted. In Sanjeev Nanda Case, Nanda, son of a businessman alleged with hit and run case killing over six people while driving his BMW in intoxication. Media intervened and case was sub-judice. NDTV news channel conducted a sting operation showing Nanda's lawyer bribing the witness, while the state prosecutor being complicit and helped in the discovery of the truth. In the case of Arushi Talwar media created frenzy.

In high profile cases media is often creating a wide spread public opinion, regardless of depriving the basic human right of accused. Sheena Bora Murder case has given rise to controversial aspect of reporting of trial proceedings of the accused as every aspect of her life was under public scrutiny which had nothing to do with the case or the general public.

In Nanavathi case due to the reports of the media the jury got influenced and there was prejudice to the case which affected the administration of justice. The media can interfere with the administration of justice by the way of scandalizing the judges, interfering with witnesses, interfering with investigation procedure by tampering evidence and contentious publications in connection with the proceedings which are pending before the court. These interferences impose a threat to fair administration of justice and constitutional guarantee of fair trial.²

² Justice R.S.Chauhan Trial by Media: An International Perspective, (PL Oct S-38, 2011), <http://www.supremecourtcases.com/index2.php>, last visited on June 28, 2016.

Abolish Rather & Konica Satan, Judicial Intervention in the Sub-judice-The emerging issues of Trial by Media, Bharati Law Review, (2015). Henry Campell

THE REPERCUSSIONS OF A TRIAL BY THE MEDIA

- The trial by media will have effect on judiciary if the publications of news reports by media are inaccurate which can prejudice the mind of judges and that may lead to miscarriage of justice, interfere with administration of justice and affect the independence of judiciary. The repercussions of media trial can be seen in some of the landmark cases which had both positive and negative impact on Judiciary.
- In *R.K Anand v Delhi High Court* the important questions relating to trial by media were examined by the Supreme Court. The case arose out of a sting operation carried out by a private television channel NDTV to expose the unholy nexus between the prosecution, its witness and defense in the favor BMW hit and run case which has resulted in death of six persons by speeding BMW car which was driven by the scion of an influential and wealthy family. At the pendency of the trial even after eight years of the incident, NDTV telecasted a sting operation to expose the manner in which a senior advocate appearing for the accused was negotiating with the help of special public prosecutor to sell out in favor of defense, the Delhi High Court which then initiated the Suo-moto contempt proceedings and held the special public prosecutor and the defense counsel guilty of contempt of court and they were debarred from appearing in Delhi High Court and its subordinate Courts for four months. Then the appeal was filed before the Supreme Court, which contended that NDTV was guilty of trial by media and it could have telecasted the sting only after obtaining the permission of the High Court. The Supreme Court of India rejected the contention holding that such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the Court. The Court dismissed the appeal of R.K Anand and issued him a notice for the enhancement of punishment.³

Contempt of court and trial by media

Under Contempt of Courts Act, 1971. Contempt is classified under civil and criminal heads. Contempt legislation is a well settled comprehensive legislation, it is enacted to maintain dignity of courts and to protect the administration of justice. Articles 129 and 215 of the Constitution of India empowers the Supreme Court and High Courts respectively to punish a person for Contempt of the Supreme Court and High Courts as a case may be.

The Constitution of India puts a restriction on the freedom of speech and expression if it amounts to contempt of court. In exercise of the right of freedom of speech and expression a person cannot be allowed to lower the prestige of the court in the eyes of the public.

Article 19(2) puts a restriction so far as the contempt of court is concerned. The law of contempt is a recognized exception under Article 19(2) to the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution of India. The right to freedom of expression cannot be equated or confused with the license to make irresponsible allegations.

Black, Black's Law Dictionary, West Publishing Co, (4th Ed, 1968). 200th Report of the Law Commission on "Trial by Media: Free Speech v Fair Trial Under Criminal Procedure (Amendment to the Contempt of Court Act, 1971)". *MP Lohia v State of West Bengal* Civil Appeal 219 of 2005

³ 200th Report of the Law Commission on "Trial by Media: Free Speech v Fair Trial Under Criminal Procedure (Amendment to the Contempt of Court Act, 1971)". *Manu Sharma v State of Delhi*, (2010) 6 SCC 1. *Santosh Kumar Singh v State* (2010) SCC 747. *State v Sanjeev Nanda* (2012) 8 SCC 450. *Nupur Talwar v Central Bureau of Investigation and Another* (AIR 2012 SC 1921) *Arpan Banerjee, Judicial Safeguards Against "Trial By Media": Should Blasi's "Checking Value" Theory Apply In India?* Vol. 2, p. 28, *Journal of Media Law & Ethics*, (2010). (2009) 8 SCC 106.

The basic reliance of contempt legislation is to protect fairness of trial, absence of prejudice and an opportunity to defend. The object of the power of court to punish for contempt is to enable the court, to ensure proper administration of justice and maintenance of the rule of law.⁴

PRESS COUNCIL AND NORMS OF JOURNALISTIC CONDUCT FOR TRIAL BY MEDIA:-

The Press Council of India was set up in the year 1966 by the parliament on the recommendations of the first press commission with the object of preserving the freedom of press and for improving the standards of press and maintaining press in India. Even though the press council does not have punitive powers to discipline the media, it is the only available instrument outside the defamation law and contempt to influence media policies relating to judicial proceedings. It will be useful to interrogate the scope of some of the norms of journalistic conduct adopted by the press council to act as guidelines in media reporting of crime or any legal issues. Media is mandated to follow certain ethics in disseminating and collecting the information that is ensuring authenticity of news, use of socially acceptable language which is restrained for ensuring fairness in reporting, keeping in mind its cascading effect on the individuals and on the society. The fundamental objective of journalism is to serve the people with news, comments, views and information on matters of public interest in an accurate, fair, sober, decent and in unbiased manner. Press is expected to conduct itself in keeping with certain norms of professionalism which are recognized universally. There are various norms of journalistic conduct by the press council for the trial by media which includes Right to Privacy, Newspapers to Eschew Suggestive Guilt, Investigative Journalism, its norms and parameters, and Caution in Criticizing Judicial Acts.⁵

Contemporary instances of trial by media

Recently Sarvjeet Singh, who had been falsely accused by one Jasleen Kaur for harassing her where she posted a picture of him on Facebook which went viral, led to the arrest of Sarvjeet Singh. After the inquiry it came to light that Sarvjeet Singh was innocent but due to the media coverage and hype created by the media, the media labelled him as a harasser and Sarvjeet Singh faced public humiliation and was sacked from his job. This incident clearly shows how the media can ruin the life of an innocent through its coverage without verifying with the true events.

The Principal of St. Stephen Institution Mr. Valson Thampu alleges that the media has targeted his institution as they are minority institution and contented that they were the victim of Media Trial, in this case the professor of St. Stephen Institution was accused of

⁴ Article 129- "The Supreme court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself" Article 215- "Every High Court shall be a court of record and shall have all the powers of such a court including power to punish for contempt of itself" 19Ibid. 20 Commissioner, Agra v Rohtas Singh, AIR 1998 SC 685 21 Section 2(b) Contempt of Courts Act 1971 22 Section 2(c) Contempt of Courts Act 1971.

⁵ (1997) 8 SC 386 24 (2005) 2 SCC 686 25AIR 1953 Orissa 249. 26 (1998) 4 SCC 592 27 Delhi Judicial Service Association v State of Gujarat, (AIR 1991 SC 2176) 28 (1990) 92 Bom LR 270 29 (2007) 98 DRJ 41. [VOLUME 6 I ISSUE 1 I JAN. – MARCH 2019] e ISSN 2348 –1269, Press Council of India, Principles and Ethics of Norms of Journalistic Conduct.

molesting the student who showed audio clips as an evidence for the molestation, and the allegation on Mr. Thampu was he pressurized the student to withdraw the complaint against the teacher. Mr. Thampu claims that he was the victim of Media Trial and said that this was not the first time he is been targeted he's been targeted twice already and it was proved to be false and this is the third attack on him and Mr. Thampu alleges that he has been falsely implicated by the media and his institution has been targeted because the institution was minority institution the principal of the institution demanded for a probe by the Central Bureau of Investigation and offered to resign if he was found guilty.

CONCLUSION

- Freedom of speech and expression is an imperative right in every democracy. Media also enjoys the same rights and in a broad perspective they exercise the same for the betterment of society. Sensationalizing news is not a new phenomenon but assuming themselves in the role of police and judges by investigation, collecting evidence and making a decision is a major concern. When a crime is committed it is taken as something affecting the society and hence state comes immediately as the complainant and proceeds with the matter.
- Under the hood of "Media Trial", where the media itself conducts a separate investigation, builds public opinion against the accused even before the court takes cognizance of the case, by this way it prejudices the public and the judges and as a result the accused, that should be assumed innocent, is presumed as a criminal.
- Though the 17th Law Commission of India in its 200th report came across this problem, no serious step has been taken in this regard except with a recommendation to treat sub jaundice period from the time of arrest instead of filing of the charge sheet. The step is too inadequate to deal with the administration of justice under the head of media trial. Thus, a separate law is required in India to control media from unduly interfering with the administration of justice under the pretext of media trial."
- The criminal justice system followed in India is based on the theory that an accused is entitled to fair trial and is innocent until proven guilty beyond any reasonable doubt. But the media on an account of exclusive coverage media goes a long way to cover and publish interviews of witnesses, victim's relatives, comments of the members of legal fraternity, which may cause prejudice to the trial proceedings in the particular judicial mind.⁶
- In fact this affects the perception of the public at large because media reaches out the mass promptly. In the last few decades we have witnessed rapid growth of media influence in the process of access to justice in plethora of cases relating to corruption, rape, sexual harassment, murder etc. Media activism imposes an indirect pressure on the adjudicating authorities to deliver justice to the victims who may interfere with the trial proceedings and may cause prejudice to the accused and a chance of proving his innocence.
- The system may have many flaws, the media should help to deal with the flaws in system but instead of that they started playing the role of investigator and finding the guilt of the persons, which may lead to confusion in the mind of people at large and there is always a risk of manipulation and innocent people may be implicated. The situation raises few important legal issues first is accused person's right to get fair trial another facet of the problem is victim's right. Media has played the role of conducting checks on functioning of all organs of the government and has yet managed to emerge as a flora for public voice and opinion. Media trial during investigation stage, contempt of court, irresponsible reporting and hype on the sub jaundice matters and the constant pressure to stay competitive in the market has now led to overstepping of boundaries by the media.

⁶ <https://www.ndtv.com/india-news/media-runs-parallel-trials-in-sub-judice-matters>