

Media trial: Freedom of Speech vs. Fair trial

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ABSTRACT

Media- fourth pillar of democracy is the very fabric and mirror of the society. It has the power to influence and revolutionize the masses. From the ink of its pen to the sound of its mic, Media can build and malign an image of a person simultaneously. In fact, it can change the governments! A free media is a prerequisite to democracy. Though India has the constitutional right to freedom of speech and expression along with the freedom of press under the clause 19(1) (a) but, the limitations to its absolute freedom are stated in its very next clause.

Media Trial- adjudication by media in cases before or after the verdict of court has become a trend in the present scenario to increase the circulation and TRP of newspapers and news channels. Media has forgotten the fundamental gap between an accused and a criminal! Today, it influences the masses by making an innocent a culprit thereby changing the perceptions. Indeed, various Judges of Court have criticized the trial by media as it leads to psychological variation while giving any degree. There is No doubt that media trial has exposed many criminals of the high profile cases like Aarushi Talwar's case is a recent example of the same. During high publicity court 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 nearly impossible but means that regardless of the result of the trial the accused will not be able to live the rest of their life without intense public scrutiny. The counter-argument is that the mob mentality exists independently of the media which merely voices the opinions which the public already has. There are different reasons why the media attention is particularly intense surrounding legal cases.

Keywords: *Freedom of speech, Murder, Judiciary, Media, Trial.*

1. INTRODUCTION

Media Trial or Trial by Media is a phrase popular in the late 20th century and early 21st century to describe the impact of Television, Radio and Newspapers coverage on person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law. Media does a separate investigation builds up public opinion against the accused even before the court takes cognizance of the case. This inevitably happen in all cases. By the way it prejudices the public and sometimes even judges and as a result the accused is presumed criminal and is devoid of all his rights and liberty. Media has become a public court (Janta Adalat) and has interfering to court proceedings [1].

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Media trial is no where legal. There is no legal system where the media is given the authority to try a case. This slang is used for those high profile cases wherein the journalists present a pre decided picture of an accused and start spreading hatred amongst the general public which can ultimately affect the trial and the judgment. Thus, it's called trial by media. Ruchika's or other cases are a recent example of the same. During high publicity court 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 nearly impossible but means that regardless of the result of the trial the accused will not be able to live the rest of their life without intense public scrutiny. The counter-argument is that the mob mentality exists independently of the media which merely voices the opinions which the public already has. There are different reasons why the media attention is particularly intense surrounding a legal case: the first is that the crime itself is in some way sensational, by being horrific or involving children; the second is that it involves a celebrity either as victim or accused [2].

In India, media trial has assumed significant proportions. Some famous criminal cases that would have gone unpunished but for the intervention of media are Nitish Katara murder case and Bijal Joshi rape case. The media however drew flak in the reporting of murder of Aarushi Talwar, when it preempted the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder, thus reviving memories of Jon Benet Ramsey murder, which was hauntingly similar. The CBI later declared that Rajesh was not the killer. Between September 2004 and March 2005, the media - print, audio and visual all wrote about His Holiness Sri Jayendra Saraswathi Swamigal, a Hindu religious leader, suggesting his guilt in a murder case, but the High Courts of Madras and Andhra Pradesh and the Supreme Court of India repeatedly found that there was no material evidence to find him guilty and came down heavily on the media and the Government of Tamilnadu for misuse of government machinery. So saying that media is responsible for ruining a person's prestige involved in some legal conflict. Is entirely acceptable? Every aspect of her personal life and character which have nothing to do legally with the investigation of the murder are under public lens of scrutiny via the media. The ethics of journalism have been again in a controversial area due to their prying eyes on the accused [3].

Media is regarded as one of the four pillars of democracy. Media plays a vital role in molding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Especially in the last two decades, the advent of cable television, local radio networks and the internet has greatly enhanced the reach and impact of the mass media. The circulation of newspapers and magazines in English as well as the various vernacular languages has also been continuously growing in our country. This ever-expanding readership and viewership coupled with the use of modern technologies for newsgathering has given media organizations an unprecedented role in shaping popular opinions. However, media freedom also entails a certain degree of responsibility. The strength and importance of media in a democracy is well recognized. Article of the Indian Constitution, which gives freedom of speech and expression includes within its

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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 one's 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 pivotal role of the media is its ability to mobilize the thinking process of millions. The increased role of the media in today's globalized and tech-safe world was aptly put in the words of Justice Learned Hand of the United States Supreme Court when he said, "The hand that rules the press, the radio, the screen and the far spread magazine, rules the country. Democracy is the rule of the people, a system which has three strong pillars. But as Indian society today has become somewhat unstable on its 3 legs- the executive, the legislature and the judiciary, the guarantee of Article has given rise to a fourth pillar known as media or press. It plays the vital role of a conscious keeper, a watchdog of the functionaries of society and attempts to attend to the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and taken cognizance of the matters in various cases after relying on their reports and news highlighting grave violations of human rights [4].

However, there are always two sides of a coin. With this increased role and importance attached to the media, the need for its accountability and professionalism in reportage cannot be emphasized enough. In a civil society no right to freedom, how so ever invaluable it might be, can be considered absolute, unlimited, or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the Constitution has to be exercised within reasonable boundaries. With great power comes great responsibility. Similarly, the freedom under is correlative with the duty not to violate any law. In an increasingly competitive market for grabbing the attention of viewers and readers, media reports often turn to distortion of facts and denationalization. The pursuit of commercial interests also motivates the use of intrusive newsgathering practices which tend to impede the privacy of the people who are the subject of such coverage. The problem finds its worst manifestation when the media extensively covers sub juice matters by publishing information and opinions that are clearly prejudicial to the interests of the parties involved in litigation pending before the Courts [5].

However, sensationalized news stories circulated by the media have steadily gnawed at the guarantees of a right to a fair trial and posed a grave threat to the presumption of innocence. What is more, the pervasive influence of the press is increasingly proving to be detrimental to the impartial decision making process of the judiciary. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. This is the threshold on which we are standing today. Television channels in a bid to increase their Television Rating Point (TRP) ratings are resorting to sensationalized journalism with a view to earn a competitive edge over the others. 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. Trial by Media it is the impact of television and newspaper coverage on a person's

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reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. There is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and right to a fair trial [6].

2. IMPACT OF MEDIA TRIAL

2.1 Media Trials vs. Freedom of Speech And Expression

Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Similarly, the persons in power should be able to keep the people informed about their policies and projects, therefore, it can be said that freedom of speech is the mother of all other liberties. Freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society [7].

The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate Government cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities." The above statement of the Supreme Court illustrates that the freedom of press is essential for the proper functioning of the democratic process. Democracy means Government of the people, by the people and for the people; it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential. This explains the constitutional viewpoint of the freedom of press in India. In the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of the press has always been a cherished right in all democratic countries and the press has rightly been described as the fourth chamber of democracy. It therefore received a generous support from all those who believe in the free flow of the information and participation of the people in the administration; it is the primary duty of all national courts to uphold this freedom and invalidate all laws or administrative actions which interfere with this freedom, are contrary to the constitutional mandate [8].

Press stands on no higher footing than any other citizen and cannot claim any privilege (unless conferred specifically by law), as such, as distinct from those of any other citizen. The press cannot be subjected to any special restrictions which could not be imposed on any citizen of the country. Trial by Media, Is it fair? India enjoys the largest democracy so does its media, which is infamous today for its role of a watchdog. ... Media facilitates awareness but is often found responsible for molding and distorting the public opinion about the things which are under trial or in process or state of scrutiny [8].

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3. IS THE CONTEMPT OF COURT MEDIA TRIAL IMPORTANT?

The subject was taken up *sue mote* having regard to the extensive prejudicial coverage of crime and information about suspects and accused both in the print and electronic media. There is a feeling today that in view of the extensive use of television and cable services the whole pattern of publication of news has changed and several such publications are likely to have prejudicial impact on the suspects accused witnesses and even judges and in general on the administration of justice. According our law suspect accused is entitled to affair procedure and is presumed to be innocent till proved quilt in a court of law. None can be allowed to prejudge or prejudice his case by the time it goes to trial. Does not refer to administration of justice but interference in the administration of justice is clearly referred to in the definition of criminal contempt. Therefore publications which interfere or tend to interfere with the administration of justice amount to criminal contempt under that Act and if order to preclude such interference the provisions of that Act impose reasonable restrictions on freedom of speech such restrictions would be valid [9].

At present under sec. of the contempt of courts Act 1971 read with the explanation below it immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case if by the date of publication a charge sheet or Chillan is not filed or if summons or warrant or not issued. Such publications would be acting in contempt of court only if a criminal proceeding is actually pending that is if a charge sheet or Chillan is field summons or warrants are issued by the court by the date of publication. The question whether this can be allowed to remain so under our constitution or whether (publication of information) relating to suspects or accused persons from the data of their arrest should be regulated? The supreme court of India and the House of Lords in the UK have observed that publications to a suspect or accused may affect judges also subconsciously. This can be at the stage of granting or refusing bail or at the trial. The Supreme Court holds prejudicial publication after arrest can be criminal contempt. But the Supreme Court in Surrender Mohanty versus state of Orissa (1961) however held that filing of an FIR could not be the starting point of pendency of a criminal case [10].

The Sanyal Committee prepared a Bill stating that prejudicial publications could be criminal contempt if criminal proceedings were imminent. By the Sanyal Committee was reviewed by a joint committee the joint committee decides to drop reference to imminent proceedings. This was done for two reasons (1) that the world imminent was vague and (2) such a vague expression may unduly restrict the freedom of speech if the law applied to imminent criminal proceedings. The recommendations of the joint committee resulted in the 1971 Act which omitted all reference to imminent proceedings or to arrest as the starting point of pendency of a criminal proceeding. The attention of the joint committee was not drawn to the decision of the Supreme Court in A.K Gopalan versus Noordeen (1969) when it gave its report on 23 February 1970. Once the Supreme Court judgment fixed the date of arrest as the starting point for treating a criminal proceeding there reminded no vagueness in the law. In that case the Supreme Court has also balanced the rights of the suspect and accused on

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the hand and the rights of the media for publication. In fact in A.K Gopalans case the editor of the newspaper and others who made the prejudicial publication after arrest were convicted for field but before his arrest had been made was exonerated by the Supreme Court. Apart from the declaration of law and fair balancing of the competing rights as above by the Supreme Court in A.K Gopalan versus Noordeen (1969) the date of arrest is the starting point under the UK contempt of court Act 1981 and the Bill of 2003 prepared by the New South Wales law commission. According to the Hall once a person is arrested he comes within the care and protection of the court as he has a to be produced in court in 24 hours. In India this is a guarantee under Art 22 of the constitution. The reason for fixing the arrest as the starting point is that if a publication is made after arrest referring to the person character previous conviction or confession etc. The persons case will be prejudiced even in bail proceedings when issues arise as to whether bail is to be granted or refused or as to what conditions are to be imposed and whether there should be police remand or judicial remand such publications may also affect the trial when it takes place later [11].

Which could be contempt? We have referred to these aspects as a matter of information to the media. We have also discussed the recent phenomenon of the media interviewing potential witnesses and about the publicity that is given by the police and about investigative journalism not Dee 5e he nag We have also recommended that journalists need to be trained in certain aspects of law relating to freedom of speech in Art. And the restrictions which are permissible under Art. Of the Constitution, human rights, law of defamation and contempt. We have also suggested that these subjects be included in the syllabus for journalism courses and that special diploma or degree courses on journalism and law be started. The subject of trial by media' is discussed by civil rights activists, const mutational lawyers, judges and academics almost every day in recent times' the coming into being of television and cable channels, the amount of public which any crime or suspect or accused gets in the media has reached proportions [13].

4. MEDIA TRIAL vs. FAIR TRIAL

Trial by media has created a “problem” because it involves a tug of war between two conflicting principles – free press and free trial, in both of which the public are vitally interested. The freedom of the press stems from the right of the public in a democracy to be involved on the issues of the day, which affect them. This is the justification for investigative and campaign journalism. At the same time, the “Right to Fair Trial” a trial uninfluenced by extraneous pressures is recognized as a basic tenet of justice in India. Provisions aimed at safeguarding this right are contained under the Contempt of Courts Act, 1971 and under Articles 129 and 215 (Contempt Jurisdiction-Power of Supreme Court and High Court to punish for Contempt of itself respectively) of the Constitution of India. Of particular concern to the media are restrictions which are imposed on the discussion or publication of matters relating to the merits of a case pending before a Court. A journalist may thus be liable for contempt of Court if he publishes anything which might prejudice a ‘fair trial’ or anything which impairs the impartiality of the Court to decide a cause on its merits, whether the proceedings before the

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Court be a criminal or civil proceeding. The media exceeds its right by publications that are recognized as prejudicial to a suspect or accused like concerning the character of accused, publication of confessions, publications which comment or reflect upon the merits of the case, photographs, police activities, imputation of innocence, creating an atmosphere of prejudice, criticism of witnesses, the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, the guilt is to be proved beyond reasonable doubt and the law is governed by senses and not by emotions the right not to be compelled to be a witness against oneself, the right to a public trial, the right to legal representation, the right to speedy trial, the right to be present during trial and examine witnesses, etc [14].

5. IS INTERNATIONAL CONVENTIONS ON FAIR TRIAL?

In the International context, the UN Basic Principles on the Independence of the Judiciary, at Article 6, which states the judiciary is entitled and required “to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. The principles enunciated in this Article are also stated in similar language in the International Covenant on Civil and Political Rights (ICCPR), which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal” in the determination of any criminal charge or in a suit at law. The ICCPR acknowledges that the right to a public trial is not absolute and that certain limitations on public access are necessary. Article 19 of ICCPR confirms that freedom of expression is also a fundamental part of a democratic society. It elaborates that freedom of expression includes the freedom of the press and states that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice [15].

6. LAW COMMISSION REPORT

The Constitution of India guarantees freedom of speech and expression and Art. Permit reasonable restrictions to be imposed by statute for the purposes of various matters including ‘Contempt of Court’. Art.19 (2) does not refer to ‘administration of justice’ but interference of the administration of justice is clearly referred to in the definition of ‘criminal contempt’ in and in Sec.3 thereof as amounting to contempt. Therefore, publications which interfere or tend to interfere with the administration of justice amount to criminal contempt under that Act and if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid. At present, under sec. of the Contempt of Courts Act, 1971 read with the Explanation below it, full immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case, if by the date of publication, a charge sheet or challan is not filed or if summons or warrant are not issued. Such publications would be contempt only if a criminal proceeding is actually pending i.e. if charges heat or challan is filed or summons or warrant are issued by the Court by the date of publication. Question is whether this can be allowed to remain so under our Constitution or whether publications relating to suspects or accused from the date of their arrest should be regulated [16].

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7. WHAT IS THE LIMITATIONS ON THE FREEDOM OF THE MEDIA

A free Press does not necessarily connote a license without any restriction whatsoever. While reaching the information to the general public the media has a duty to ensure that such information is accurate and does not impinge upon the rights of others. Those who treasure the liberty of speech and expression should recall that the said liberty is constitutionally hedged in by the limits laid down in the Constitution of India. Those limits are following [17].

1. A) the right to reputation.
2. B) the right to privacy (decency and morality).
3. C) the law of contempt of Court etc.

Thus, if any person (including the Press) while criticizing another, indulges in libel or slander, he will be answerable in law for such offence both under the civil as well criminal law. Likewise, under the guise of freedom of speech and expression, no agency is entitled to pry into the privacy of individuals and publish the same. There may be sex hungry individuals peeping through the ventilator into the bedroom of others to derive some sort of perverted pleasure. But if they were to transfer into a camera whatever they have perceived and publish the same, the law is above them ready to make them answerable for the same. Similar is the case with journalistic adventures calculated to derail the on-going trial before a court of law. Such exploits may be counter-productive and those who indulge in such parallel trials will have to be accountable to the law of contempt of courts [18].

8. CONCLUSION

Though media act as a watchdog and act as a platform to bring people voice to the notice of society and legislatures. But now day's media is so much sensationalized and they just do for their salaries and TRP's. There are few reporters those showing only that news for what they have been paid by political parties. From the above account it becomes clear that the media had a more negative influence rather than a positive effect (except for a few exceptions here and there). The media has to be properly regulated by the courts. The media cannot be granted a free hand in the court proceedings as they are not some sporting event... 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 use of contempt powers against the media channels and newspapers by courts have been approved by the Supreme Court in a number of cases as has been pointed out earlier. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. Certain cases are so hyped for a day or two, so much so that you switch to any channel, they all will be flashing the same story but then when the heat is over there is no following of the case. The news then jostles for space with other stories that are carrying the heat then. Media just sensationalized the case for few days and leave it as they find others "masala"

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topics and stories news irrespective of how much importance earlier news was. Trial is very much effected by the Media sensation. Judges while making decision start considering Media criticism if they goes opposite from the view of the Media that's why in mostly high profile cases verdict passes by media becomes the final verdict in trial courts [19].

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