



Fair and Free Trial vs Media Trial

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Abstract

Freedom of media is the freedom of people to be informed of public matters pertaining to their rights and duties. Free and healthy press is a main requisite to functioning of the democracy. It is called the fourth pillar of a democracy. The right to freedom of speech and expression is contained in Article 19 of the constitution but the same article also restricts this right from being absolute – as media today has power to shape and influence the public opinion and can create a clear bias in civil cases. They have rules to follow when the case is sub-judice, this has been done because of the irreparable damage done by the same due to its outreach. If on one side the media has crossed the line and declared a number of people guilty it has on the other side brought many a guilty to the hook. A trial by media can in some cases tramples upon fundamental rights of an accused and interfere with free and fair decision-making. This paper is a study of the power of the media and the enormous effect the coverage has on the impressions and opinions of the people and its positive and negative impacts.

Keywords: *Media, Judiciary, Ethics, Media trial, sub-judice, contempt, Public opinion.*

Trial by Media vs Right of Fair Trial

'Fair and foul are near of kin, and fair needs foul,' words by William Butler Yeats so is the relationship today between the Media and the Judiciary, Legislative and Executive- they are all powerful in their own way but they all keep a check on the power of the others .

Trial as per Law is examination before a judicial tribunal of the facts put in issue in a cause, often including issues of law as well as those of fact. It is also the determination of a person's guilt or innocence by due process of law, an act of trying, testing, or putting to the proof.

Media: The news media are those elements of the mass media that focus on delivering news to the general public or a target public. These include print media, broadcast news, and more recently the Internet.

“Where the press is free and every man able to read, all is safe.”

Thomas Jefferson

Pandit Jawahar Lal Nehru was also of the same opinion and he said he would rather have a country with complete free press with all the dangers involved than a stifled and controlled press. His dream was to have a country where the press had a say and was allowed to participate without any inhibitions.

Democracy means making of the government by the people, for the people and of the people and the public to have active participation in the community decision. It is, therefore, the need of the day that the people be informed about current and burning affairs of society, this is where the media steps in bringing us the minor and important details that require the attention of the people- make them aware of what is going on around them and what needs to be done- steps to be taken for the betterment of the community.

Duty of the press and media is to enlighten the public; the masses, about the issues relating to public importance. It is why freedom of speech and expression in the Constitution has been extended to include

freedom of press and media. The right to freedom of expression is contained in Art.19 of the Indian Constitution. But this freedom is not absolute. Reasonable restrictions are permitted by sub-clause (2) of the same article. Article 19 (1) (a) of the Constitution of India guarantees freedom of speech and expression and Article 19(2) permits reasonable restrictions to be imposed by statute for the purposes of various matters including 'Contempt of Court'. Article 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 section 2 of the Contempt of Courts Act, 1971 and in section 3 thereof as amounting to contempt. Freedom of expression does not mean the freedom to commit contempt of court. The word 'expression' used in Article 19 (1) (a) of the constitution in addition to 'speech' is comprehensive enough to cover the press. Dr. Ambedkar said that media has no special rights – the editor and the manager of the press are citizens of the country and when they choose to write they are merely expressing their right to expression.

The concept of media trial is not a new concept, right from "Ramesh Thappar v State of Madras and again in Prabhu Dutt v Union of India the Supreme Court laid down that Freedom of speech and of the press, formed the very foundation of all democratic organization. It also held that the right to know news and information regarding administration of the government is included in the freedom of press. In M.Hassan v Government of Andhra Pradesh, the court held that the denial by the jail authorities to a journalist and a videographer to interview the condemned prisoners in jail amounts to deprivation of a citizen's Fundamental right of Freedom of Speech. Again in State of Uttar Pradesh vs Raj Narain the court underlined the significance of the right to know it was held that Art 19(1)(a) not only guarantees the freedom of speech and expression it also ensures and comprehends the right of the citizens to know and receive the information regarding matters of public interest.

The Supreme Court opined that freedom of speech available to a Member of Parliament

under Article 105(1) as well as to a member of a state legislature under Art. 194(1) is wider in amplitude; it has also in *Association for Democratic Reforms v. Union of India* pointed out the significance of the right to receive information in the context of elections.

In *Indian Express v. Union of India*, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom.

Freedom of press has three essential elements. They are:

- Freedom of access to all sources of information,
- Freedom of publication, and
- Freedom of circulation.

In *Sakal Papers Ltd. v. Union of India*, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. v. Union of India*, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Supreme Court of India holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court struck down the rebuttal of the Government that it would help small newspapers to grow.

In the case of *Brij Bhushan v. State of Delhi* (AIR 1950 SC 129), the validity of censorship previous to the publication of an English Weekly of Delhi, the organizer was questioned. The court struck down the Section 7 of the East Punjab Safety Act, 1949, which directed the editor and publisher of a newspaper "to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters all the matters and news and views about Pakistan, including photographs, and cartoons", on the ground that it was a restriction on the liberty of the press.

Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression.

In *Pushpadevi M Jatia v M.L. Wadhawan* it was held that the court need not concern itself as to how the evidence in question was obtained, thus clarifying that the evidences collected through sting operations and statements made to the undercover journalist can stand legal scrutiny if made voluntarily and under no threat are admissible in the court of law but with certain limitations, it further went on to say that even the confession made by the accused except in police custody are admissible and are to be treated as extra judicial confessions made to the third party.

“As Section 66A severely curtails information that may be sent on the Internet based on whether it is grossly offensive, annoying, inconvenient, etc, and being unrelated to any of the subject matters under Article 19(2) must, therefore, fall foul of Article 19(1)(a), and is declared as unconstitutional and void,” the bench ruled while allowing a clutch of petitions, including one by law student Shreya Singhal who first approached the top court in November 2012.

Trial by Media came into a huge limelight with the Simpson case and arrived in full insignia in India with the case of the virtual retrial of Jessica Lal case where the intervention of the media and the intense outpour by the public against the not guilty verdict forced the authorities and the judiciary to start the retrial, wherein a lot of evidences were brought forth by the media. In India trial by media has assumed significant proportions. Some other famous criminal cases that would have gone unpunished or unnoticed but for the intervention of media are Pritadarshini Mattoo case, Santosh Singh, a lawyer and the son of IPS officer, JP Singh, the then Joint Commissioner of Police, brutally raped and after committing the heinous act killed the girl using his helmet. He was acquitted by the court of the Additional Session judge

giving him the benefit of doubt. It was only the Media and the work of the immediate family that Santosh Singh who in the mean started to practice law and got married was brought to court again. Media exposed the numerous lapses in the murder case they went further and traced the domestic servant. This infuriated the public and thus pressurized the judiciary system and within 42 days of speedy trial Santosh Singh was awarded death sentence which was later converted to life sentence.

In Nitesh Katara murder case to the media, NDTV managed to obtain a video tape wherein the Yadav brothers confessed to kidnapping and then murdering Nitesh to save the family honour, this was later broadcasted. The Supreme Court pronounced prominent criminal lawyer R K Anand guilty in connection with the NDTV BMW expose case, the court found him guilty of criminal contempt of court for attempting to influence the course of justice in the infamous BMW hit- and- run case – the sting had exposed Anand perusing key witness Sunil Kulkarni to change his testimony to save the prime accused Sanjeev Nanda.

In the Nirbhaya rape case too media played a major role in evoking great sympathy and outrage from the Indian and foreign masses and authorities.

The role of media has been debated in a number of high profile cases. Though the role of the media in bringing the accused of these heinous crimes to justice is certainly commendable, the question remains that how far the doctrine of free speech can be stretched to sabotage free and fair trial. There are number of cases, numerous incidents wherein the media has been accused of conducting the trial of the accused and passing the verdict even before the court passes its judgement and the problem is that due to the delayed justice in India which is the result of the judicial backlog the country men rely on instant media justice than the reasoned verdict by law court forgetting that some channels are distorting, sensationalizing, are prejudicing, instigating the public and ultimately derailing the justice for cheap and high TRP.

They forget that everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal.

The conflict between the freedom of speech extended to media and fair trial has always raised a number of questions and has forced the Supreme Court to intervene and try to put an end to this conflicting issue. The Supreme Court has held that a trial by media has in a number of cases is the very anti-thesis of the rule of law and has led to the miscarriage of justice. In *M.P. Lohia v West Bengal* and in *State v Mohd. Afzal and Ors.* the Supreme Court cautioned for publication of issues which was prejudiced. It deprecated the media for interfering with the administration of justice by publishing one sided articles touching on merits of cases pending in the Courts. Justice Santosh Hedge remarked, "*We deprecate this practice and caution the Publisher, the editor and the journalist who are responsible for the said articles against indulging in such trial by media when the issue is sub-judice. Others concerned in journalism would also take note of this displeasure expressed by us for interfering with the administration of justice.*"

Media has now re-embodied itself into a "public Court and is also referred to as Janta Adalat, it pronounces the person guilty or not guilty even before the court announces its verdict. It ignores the vital gap between the accused and a convict and puts the golden principle of law 'Presumption of innocence until proven guilty' and "guilt beyond reasonable doubt" at stake. It is a threat to the principle of natural justice; every accused has a right to a fair trial clubbed with the principle that 'Justice may not only be done it must also seem to be done'.

Media in a number of cases drew criticism like in the reporting of the murder of Aarushi Talwar, wherein it preempted the court and reported that her own father Dr. Rajesh Talwar and possibly her mother Nupur Talwar were the ones who had committed the crime. The Supreme Court on 6th August sharply criticized the media for acting as if it was a super investigating agency and tarnishing the reputation of the

doctor couple who had just lost their only child.

There are number of other cases wherein the media has been accused of conducting a separate investigation, building a public opinion against the accused even before the court is even aware of the case. It not only influences the judgement of the masses but goes beyond and does the same with the judges who are human too and the accused is presumed guilty thus interfering with the administration of justice. To prevent the convicted of offences they have not committed, and justice is not unfair and unjust the 'Contempt of Court has been introduced. Lord Russell CJ said in *R v Gray* that anything calculated to bring a judge into contempt, or to lower his authority, is a contempt of court. But judges are open to criticism, and reasonable argument or expostulation would not be treated as a contempt of court. Further, any act done or in writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. Court cannot function properly if a reporting is calculated to disturb the judicial mind. In *John D. Pennekamp v State of Florida* it was observed, "No judge fit to be likely to be influenced consciously except by what he sees or hears in the court and by what is judicially appropriate for his deliberations. However, judges are also human and we know better than our forbearers how powerful is the pull of 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."

A similar opinion was mentioned in the case *Shalab Kumar Gupta and Ors. v B.K. Sen and Anr.* Where in it was mentioned that to investigate and conduct a trial by media and then publish results of the same when the case is sub-judice as this tends to interfere in the course of justice and thus such publication should be prevented.

In the case *Y. V. Hanumantha Rao v K.R. Pattabhiram and Ors.* Where it was observed by Justice Gopal Rao Ekkbote that

when litigation is pending in the court of law no one shall comment on it in such a way that there is a real and substantial danger of prejudice to the trial of the action, even if the person is making the comment honestly believes it to be true, it still amounts to Contempt of the Court, if he prejudices the court 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 defense.

No editor has the right to assume the role of an investigator so as to prejudice the Court against any person. But law of Contempt can only be attracted to prevent comments when the case is sub-judice. If the case is not pending in the court, it is of no avail.

The Supreme Court in *Zahira Habibullah Sheikh v State of Gujrat* explained “a fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial claim. Fair trial means a trial in which bias or prejudice for or against the accused, the witness, or the cause which is being tried is eliminated.”

Media creates unconscious pressures on the jurors-they know they are being watched; the lawyers too under pressure do not want to take up the case of the accused-which is against the principle of natural justice- we see this in the case of Manu Sharma where in *Mr. Ram Jethmalani* who decided to defend him was subject to public derision, quotes like “defend the indefensible” came from the media. Media in some of the cases has even presented the Police in poor light. Trials on the whole are really affected in a big way by the media sensation. Judges while making decisions start considering media criticism if they go opposite the views of the media and in some high profile cases the verdict passed by the media becomes the final verdict.

The Media has gone into aggressive journalism and the most objectionable and unfortunate part of the recently incarnated role is that the coverage of a sensational crime and its adducing of ‘evidence’ begins

early, mostly even before the person who will eventually preside over the trial even takes cognizance of the offence. Another place where the media for its own profits somehow had the entire Mumbai which was under threat of attacks in danger; when the enemies were planning their further steps depending on the media coverage during the Mumbai attack.

The identification of the witness, suspects and accused such that it amounts to an invasion of their privacy and further endangers their lives especially in case of the witnesses and force them to turn hostile by giving them excessive publicity is often another accusation against the media and they have been warned not to do so in a number of cases. Zaheera Sheikh, who was a key witness in the Gujrat Best Bakery Case, was a victim of excessive media coverage and sympathy. Her turning hostile invited an equal amount of media speculation and wrath. Her excessive media exposure possibly endangered her life. The media should avoid revealing the facts where they are offensive or the identity of the rape victim, it should also not report the past history of both the victim and the accused, the media went all out to rake up the past history of Manu Sharma in the Jessica Lal murder case and even included the photos of the accused in the affluent bars and pubs; these were published even after the Trial Court had acquitted him.

Hon’ble Justice Dharmadhikari, chairman, M.P. Human Rights Commission also asserted that there is a chance that the judges get influenced by the flowing air of remarks made upon a particular controversy. Media presents the case in such a manner to the public that if the judge passes a verdict against the “media verdict”, he or she is deemed either as corrupt or biased.

REBECCA JOHN says, “When it comes to reporting cases that are pending investigation, excessive media coverage can seriously prejudice the rights of the accused and sometimes, even the rights of the victims, and can lead to miscarriage of justice.”

Conclusion

To conclude without media's intervention, it would have not been possible to get justice for a common man. We can see this in a number of cases wherein the intervention of media has brought many a culprit to justice, the turn of events in the Priyadarshini Mattoo case show that although justice was delayed for Priyadarshini justice was not denied. This only proves the efficiency, power and social responsibility of media in a democracy. This is why the case is considered as a landmark reversal of judgments in the history of Indian judiciary.

In Jessica Lal case we all know that the role of media was immense in bringing the culprit to the court it was a very rare feat and the credit of this task can be entirely claimed by the media. Media interference not only helped in the speedy trial of this case but also justice was done.

In most of the incidents, media plays an effective role in awakening the nation and uniting it for a common cause. In the Delhi gang rape, the media took its strongest stand, which accelerated one of the biggest people's movements of recent times against the government demanding an effective action.

But on the other hand there are numerous instances in which media has conducted the trial of the accused and has passed the verdict even before the court passes its judgment or it has not paid any attention to, call for justice therefore becomes activism of elitism that would only serve the vested interests of the few. Nithari appeared as cover story with a sensational element of a thriller, but it never attained the dimension of a campaign it was about, on the other hand, the controversial kidnapping and rescue of the son of Naresh Gupta, CEO of Adobe, got more attention from media and the state machinery.

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The media sensationalizes some of the issues just to get a better TRP; they show only what some of the politicians and business houses want them to show and for what they are paid huge amounts. Its influence is becoming more negative than having positive effects.

In today's scenario the Judiciary and the media have rather become partners in the dispensation of justice as the media enjoys the privilege to investigate crimes and to act as a catalyst in the process of dispensation of justice while the judiciary is supposed to deliver justice. When it comes to the conflict between freedom of media and the corruption of the Judicial process the view taken by the Punjab High Court in Rao Harnarain v Gumori Ram stated that; "Liberty of the press is subordinate to the administration of justice. The plain duty of Media is the reporting and not the adjudication of cases."

The judiciary has laid down guidelines in a number of cases one such being Sahara India Real Estate Corporation Ltd. and Ors. V Securities and Exchange Board of India and Arn.

Media too has to acknowledge the fact that whatever they publish has a great impact over the spectator / reader, a court cannot function properly if the reporting is calculated to disturb the judicial mind – they too are human and not robots who programmed to do a things in a specific manner; and this can lead to judgement becoming biased. The right of the accused for fair trial has to be safe guarded at any cost.

The Apex Court in Re Hari Jai Singh in Re- Vijay Singh expressed serious concern about the freedom of press, while holding that the freedom of press is indispensable for the functioning of democracy [1-18].

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