

FREEDOM OF PRESS WITH REFERENCE TO MEDIA TRIALS IN INDIA

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INTRODUCTION

Article 19 (1) (a) of the Indian Constitution provides for the freedom of speech and expression. The Supreme Court of India, in *Life Insurance Corporation of India v. Manubhai D Shah*² observed that the “freedom of press” in Article 19 means the right to express one’s convictions and opinions freely, by word of mouth, writing, printing, pictures or electronic media or in any other manner. The freedom of media can be located under this article.

The strength and importance of media in a democracy is well recognized. The existence of a free, independent and powerful media is the cornerstone of democracy, especially in a highly mixed society like India. However, there are always two sides of a coin. With its increased role and importance attached to the media, the need for its accountability and professionalism in reportage cannot be emphasized enough. Media is not only a medium to express once feelings, opinions and views on various topics of regional, national and international significance. The pivotal if the media is its ability to mobilize the thinking of millions. So this freedom plays very important role in changing the public opinion. But at the same time this power of media can be used in a wrong manner also.

The concept of media trial is a part of freedom of press. Media trial means the pre-trial and in-trial reporting of the case. By this media has become an investigation agency. But this role of media sometimes interferes with the judiciary which has the real responsibility of justice.

Some famous criminal cases that would have gone unpunished but for the intervention of media are Priyadarshini Matoo case, Jessica Lal case, Nitish Katara murder case and Bijol Joshi rape case.³ In all these cases media played very significant

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2 (1992) 3 SCC 637

3 Dr. Rajnish, *Emergence of Investigating Journalism*, Sumit Enterprises 2007 First Edition p.120.

role. But now with the challenges of TRP and competition among news channels, media has changed its role to go into cases only based on their findings and mould the public opinion in that thinking only. By doing so media is creating problems for judiciary and also for the public in general.

The first problem with media trial is that it builds a public opinion for a case which is under consideration i.e. subjudice. Citizens without direct contact with the legal system base their views on other sources. But even those with direct experience are routinely bombarded with indirect, vicarious information.⁴ This information by media is without any proper evidence.

By media trial this freedom is misused which requires an early cure. Media is over-reaching being one of the state organ along with the other three i.e. judiciary, executive and legislature. The basic structure of the Suprema lex, is being destroyed by usurping the other's field by denying separation of power doctrine, which should be stopped.⁵

Media is an opinion builder, thus by showing the negative image of an accused, society starts reacting towards the accused in that manner only. It destroys the reputation of the person and sometimes because of this; the accused could not get legal representative for his case like in the case of Nithari murder.

The next problem with media trial is that it influences judges. Though judges must not take into account any outer investigation by media but still judges are also human beings and not susceptible to such indirect influences. The Supreme Court in the case of *M.P. Lohia v. State of West Bengal*⁶ observed, "the articles published in one sided manner appearing in media would certainly interfere with the course of administration of justice."

Furthermore media tries to violate the right to privacy of a human being. Also media works against the basic principle of criminal system i.e. innocent until proved guilty. So these problems are discussed in this project. Finally conclusion and suggestion are also given in the end of the project.

4 MacCoun, R., Legal issues about public opinion, International Encyclopedia of the Social and Behavioral Sciences, 2001 p. 8642

5 Role of judiciary in Trial by Media on crossing the line between the public and private domain, Journal of Faculty of Juridical Sciences, vol.1, issue 2010, p. 91

6 2005(2) SCC 686.

CONSTITUTIONAL PROVISIONS AND FREEDOM OF PRESS:

Part III and IV – fundamental rights and directive principles of state policy ensures the basic human rights of a person. These are perceived as the conscience of the Constitution, because they provide the base of the human rights and human development policies for governance. The constitution provides that fundamental rights are guaranteed as a matter of legal obligation rather than as a political concession.

For citizens, constitution specifically provides for freedom of speech and expression including freedom of press under Article 19 (1) (a). This freedom was given great emphasis during constituent assembly debates because press played a very important role in freedom struggle of India. During debates, Dr. B.R. Ambedkar said:

“The press is merely another way of stating an individual or a citizen. The press has no special rights that are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is all citizens and therefore when they choose to write in newspapers, they are merely exercising their rights of expression and in my judgment therefore no special mention is necessary of the freedom of the press at all.”

The Supreme Court also in many cases upheld the validity of the freedom of press and widens the scope of this freedom. *Romesh Thappar v. State of Madras*⁷ is one of the earliest cases in which Supreme Court struck down the ban imposed by Government of Madras on the entry and circulation of the journal. *Bennett Coleman & Co. v. Union of India*⁸, the Supreme Court held that newspapers should be left free to determine the number of pages and their circulation. Justice A.P. Sen in the case of *Express Newspaper Pvt. Ltd. v. Union of India*⁹ this regard described the rights to freedom of press as a pillar of individual liberty which has been unfailingly guarded by the courts. But the judge made it clear that this freedom was not absolute and unlimited at all times and under all circumstances. The permissible restrictions on any fundamental right have to satisfy the test of reasonableness. The test propounded by the Supreme Court in the *Bennett Coleman* case is whether the direct and immediate impact of the impugned action is on the freedom of speech and expression.

7 AIR 1950 SC 124.

8 AIR 1962 SC 305.

9 AIR 1986 SC AT 909.

This freedom leads to pretrial publications by the media. Media has all rights to publish or show anything. So under this right media takes up the investigations of certain cases that are subjudice. Under the constitution the subject of trial by media is closely linked with Article 19 (1) and restriction provided under Article 19 (2) for the purpose of contempt of court and for maintaining the due process to protect liberty. This type of journalism started with the imposition of the emergency in 1975 that curtailed freedom of expression. It was this emergency which led to the birth of the various news magazines like India Today, Sunday, Outlook, etc. and profited by printing analytical reports based on first hand information. It would not be an exaggeration to say that the emergency turned out to be a blessing in disguise for the print media in the country, as it definitely helped them to reshape the definition of “investigative journalism” in the post emergency era.

The freedom of press in the context of the investigative journalism came to be considered by the Supreme Court of India in the judgment in the State of Maharashtra v. Rajendra Jawanmal Gandhi¹⁰. This court expressed its displeasure over the phenomenon, which it called as “Trial by Press, electronic media or public agitation”. Further, the Hon’ble Supreme Court in case of M.P. Lohia v. State of West Bengal¹¹ took a similar view and echoed these lines:

“This type of articles appearing in the media would certainly interfere with administration of justice. We deprecate this practice and caution the publisher, editor and journalists who were responsible for the said article against indulging in such trial by the media when the issue is subjudice.”

The basic issue is about balancing the freedom of speech and expression on the one hand and undue interference with the administration of justice within the framework of the Contempt of Courts Act, 1971, as permitted by Article 19 (2). On the other hand, that should be done without unduly restricting the rights of suspects under Article 21 of the Constitution of India for a fair trial.¹²

HUMAN RIGHTS AND MEDIA:

Human rights and media have a strong relationship. As people need food, shelter and health care for their physical survival, they need communication for

10 (1997) 8 SCC 386

11 2005(2) SCC 686

12 Trial by Media, Law Commission of India, 200th Report (August 2006), at 113-14

their social welfare. This communication can be provided by media and thus it becomes integral part of human rights which allows human beings to discuss matters of public interest and thus increases participation. Media cannot be primarily be considered business enterprises, but are part of the cultural environment in which we live and move and thus should contribute to the quality of life of everyone by celebrating all that is genuinely human.

The contribution of media is clear because exposing violations of human rights; media can make authorities more responsible and thus increase respect of human rights. At the same time, sensitivity of media to the importance of human rights provides reliable sources of information through which citizens, human rights groups, private organizations and public authorities can work together to promote development and to eliminate arbitrary abuse. For example, the Sunday Magazine exposed human rights violations by publishing the story of blinding of prisoners in Bhagalpur Jail. Moreover the dignity of a human being is particularly threatened in situations of war, massacres and in these situations media plays a vital role in making people aware of the situation.

But because of the new media, sometimes it itself violates the human rights. The pre-trial investigation by media deteriorates the image of the suspect or accused. It makes him accused in the eyes of people before the decision of court. Even if court declares him guilty, media report will make a negative impact on his image. His family also suffers from this.

Furthermore right to privacy is also a human right. The protection of personal information and privacy is central to the autonomy of the individual and to respect for human rights. The use of increasingly invasive means of surveillance and of interception of communications, of intrusive profiling and identification and of biometric identification technology, the development of communication technologies with built-in surveillance capacities, the collection and misuse of genetic data, genetic testing, the growing invasion of privacy at the workplace and the weakening of data protection regimes give rise to serious concerns from the point of view of respect for human dignity and human rights.¹³ This development in communications infrastructure and computing threatens privacy in new ways.

13 Human Rights, Human Dignity and the Information Society, Prof. Balraj Chauhan and Dr. Mridul Srivastava, Journal of Faculty of Juridical Sciences, vol.1, issue 2010, p.21

FAIR TRIAL:

Every person has a constitutional right of fair trial in the court of law, by an impartial tribunal, uninfluenced by newspaper dictation or popular clamor.¹⁴ Every democracy demands fair play and transparency and if these are curtailed then the very concept of democracy will be at stake.

Trial by media actually makes interference with the judicial process. To have a fair trial is a fundamental right of a person and for that a judge is required to be non-prejudice. Contempt of court has been introduced to prevent such unjust and unfair trials. No publication, which is calculated to poison the minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt. Commenting on the pending cases or abuse of party may amount to contempt.¹⁵ No editor has the right to assume the role of an investigator to try to prejudice the court against any person.¹⁶ The question is not about trial by media or findings of media but it's about the means media is using and after investigating how media is generating a public opinion in favour of one party and its impact on judgment.

A person should not be punished for a crime unless there has been a charge fairly tried in public tribunal which is free from prejudice. But while investigating media does not bother about the laws of evidence and penal codes. While conducting the program, no investigation procedure is followed and the documents are not scrutinized. The discussions are around imaginary and speculative ideas purveyed by the electronic and print media. Sometimes media also try to make the person confessed of his crime. Where the confession by accused made to the police hit by the Section 25 of the Indian Evidence Act. Even Polygraph, Narco-Analysis and Brain mapping tests can give clues to the investigator but are not admissible in law. The over-exposure by media, thus makes a person guilty even before he or she is tried in court.

Moreover media convicts a person without any evidence. In the parliament attack case media showed S.A.R. Gillani as accused and made him a hard core criminal. Later on he was declared innocent by the court. He said "Media has played a highly dubious role in the turning the people against me. I remember the first time, when I was

14 Cooper v. People (1889) 6 Lawyers Report Annotated 430(B).

15 Subhash Chandra v. S.M. Agarwal, 1984 Cri LJ 481 (Del.)

16 DM v. MA Hamid Ali Gardish, AIR 1940 Oudh 137.

paraded before media on December 16, 2001. Every channel and newspaper was there. Throughout the trial media ignored the defense and only reported the police version. A prominent hindi T.V. news channel made a film portraying me as the master mind of not just parliament attack bit of the entire militancy in Kashmir.”¹⁷

The concept of denial of a fair trial has been coined by authoritative judicial pronouncements as a safeguard in criminal trial. The obstruction or interference in the administration of justice by any publication or influencing the mind of the judge or suggesting the court as to in what manner the case should proceed would amount to denial of fair trial.

The observation of Mr. Andrew Belsey in his article “Journalism and Ethics, can They co-exist”, describes the state of affairs of today’s media. He says that journalism and media stand apart. While journalists are distinctive facilitators for the democratic process to function without hindrance, the media has to follow the virtues of accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people. These all are part of democratic process. But the practical considerations, namely, pursuit, of successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying media managers by meeting growth targets, are recognized as factors for the temptation to print trivial stories. While investigation by police, officers connected must resist the temptation of being media savvy, else there was a danger of the investigation being derailed.¹⁸

In criminal cases, the presumption is that the accused is innocent till the contrary is established. It is often said that it is better that hundred guilty men should escape that that one innocent man should suffer. If there is an element of reasonable doubt as to the guilt of the accused, the benefit of the doubt must go to him. But media does not care about it and most of the times it becomes biased on one side. This gives wrong impact on the public. So in the eyes of public that person becomes guilty without any proof.

So it is the duty of the media to show right news to the people so that a subjudice matter must not be affected. Their findings must be based on evidence and not in conflict with the proceedings in the court. Media should try to interfere with administration neither by influencing judge’s mind nor by diverting public opinion.

17 Tahalka, The Target Forever, 22 Nov., 2008, vol.5 issue 46, p.26.

18 Dr. Ambrish Saxena, Right to Information and Freedom of Press, Kanishka Publishers, new Delhi, 2004, p.80.

CONTEMPT OF COURT AND FREEDOM OF PRESS:

The problem raised by trial by media involves a tug of war between free press and free trial. The Constitution of India and the Contempt of Courts Act, 1971 contain provisions which aim at to safeguard the right to fair trial. Restrictions are imposed on the discussions and publication of matters relating to the 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 a court to decide a cause on its merit.

Section 2(c) of the Contempt of Courts act, 1971, defines criminal contempt. It includes the doing of any act which prejudices or interferes or tends to interfere with the due course of any judicial proceeding or obstructs or tends to obstruct the administration of justice in any manner. Section 3 clarifies that innocent publication and distribution of matter is not contempt of court. Section 4 says that a person shall not be guilty of contempt of court for publishing a fair and accurate report of judicial proceeding or any stage thereof. Needless to say that the press reporter and the publisher of newspapers do not have any indefeasible right to put his own gloss on the statements in court by selecting stray passages out of context which might have a tendency to convey to the reader to the prejudice of a party to the proceedings, a sense different from what would appear when the statement was read in its own context.¹⁹ Our law of contempt however does not prevent comments before the litigation is started nor after it has ended. In *Re P.C. Sen*²⁰, Justice Shah said “The law relating to contempt of court is well settled. Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority or to interfere with the due course of justice or the lawful process of the Court, is contempt of court. Furthermore in the case of *R.v. Gray*²¹, held that the contempt by speech or writing may be scandalizing the court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard.

It is incumbent upon the courts of justice to preserve their proceedings from being misrepresented, for prejudicing the minds of the public against persons concerned as parties, in causes before the court is finally heard, and has pernicious

19 K. Mahesh, Bishwajit Bhattacharyaa, *Judging the Judges*, Gyan Publishing House, New Delhi, 1999, p. 113.

20 AIR 1970 SC 1821.

21 [1900] 2 Q.B.D. 36, p.40.

consequences. The question in all the cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. In *Sushil Sharma v. The State (Delhi Administration) and ors.*, it was held that “conviction, if any, would be based not on media’s report but what facts are placed on record. Judge dealing with the case is supposed to be neutral. Now if what petitioner contends regarding the denial of fair trial because of these news items is accepted it would cause aspiration on the judge being not neutral.” Thus sometimes media trials tend to show wrong information, so it is the duty of the judge not to be influenced by these reports and deliver the decision based on the facts and evidence produced. It is observed that more pretrial publicity of a person is covered, the more likely is that a person know about a given case, more the chances of the judge are to form a biased opinion about the defendant.²²

Thus it can be concluded that remedy available against media trial is contempt of court act. But judiciary is open for criticism. So it is the duty of media not to interfere with the administration of justice but must give reasonable argument against any judicial act as contrary to law or the public good. In this case, no court would treat that as contempt of court. So in circumstances, the media and judiciary need to co-operate and evolve policies acceptable to both to promote public interest and self-correction.

RIGHT TO PRIVACY:

Right to privacy is implicit in the fundamental right to life and personal liberty guaranteed under Article 21 of the constitution. No one can publish or project anything without the consent of the person concerned whether truthful or otherwise. If media do so, it would be violating the right to privacy.²³ A citizen, even an accused, has a right to safeguards the privacy of his own and of his family.²⁴ But it is very sad that the media, to which the common man looks for the real picture, has really come up with a confusing image and distorted facts and pictures. All the TV channels have crossed the limits of beaming their interpretation in every living room of the nation and affecting their privacy. The new concept of sting operations is very important in this segment because it is clear violation of right to privacy because that takes confession of a person without his consent.

22 Krause, *Journal of African Law*, “The Partial Juror: Correlates and Causes of Prejudgment”, *Law and Society Rev.* 9, 21-24 (1981).

23 *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

24 *Kharak Singh v. State of U.P.*, AIR, 1963, SC 1295.

CASES ON MEDIA TRIAL:

Media trial has been done in many of the cases in India. Many of the prove positive impact like Jessica Lal case by showing the ethical journalism and thus influencing judiciary in positive way. But in some cases media has shown very low standards of journalism just to increase their TRPs like in the case of Aarushi, SAR Gillani, etc. Let us discuss some of the cases :

(a) Aarushi Murder Case:

In this case a 14 year old girl was found murdered at her home. A day later the domestic helper Hemraj found on the terrace of their house. Police arrested her father and kept him custody for 50 days before declaring him innocent. The Supreme Court criticized the media for acting as super investigating agency in Aarushi Talwar murder case and tarnishing the image of the doctor-couple who lost their only child.

(b) Uma Khurana Case:

In this case a TV channel conducted a sting operation in which mathematics teacher of a Delhi Government teacher was allegedly forcing her own students into prostitutions. Because of this she had to lost her job and was badly abused and assaulted by mob near the school. Later in the police investigation it was found that the sting operation was fake and was done to defame the lady.

(c) SAR Geelani Case:

SAR Geelani, one of accused in the parliament attack was initially sentenced to death for his alleged involvement withstanding the stunning paucity of evidence. Soon after that he was presented by the media as a dangerous terrorist before the public. Later Delhi High Court while overturning the Geelani's conviction described the prosecution's case as absurd and tragic. Court also highly condemned the role of media in this case.

CONCLUSION:

From the above discussion, it becomes clear that the media had a more negative influence rather than a positive effect. The media should not be allowed to do anything during court proceedings as it may influence in negative way. It can also be concluded that Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process.

Freedom of expression enables citizen to seek the path to truth, to democracy and to self fulfillment. Media should only publish what is true. In this way media undertakes the role of watchdog rather than the role of judiciary.

In its 200th report submitted to government, Law Commission emphasized for a better media. It says that in absence of proper control mechanism, intrusive media coverage may actually serve to encourage sensationalism trivialization. The media abuse the public interest and thus push to disregard the ethical code of conduct simply for commercial gain.

The boundary between freedom of media and right to fair trial of an accused is the "Laxman Rekha" and media should not cross the line of boundary. Media concerns towards exposing arbitrary power, illegal activities, corruption, health, science, technology, etc. The right of media to furnish the information or facts or opinion should be only to foster public interest and not to encroach upon the individual's rights. In the end we can say that media is very important for any democracy and it must be used as a strong tool for public interest.

SUGGESTIONS:

1. There should be at least a place of complaints like press council with time bound hearing procedures and prescribed penalties.
2. Accuracy in reporting facts is the first responsibility of media so it should be adopted.
3. Uncover the truth is not always the job of media because it is not equipped to investigate and uncover the truth in severely complicated cases. So where cases are so complicated, media should not do this work.
4. TV channels are supposed to be information agencies and not investigating agencies. Police should not allow TV channels to enter the crime scene where possible important finger prints, evidences and clues are lying for the police to collect.