

ROLE OF MEDIA IN THE INDIAN JUSTICE SYSTEM WITH SPECIAL REFERENCE TO TRIAL BY MEDIA

Dr. O.P. Tiwari,

(Faculty) Allahabad Degree College,
University of Allahabad, Allahabad.

ABSTRACT

Right to speech and expression inclusive of right to information is a recognised and valuable human right in the democratic world. Media along with its various forms is the vehicle to recognise, enforce, propagate and sustain this right which is life blood of welfare states. When media exposes corruption, nepotism, crimes and injustices it is good for the society and is also excused for the restrained investigative journalism that it practices for this purpose. The problem arises when it knowingly or inadvertently crosses the limits set for it by media ethics. It shows over reach by becoming hypothetical and jumping to conclusions as regards outcomes of civil and criminal cases which are within the jurisdiction of the justice system of the state. It usurps the function of the criminal justice system and this is alarming because here the questions involved are grave -that of life liberty and dignity of human beings. The paper discusses fairly about both sides of the coin named media- that is 'media activism' and 'media overreach'. It explains in detail why media restraint is imperative in cases which involve penal consequences and also consequences in the form of mental and psychological effects. If due to unnecessary media intervention an accused is labeled and condemned by people as criminal even before the final outcome of case it is the media who is the sinner. This is because of the immeasurable amount of ill consequences that the person has to bear with all during the trial. Media should be a medium and facilitator to deliver justice, should aid the justice system without being biased or working on extraneous, illogical, irrational and extra legal considerations. It should be ruthless on corrupt but messiah of the marginalised and hence indispensable for survival and sustenance of any civilized nation.

I detest what you write but I would give my life to make it possible for you to continue to write.

WHAT IS MEDIA?

The term 'media' refers to components of the mass media communication industry such as print media, photography, cinema, broadcasting (radio and television) and advertising¹. Business Dictionary also explains in the same manner the term media. According to it the term 'media' encompasses

communication channels through which news, entertainment, education, data or promotional messages are disseminated. Media includes every broad casting and narrow casting medium such as news papers, magazines, TV radio, bill boards, direct mail, telephone, fax and internet. Media is the plural of medium and can take a plural or singular verb depending on the sense intended.²

IMPORTANCE OF MEDIA IN A DEMOCRACY.

The importance and strength of media in a democracy is well recognized. Art 19 (1) (a) of the Indian Constitution which gives freedom of speech and expression includes within its ambit freedom of press. The existence of a free, independent powerful and unbiased media is the cornerstone of a democracy and especially of a multicultural country like India. Apart from being a medium to express one's feelings, opinion and views it is also responsible for building opinions and views on various topics of regional, national and international agenda. The pivotal role of media in mobilizing the thinking process of the nation cannot be underrated. Justice Learned Hand of US Supreme Court aptly and rightfully opined "The hand that rules the press, the radio, the screen and far spread magazine rules the country."³

The three pillars of the India democracy which proudly is also largest democracy in the world are the executive the legislative and the judiciary and the guarantee of Act 19(1) (a) have given rise to a fourth pillar known as press or media which plays the role of a watchdog of the functionaries of the 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 state has benefitted from the ethical and fearless journalism and taken suo-motu cognizance of the matter in various cases after relying in their reports and news highlighting grave violatons of human rights ⁴

Chief Justice B.P. Singh has said that freedom of speech and more specifically the freedom of press is the "sine qua non" of a democratic form of government that our constitution has established.⁵ It cannot be denied that over the past two decades media has played an active role in ensuring dispensation of justice by the intervention of media.

FEW CASES HIGHLIGHTING MEDIA ACTIVISM IN INDIA AIDING THE JUSTICE SYSTEM.

Media plays an investigative role like pre trial investigation by the investigating agencies of the state. It brings to light in the society political corruption, scams and many criminal matters. It thus acts as a source albeit important source of information and thus aids the criminal justice system of the country. This becomes possible because there are no prior restraints on press⁶, although it can be held ultimately liable under civil and criminal law for publishing information and news which are wrong defamatory, obscene or seditious in nature.⁷ Cases are numerous in India when investigating agencies have forcefully been awakened from their pseudo slumber and further been pushed to take action against the accused. In Shakti Mills Gang Rape Case a photojournalist was gangraped by five man in Mumbai Shakti Mills while she was on an assignment. In this case the timely media intervention expedited the criminal proceedings and also encouraged yet another eighteen year old telephone operator to report that she was raped at the same place in July 2013.⁸ This ensured that repeat offenders were awarded the maximum sentence under the amended rape law of 2013. In this case undoubtedly the media played a crucial role in expediting the criminal justice system. In State Vs Ram Singh and Another ⁹ also known as the Nirbhaya Case on Dec 16, 2012 five men and a juvenile gangraped a paramedic student in a moving bus after which they brutally assaulted her as a consequence of which she succumbed to her injuries. The Indian media provided day to day extensive coverage in this case which due to utter depravity of the crime had shook the collective conscience of the nation.¹⁰ Media had reported the incident as soon as it happened and helped in generating strong public opinion. Also thorough adequate follow-ups it ensured that the mass awakening did not slacken or die out. On Sept 13, 2013 the accused were awarded death sentence by the trial court. On March 13, 2014 High Court upheld

the death penalty awarded. In R.K. Ananda Vs Registrar Delhi High Court¹¹ NDTV conducted a sting operation showing R.K. Anand and I.U. Khan offering bribe to influence a key witness in the case of BMW Hit and Run Case¹². In this case of remarkable investigative journalism the media intervened and prevented miscarriage of justice and what made this case even more noteworthy in history of Indian media is the fact of the Apex Court declaring that it was not necessary for a media outfit to receive permission from a court to undertake sting operation which in practice would assist in the function of trial. In Surender Koli Vs State of UP¹³ (Nithari Killing) the incident of missing children was brought to light by the media in December 2006 when human remains were found in the backyard of a palatial bungalow. Intense media pressure and public outrage set the wheels of dispensation of justice in motion. Also through this case it was reiterated that a responsible media is crucial to ensure that the marginalized can easily have access to the Criminal Justice System.

Many a times rich and influential people try to employ underhand tricks to abuse the legal machinery. In the case of Sajal Suresh Kumar Jain Vs State of Gujarat¹⁴ (Bijal Joshi Rape Case) on the eve of Jan 1, 2004 four men along with Sajal Suresh Kumar gangraped Bijal Joshi. Unable to with stand the humiliation and trauma Bijal committed suicide. Since the accused in this case belonged to an influential family he tried to influence the investigation but the media ensured that the police could not hush up the entire matter. The Gujarat High Court delivered the judgment eight years after the incident took place. In the case of Vikas Yadav and Vishal Yadav Vs State¹⁵ (Nitish Katara Murder Case) Vishal and Vikas abducted and killed Nitish Katara for his alleged intimacy with their sister Bharti Yadav. Though the offence occurred in 2002 it gained the attention of media only in 2006. Media reported each and every painstaking detail of the case thereby ensuring that the powerful culprits were brought to book.¹⁶ It also brought to light the fact the Yadav brothers had been granted bail 66 times.¹⁷ In the famous Jessica Lal murder Case¹⁸ on

24th April 1999 one Manu Sharma shot Jessica Lal (bartender) for refusing to serve him drink. Jessica died as a consequence. Though this incident was reported extensively in the early stage but when media fever subsided it led eventually to acquittal of all suspects in February 2006. A sting operation by Tehelka revealed Manu Sharma's father paying bribes to the key witnesses in the case. Due to media activism the case was reopened in March 2006. The High Court heard the case on a day to day basis and on Dec 18 2006 gave its verdict. Further Supreme Court upheld the conviction on April 19, 2010.

There have been multitude of such cases like the Uphar Tragedy Case, Priyadarshini Mattoo Murder Case, Harshad Mehta Case, Ruchika Gehrotra Case, Rizwannur Rehman Case etc in which media was instrumental in ensuring that justice is delivered even though it intervened during different stages of proceeding. In recent times media has played a commendable role in highlighting cases of sexual assaults against women, of corruption in government setup. It cannot be forgotten how incessant demonstrations in Damini Case led to crucial amendments to existing rape laws.

THE OTHER SIDE OF THE COIN – MEDIA OVERREACH IN THE FORM OF MEDIA TRIALS.

The expression trial by media is a misnomer. On the other hand the word trial means – 'a formal judicial examination of evidence and determination of legal claims in an adversary proceedings'.¹⁹ Since trial ordinarily means a proceeding before a court of justice and therefore there cannot be a trial by the media. But these words are often used to denote an exercise undertaken by the media virtually taking up the role of a judicial form for which such exercise has been earmarked by the laws of the land. Supreme Court has aptly laid down the unfortunate consequence of 'trial by media' in the following words, "The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any

verdict in a court of law. During high publicity 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 impossible but means that regardless of the result of the trial in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.²⁰ The Apex Court also observed that –“A trial by press, electronic media or public agitation is very antitheses of the rule of law. It can well lead to miscarriage of justice.”²¹ This type of journalism is irresponsible and unethical and highly toxic. Something which was started to show to the public at large the truth about cases has now become a practice interfering dangerously with the justice delivery system and to top all this it has become phenomenon of daily occurrence.

LAW COMMISSION REPORT ON MEDIA TRIAL.

In the 200th report of the Law Commission on “Trial by media: free speech Vs fair trial under Criminal Procedure (Amendments to the Contempt of Court Act 1971)” this subject was suo motu taken up in reaction to the widespread coverage of crime and information about accused and suspects by print and electronic media which are likely to have prejudicial impact on the administration of justice. The report mentioned in chapter IX what publications can be prejudicial if made after a person is arrested. For example publications which refer to character, previous communications and confessions could be criminal contempt. Publishing photographs may hinder proper identification in an identification parade. Also various other aspects such as judging guilt or innocence of accused or discrediting witnesses etc. would be considered contempt of court. These are matters of information to media. The report also draws attention to the recent phenomenon of media about publicity that is given by police and about investigative journalism. The report recommended that journalists needed to be trained in certain aspects of law relating to freedom

of speech in Art 19(1) (a) and the restrictions which are permissible under Act 19 (2) of Constitution, human rights, law of defamation and contempt. The report also had suggestions that these topics be included in the syllabus for journalism and special diploma or degree on journalism and law be started.

THE INTEREST OF COMMON MAN IN TRIALS - JUDICIAL OR MEDIA BOTH.

Barnes and Teeters say, “We live close to crime detached though we may be because it is so effectively publicized. Not a day passes that we do not read of some crime that holds out attention, and scarcely a week goes by without screaming headlines announcing some notorious trial ----. The modern machinery of news distribution—gigantic presses, leased wires, specialist reporters, amazing improvements in the technology of communication makes it possible for millions to learn at once of a bizarre crime and to follow a sensational trial “play by play”²²

Charles Merg commented on one notorious case in which twelve million words were telegraphed from the scene of the trial in 24 days. He said, “Words enough if put into book form to make a shelf of books twenty two feet long. This is the literature of the nation----- because it does not wait for its patrons on book store shelves or gather dust in libraries but is sold out, read and realistically debated within two hours after it comes smoking from the press. It needs no pushing, needs no advertising, needs no criticism”²³

“The avid interest in crime may be attributed to an ambivalence common to us all; we fear the criminal, but we also secretly identify with him and are thus willing victims of romanticism. Crimes that shock our sense of decency may not fall into such a category, but the crimes of bravado such as robbery of banks give us a vicarious thrill that we secretly enjoy. Interest in criminals who have committed reprehensible crime, such as kidnapping or murder, may be associated with the primitive urge for vengeance for our own grievances real or

imagined²⁴. He further opines, “Also symptomatic of functional attitudes is the popularity of the mystery stories that come off the presses by the hundreds and are polarized highly by popular television and radio performs. The unfolding of a real crime story reported day by day in the press, comes too slowly; we can absorb crime double quick by reading the mysteries or looking at television thrillers”.²⁵

MISADVENTURES OF MEDIA IN INDIA IN THE FORM OF MEDIA TRIALS – FEW CASES.

The idea that media can have a strong influence on the legal process can be traced back to the advent of printing press. In the 20th century celebrity Roscoe 'Fatty' Arbuckle was acquitted by the court but then also lost his career and reputation due to media coverage. Even where a criminal court finds someone guilty the media can shall appear to sit in judgment over their sentence. Examples include Myra Hindly whose proposed release from prison after 30 years was widely condemned by the British press (the argument became moot when she died in 2002). One case popularized by media between 1980 and 1982 was murder trial of Lindy Chamberlain in Australia who was but later released in 1986 on fresh evidence showing that a dingo had in fact committed the act as was originally claimed by Chamberlain.²⁶ Later in time 'caught on camera' incidents became more and more common worldwide. This proved real problems for the legal system as the evidence they provided could have been inadmissible for technical reason (e.g. not being able to pinpoint exact time) but they gave very strong images for the media (and public) to reseeze upon and the potential to manipulate by editing.

As in India people are getting more and more evolved and updated regarding the government's functions and obligations. So is the functioning of courts also getting public day by day . The trials are not only reported in media due to which debates start, people engage into discussions and media too gives its opinions and that too in a

euphoric manner. Thus parallel trial is on, one within courtroom and the other outside it. This poses big challenge for judges as well as lawyers and they have to answer indirectly the public debates and discussions as well as if it there duty. In *M.P.LohiaVStateofWestBengal*²⁷ the husband of the deceased women and his family were charged with dowry death under the IPC. The parents of the women filed document to prove their allegation of demand of dowry by the husband and his family. On the other hand the husband filed a number of documents to prove that the women was a schizophrenic psychotic patient. The lower court refused to grant interim bail which was done by the Supreme Court. While passing the final order it critically refered to certain news items in a magazine. The Court cited two articles published in the magazine in a one sided manner informing the world about the woman's parent's allegation but not referring to the documents filed by the accused to prove that the lady was a schizophrenic. The Apex Court opined that such type of misadventures on the part of media would undoubtedly interfere in the cause of administration of justice. In the *Sheena Bora Murder Case*²⁸ the sage with its roller coster ride path provided fodder to the media in an unprecedented manner. To quote Mythili Sundar – “The media trial the aim of which was justice for Sheena began in all earnest in television studio – only an irresponsible terrible women could pass off her children as siblings they said; she gave them in adoption to her parents ----- . A well known journalist came on air to claim that Indrani had told him that she had been molested by her stepfather. Other sections of media asked if her so called children could perhaps be her siblings too ²⁹. Mythili further says that in the heat and dust raised by the issue everyone forgot that one cannot disclose the identity of a sexual crime victim. Some reporters claimed that Indrani, mother of Sheena ran away with a man when she was just 15. No heed was given to the fact that in India disclosing the identity of a juvenile in conflict with law is prohibited. Media was ruthless as well as biased too. Siddharth Das the alleged father of Indrani's children had not been attacked upon and as much as Indrani. Siddarth

alleged that Indrani could do anything for money. "Where he was when his children were growing up. If Indrani was dangerous he should have ensured they were safe but his compliance is itself questionable".³⁰Not going into the details of this high profile case it can be concluded that such an over vigilant media is unfair and it crosses the line of propriety by showing such over reach.

In Arushi Murder Case³¹ there were no eyewitnesses and only circumstantial evidence. But media identified completely with the filicidal narratives and why not? This narrative was primarily floated by I.G. Meerut Gurudarshan Singh who solved the case even before investigations could begin. In a widely published press conference he declared that Rajesh who was "as characterless" as his daughter had committed the murder after discovering his daughter and household servant Hemraj in "an objectionable and compromising position." No doubt his story gained momentum and accumulated more stories across the media. The myriad stories might not have interfered, slowed and effected the justice in motion in the case is surely a matter of contention. A juvenile girl's character was maligned even after her murder by the ruthless media. Shockingly almost every media house was reconstructing the crime scene happenings in their own way with the aid of graphics. The common viewers and readers became so convinced about her parent's guilt that they saw the trial not as a judicial examination of evidence to determine the facts but a media legal formality that would simply lead to conviction.³²

THE EFFECT OF MEDIA TRIAL.

The damages resulting from the catastrophe called 'trial by media' is immeasurable. No doubt unwarranted media exposure effects the outcome of criminal trials. In the democratic countries of the world the criminal laws are meant to guarantee to the defendant a fair and impartial trial. Judges are expected to base their decisions solely on evidence presented at trial and whether or not the defendant is guilty they are not supposed to have pre opinions

about the relevant case. On whether the pre trial publicity has any impact on actual jurors Romeo Vilelli (Ph.D) from Media Spotlight says that news stories about crimes are skewed assuring that the defendant is already guilty. To quote Romeo, "To make matters worse these stories frequently include prejudicial information that is rarely allowed during the actual criminal trial. This kind of evidence can include the accused's past criminal history (whether or not its relevant to the case), sensationalized descriptions of the crime and inflammatory statements by arresting officers or press. Also add in the often emotional interviews with relatives of the deceased most of whom openly state their belief that the accused is guilty and it can seem like virtually everyone with an interest in the case has their minds made up before the jury is even selected.³³ They are likely to hand down a guilty verdict or recommend against mercy.³⁴ As regard media effect in capital cases he says when the media coverage consistently demonises the accused the jurors who are selected are going to be much more likely to be convinced of the accused's guilt which may mean that many jurors are ready to hand down a death sentence even before hearing any evidence.³⁵ He further suggests a few strategies to subdue this kind of bias for example by applying for a change of venue, postponement of trial till publicity has died out and questioning the jurors about their personal biases. But these options are almost impossible to use especially in cases where public sentiments are high as well as the determination to see justice done immediately. Problem of bias is difficult to overcome in capital cases due to the enormous amount of negative publicity. Romeo Vilelli cites in detail a case of Atlanta in which Richard Jeulla security guard during a routine search of the Centennial Olympic Park ground prior to 1996 Summer Olympics after notifying police helped evacuate the park grounds before the backpack which contained a powerful pipe bomb. Despite initially being hailed as a hero Richard Jeuell found himself being subjected to "trial by media" after the Atlanta Joint Constitution reported that he was a person of interest in the banking. FBI investigation found nothing against him.

He was eventually vindicated but he sued several news agencies for their biased coverage.³⁶

MEDIAROLE – THEMIDDLEPATH.

Media Activism is most welcome phenomenon for justice to be delivered by the courts but not in a way so the even the court gets influenced by it and as a result gets prejudiced against any person. In the case of Y.V. Hanumantha Rao Vs K. Pattabhiram and another³⁷ Chief Justice G.R. Ekkbote of A.P. High Court observed, “When litigation is pending before a Court, 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, as for instance by influence on the judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of court if he prejudices the truth, 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. It is always regarded as of the first importance that the law which we have just stated should be maintained in its full integrity. But in so stating the law we must bear in mind that there must appear to be a real and substantial danger of prejudice”.

When media is active positively it is most welcome to the criminal justice system because it aids the latter in delivering justice. But just as judicial overreach is frowned upon so is media overreach. The prejudicial publication affecting public which in turn affects the accused amounts to denial of fair trial. Prejudicial publication may affect the mind of judge and suggest to the court also. In fact prejudicial publication is within the parameters of contempt of court. In re P.C Sen³⁸ Justice Shaw put the law as follows “The law relating to contempt of court is well settled. Any act done 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 a contempt of court. In R Vs

Gray³⁹ too it was held that to make a speech tending to influence the result of a pending trial whether civil or criminal is a grave contempt.

The question in all cases of comments on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the Contemner as whether it is calculated to interfere with the administration of justice. So press if while criticizing another indulges in libel or slander it shall be answerable in law for such offences both under civil as well criminal law. Art19 (1) (a) of the Indian Constitution protects the freedom of speech and more specifically the ‘freedom of press’ too. But under Art 19 (2) this right is subject to reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

CONCLUSION

Media Activism is the most welcome attitude and a moderate between two extremes-media overreach and media lethargy. But such activism should be hedged by a little restraint so that ruling out the danger of it being converted into media tyranny becomes possible. Press is the fourth pillar of any democratic country. If public opinion is life blood of a nation, press is the body and vehicle to bear, nurture and preserve it and to give it a tangible and concrete shape. In criminal investigation and trials the moot question involved is of life liberty and dignity. The penal consequence may have grave effect on the mind and body of people. The press and media should have a role not to erode and derogate from the concept of life, liberty and dignity of even a single individual. When an innocent person is condemned and punished for not what he did but due to misadventures and fantasies of the media it would be unfortunate indeed. A person cannot be punished in India for a crime unless it is proved beyond reasonable doubts. But if due to media

intervention a person is punished but doubt still hovers that the person may be innocent but for the meddling of media the real sinner is the media. Media ethics need to be recognized, learned and practiced by media if they want to retain the most believed upon social institution in the democratic world.

REFERENCES

1. See Martin Lister; Jon Dovey, [et.al](#); *NewMedia: A Critical Introduction* (Routledge UK., 2nd Edn, 2008)
2. www.businessdictionary.com (last visited on March 2 2018)
3. "Right to Privacy in Sting Operation of Media", *available at* <http://www.odisha.gov.in> (last visited on Jan 1 2019).
4. *Ibid.*
5. *KedarnathSingh V StateofBihar* AIR 1962.
6. *R. Rajagopal V StateofTamilNadu*, 6 SCC 632 1994.
7. Dr.S.S. Srivastava, *RighttoInformation* 81(Central law Agency, Allahabad)
8. *Hindustan Times*, Sept 3, 2013.
9. SC No 114/ 2013.
10. *The Times of India*, Dec 17 2012.
11. 8 SCC 106 2008.
12. NDTV Expose on BMW Case (May 30, 2007) NDTV.
13. AIR SC 970 2011.
14. CrLj 213 (2010).
15. MANU/DE /087/2014.
16. "Bharti's Testimony Was Crucial" *Hindustan Times*, May 28, 2005.
17. *Available at*: <http://www.indiaexpress.com/article/in-dia/latest-laws/vikas-yadav-out-on-bails-66-times-for-treatment> (last visited on 04/02/2018).
18. *State V SiddharthaVasishthaandOthers.*
19. *Black's Dictionary* (9th Ed).
20. *R.KAnandV DelhiHighCourt* SCC 106 2009.
21. *RajendraJiwanMalGandhiV StatesofMaharashtra* 8 SCC 8: SCC 386 1991.
22. Harry Elmer Barnes and Negley k. Teeters, *New HorizonsinCriminology* 4 (Prentice-Hall, USA, 3rd edn. 1959).
23. Charles Menz, *Bigger and Better Murders in great American Bandwagon* 81(Harper-Reed, NewYork, 1928).
24. *Supra* Note 22.
25. *Ibid*
26. The motion picture "A cry the dark depicted Chamberlain as played by actress Meryl Streep caught in trial by media which led to her false conviction.
27. (2) SCC 686 2005.
28. *PratimAliasPetermukherjeaV UnionofIndiaandAnother.*
29. "Media trial most foul" *The Hindu*, Sept 2 2015.
30. *Ibid.*
31. *DrRajeshTalwarandAnother V CentralBureauofInvestigation* 2013 (82) ACC 303.
32. *Availableat* the Hoot. esu. the hoot.org (first published on November 6 2013).
33. *Availableat* www.psychologytoday.com (last visited February 2 2019).
34. *Ibid.*
35. *Ibid.*
36. *Ibid.*

37. AIR AP 30 1975.

38. AIR SC 1821 1970.

39. (1900) 2Q.B.D 36 at p 40.