

MEDIA TRIAL: A HINDRANCE IN DISPENSATION OF JUSTICE

By SM Aamir Ali²⁸⁰ & Mohd Imran²⁸¹

Abstract

“Fair is foul and foul is fair” recollecting the lines enshrined in Shakespeare’s play Macbeth, one could indisputably perceive what it contemplated acceptable today may conceivably be malevolent and vice versa perchance deplorable now and adequate in future. To understand the antagonism of free trial and free media one has to reflect on the evolutions of court and media and its present scenario. The judiciary and the media share a common bond and play a complimentary role to each other; man is the centre of their universe. Both the judiciary and media are engaged in the same task; to discover the truth, to uphold the democratic values and to deal with social, political and economic problems. Media as referred to by many as the “eyes and ears of the general public”. Media intervention in under trial cases has become very normal affairs in the society. Judges are compelled somehow to take decision according to the follow up of Media criticism. For which, declaration of verdict by media becomes the final verdict in trial courts especially in many high profile cases. Reincarnated as public court, media separately starts investigation and forms public opinion. It is obvious that to run the democracy very smoothly, a free and healthy media functionary is needed. But most of the time the freedom of expression is engrossed the controversy by the sub clause (2), article 19 of the Constitution of India. It does not embrace the freedom to contempt of court. The journey from ‘mission to profession to creation’ or in other words ‘passion to fashion’ endorses the selling of human values. This paper is a humble effort to analyze the need of media involvement and playing a crucial role in establishing the justice in the society.

²⁸⁰ 3rd Year BA LLB Student, Aligarh Muslim University, Murshidabad Centre

²⁸¹ 3rd Year BA LLB Student, Aligarh Muslim University, Murshidabad Centre

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INTRODUCTION

Media is regarded as one of the pillars of democracy. Media has wide ranging roles in the society. It plays a vital role in moulding 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. Freedom of media is the freedom of people to be informed of public matters. Free and healthy press is indispensable for the functioning of democracy. In a democratic set up there has to be active participation of people in all affairs of their community and the state. It is their right to be kept informed about the current political social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider forming broad opinion in which they are being managed, tackled and administered by the government and their functionaries.

Media intrusion is an ethical dilemma for the developing nations of the globe. It has grown up to be a trend that media come forward to investigate the truth. 'Trial by media' is a phrase popular in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law ("Trial by media - Wikipedia, the free encyclopedia"). As the judiciary system has the key responsibility in the society, there have been established various courts at all levels to get the justice properly in stipulated time. Legal system exists for litigants. Nonetheless, practically it is now hardly seen. It has become the coin in the hands of lawyers, judges and of course authoritative and influential persons.

Not only people wait to obtain justice for years, but also they sometimes become bound for oblation to buy the justice. The agony of the litigants is almost not felt by anyone. 'Justice delayed is justice denied' (Dutta & Ray, 2012).

Thereby, the major concern is, and which is the core issue of this work is the need to check prejudicial effect caused by a sensational reporting of a sub-judice matter. So far as a criminal trial is concern media reporting has a more negative influence rather than a positive effect. Thus, media cannot be granted a free hand in court proceedings. The media has to be properly regulated. Although our judicial system relies on the competence, impartiality and fearlessness of the trial

judge and one can argue for unrestrained media converge of court proceeding on the ground that it will not influence the judgment. Thus, in such a scenario there is an urgent need for the news-media to respect the balance between the 'freedom of press' and the 'right to fair trial.

FREEDOM OF MEDIA

"Right to Freedom of Speech and Expression" is a fundamental right of the citizens of India. This is mentioned in Part III of the Constitution of India - Article 19(1). This Article is so wide in scope that Freedom of the Press is included in Freedom of Speech and Expression. It includes the right of free propagation and free circulation without any previous restraint on publication.

The Article 19(2) of the Constitution imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India. The security of the state, friendly relations with foreign states, public order, decency of morality or in relation to contempt of court, defamation or incitement to an offense. Whenever, emergency is declared in a country, these rights remain suspended. All our governments have preferred press freedom to be linked with social and fundamental responsibilities and the obligation to report objectively.

MEDIA TRIAL

The prevalence of an independent judiciary as well as a free press are both essential in a constitutional democracy. In recent years, with the growth of Cable Television and Channels, Local Radios, News Papers and Magazines, Networks and Internet the range and reach of media has increased a lot. Unlike Western nations, the circulation of newspapers and magazines has also been continuously growing in India on account of rapidly increasing literacy levels. This continuously expanding readership and viewership has given our news-media organizations an unprecedented role in shaping popular opinions and preferences. 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. This phenomenon is popularly called as media trial. Trial is a word, which is associated with the process of justice.

Earlier, journalism was not under pressure to push up TRP ratings or sales. So the journalists did their work with serious intent and conviction, with courage and integrity. They did not pronounce people guilty without making a serious attempt to study the charges, investigate them, and come to their own independent conclusions, without fear or favor. They did not blindly print what law enforcers claimed, what the bureaucracy said or what politicians planted on to them. That is why people trusted them. But now we are seeing a different self-acquired role of media in form of 'media trial'. Everyone manipulates the media to serve their own interests or hurt their rivals. The problem does not lie in media's exposing the lacuna of a bad investigation by cops, or mal-performance of the duties ordained to the civil servants but the eye-brows start to raise when the media *ultra vires* its legitimate jurisdiction and does what it must not do.

Media has now reincarnated itself into a 'public court' (Janta Adalat) and has started interfering into court proceedings. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of '*presumption of innocence until proven guilty*' and '*guilt beyond reasonable doubt*'. Now, what we observe is media trial where the media itself does a separate investigation, builds a public opinion against the accused even before the court takes cognizance of the case. By this way, it prejudices the public and sometimes even judges and as a result the accused, that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty unredressed. The print and electronic media have gone into fierce and ruthless competition, as we call them '*aggressive journalism*' that a multitude of cameras are flashed at the suspects or the accused and the police are not even allowed to take the suspects or accused from their transport vehicles into the courts or vice versa. The most objectionable part, and unfortunate too, of the recently incarnated role of media is that the coverage of a sensational crime and its adducing of 'evidence' begins very early, mostly even before the person who will eventually preside over the trial even takes cognizance of the offence, and secondly that the media is not bound by the traditional rules of evidence which regulate what material can, and cannot be used to convict an accused.

Thus, trial by media, in any case, be it a crusade or otherwise is not acceptable. Media has an important role to educate people about the factual aspects of a case. It act as a mirror for the society. It brings only what is happening around and make the legislatures and government answerable for

the act of them. But it cannot justify valuing evidence, arriving at a conclusion or returning a verdict. It is within the boundaries of certain restrictions; this right ends when the man's freedom of privacy and fairness begins. That has been clearly demarcated by the press council and by the law itself. A newspaper report of a factual event taking place or an accused being questioned because of that is admissible and permissible. But going beyond that i.e. to gather evidence, to analyse it and to return a finding or even rashly give crossing comments on whatever is available with the police is again crossing that *Laksman- rekha* where the rights of somebody else are affected.

RIGHT TO FAIR TRIAL

Right to a fair trial is absolute right of every individual within the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution. Needless to say right to a fair trial is more important as it is an absolute right which flows from Article 21 of the constitution to be read with Article 14.

One's life with dignity is always given a priority in comparison to one's right to freedom of speech and expression. Media should also ponder upon these facts. Fair trial is not purely private benefit for an accused – the public confidence in the integrity of the justice system is crucial. The right to a fair trial is at the heart of the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, 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. The media treats seasoned criminal and the ordinary one, sometimes even the innocents, alike without any reasonable discrimination. They are treated as a 'television item' keeping at stake the reputation and image. Even if they are acquitted by the court on the grounds of proof beyond reasonable doubt, they cannot resurrect their previous image. Such kind of exposure provided to them is likely to jeopardize all these cherished rights accompanying liberty.

In the case of **Zahira Habibullah Sheikh v. State of Gujarat**

The Supreme Court has held, *“the principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices.... fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.”*

This right of fair trial may also be defeated if the media while reporting a matter use such a language which may have an effect to influence the mind of a Judge and control the judicial processes. Needless to remind that in recent times, in order to sensationalize the reporting and to increase its commercial value, the media starts naming and blaming the suspect or accused. Photographs and other materials in the form of interview etc. are published and shown along with public reaction. The problem is more visible when the matters involve big name and celebrities. In such cases media reporting can swing popular sentiments either way.

PREJUDICE OR INTERFERENCE WITH JUDICIAL PROCESS

“The tension between the courts and the media revolves around two general concerns. The first is that there should be no ‘trial by media’; and the second is that it is not for the press or anyone else to ‘prejudge’ a case. Justice demands that people should be tried by courts of law and not be pilloried by the press.”

In respect of court proceedings, the problem finds its worst manifestation in the coverage of **sub-judice** matters where the reporting can be clearly prejudicial to the interests of the litigating parties. This problem is heightened in instances of high-profile criminal investigations and trials, especially in matters involving celebrities – where media reporting can shape popular sentiments and hence create undue pressure on judges and lawyers.

The major concern with respect to the reporting of court proceeding can be stated as follows:

First and foremost, there is an obligation to ensure fair and accurate reporting throughout the course of a legal proceeding, whether at the stage of investigation, during arguments in the courtroom and

eventually when the judgment or order is given. This is a concern since it is very common to come across reports where statements made by investigators or even the courtroom discussions between the judges and lawyers are either erroneously cited or quoted without an explanation of their context.

Secondly, in some cases there is a compelling need to protect the identity and privacy of parties. As a norm, judicial proceedings should be open to public scrutiny, but there is a need to restrain the same in some exceptional circumstances. For instance the identity of victims of sexual offences should not be disclosed.²⁸² Furthermore, our procedural laws empower judges to order *in camera* proceedings in family-related disputes and rape trials – so as to protect the victims and witnesses from undue pressure.

The third major concern of course is the need to regulate reporting on *sub judice* matters. Particularly, in criminal cases, photographs are shown, fact-situations are fictionally recreated and a hypothesis is made without thorough verification. This has occurred in numerous investigations in recent years.

MEDIA’S STRUGGLE FOR JUSTICE

We cannot ignore case wherein media has played a positive role in drumming up public support against apparent injustice. It was because of media’s relentless campaign in high profile murder cases of Jessica Lal, Priyadarshini Matoo and Nitish Katara that citizens were able to highlight injustice through mass peaceful protest/ rallies and appearances in media, both print and electronic. Notably, talk shows of various news channels provided platform to the citizens to raise these burning issues and demand justice.

PRIYADARSHINI MATOO CASE

Santosh Kumar Singh, son of a senior IPS officer, was accused of raping and brutally killing Priyadarshini Matoo, a 25 year old law student, in 1996. In 1999, the trial court acquitted him quoting manipulation of evidence by influential father of accused. The Delhi High Court in 2006 held him guilty and awarded him death penalty since his guilt was proved “beyond any doubt by

²⁸² This observation was made in *R. Rajagopal & Anr. v. State of Tamil Nadu*, (1994) 6 SCC 632

unimpeachable evidence,” including DNA fingerprinting. It is relevant to refer here to the remarks of the then Chief Justice of India, Justice Y. K. Sabharwal, who gave full marks to the media for being instrumental in spurring the judiciary into action in the instant case, which had been lying in cold storage for years.

JESSICA LAL MURDER CASE

The Manu Sharma, son of a wealthy politician in Haryana, was accused of killing Jessica Lal in 1999, because she refused to serve him liquor in a restaurant where she was working as a bar maid. A long and protracted trial followed which lasted seven years. In 2006 all the accused were set free due to lack of evidence. The case was reopened following public outcry publicized extensively in the media. In the immense uproar, hundreds of thousands of people e-mailed and sent text messages conveying their outrage on petitions forwarded by media channels and newspapers to the President. The prosecution appealed and the Delhi high court conducted proceedings on a fast track with daily hearings over a month. The Lower Court judgment was founded faulty in law, and Manu Sharma was founded guilty. He was sentenced to life imprisonment in December, 2006

NITISH KATARA MURDE CASE

Nitish Katara , a young business executive was murdered by Vikas yadav, son of an influential politician of Uttar Pradesh. The trial court had held that Nitish’s murder was an honour killing because the family of the accused did not approve of the victim’s relationship with the sister of the accused the ensuing trial followed the path of similar cases which involve “ money and muscle power” in India. A number of respectable witnesses, including key friends of both the victim and the girl, repudiated their initial testimony. The person in the eye of storm, Bharti yadav, too retracted her initial verbal statements wherein she had admitted her relationship with the victim. However, owing to intense media scrutiny, and also the strength of the accused and his accomplice in May 2008. In the end, the victim’s mother, Neelam Katra, who fought the six year long legal battle, thanked the media for supporting a just cause.

CONCLUSION

The Judiciary and the Media are the third and fourth pillars respectively of a Democratic set up. Both are indispensable for the smooth functioning of the system. While the former should duly regard the Freedom and Right of the latter to cover and disseminate news about court proceedings in an open justice system, the latter on its part also ought to show its due diligence and extreme caution while reporting the same so as to preserve the sanctity of the former as well as for ensuring a free and fair trial. Any confrontation between the two over Reportage of news in sub-judice matters is indeed unwarranted. On the contrary, they both rather ought to work in tandem respecting each other's domain and independence.

Though media act as a watchdog and act as a platform to bring people voice to the notice of society and legislatures. 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.

Somehow, trial by media has no doubt assumed gigantic proportion. On one hand we have some famous criminal cases which would have gone unpunished but for the intervention of media, while on the other hand, media has drawn flak for pre-empting the court as well as for irresponsible and erroneous reporting. At times they hype the matter which disturbs the proceedings. They have fair right to comment on judgments, but commenting during the trial vitiates the very purpose of justice. "After all, judges too are human beings and they get distracted when they read the comments on the cases they are hearing.