

## VICTIM OF SEXUAL ASSAULT AND IMPORTANCE OF MEDIA

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### Abstract

The media is the gatekeeper and watch dog of the society. The media acts as multifaceted institution with multiple activities.

It takes the message simultaneously from all the parties involved and builds the opinion on an issue, with definitely threatens the establishment from violating rights with the growth of the number of news channels and in increasing popularity of "breaking news" Electronic Media has come to play a major role in stirring public opinion and consciousness public advocacy outside the court through well- established mechanism like lobbying, negotiations and mobilization of public opinion has been effectively undertaken by the media.

### Introduction

#### ✓ Evolution

The word *media* is defined as "one of the means or channels of general communication, information, or entertainment in society, as newspapers, radio, or television."<sup>309</sup>

The beginning of human communication through designed channels, i.e. not vocalization or gestures, dates back to ancient cave paintings, drawn maps, and writing.

The Persian Empire (centred on present-day Iran) played an important role in the field of communication. It as the first real mail or postal system, which is said to have been developed by the Persian emperor Cyrus the Great (c. 550 BC) after his conquest of Media. The role of the system as an intelligence gathering apparatus is well documented, and the service was (later) called *angariae*, a term that in time turned to indicate a tax system. The Old Testament (Esther,

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<sup>309</sup> [www.pitt.edu/mitnick/evolutiontheory](http://www.pitt.edu/mitnick/evolutiontheory)

VIII) makes mention of this system: Ahasuerus, king of Medes, used couriers for communicating his decisions.<sup>[citation needed]</sup>

The word *communication* is derived from the Latin root *communicare*. This was due to the Roman Empire also devising what might be described as a mail or postal system, in order to centralize control of the empire from Rome. This allowed for personal letters and for Rome to gather knowledge about events in its many widespread provinces. More advanced postal systems later appeared in the Islamic Caliphate and the Mongol Empire during the Middle Ages.

The term "media" in its modern application relating to communication channels is traced back to its first use as such by Canadian communications theorist Marshall McLuhan, who stated in *Counterblast* (1954): "The media are not toys; they should not be in the hands of Mother Goose and Peter Pan executives. They can be entrusted only to new artists, because they are art forms." By the mid-1960s, the term had spread to general use in North America and the United Kingdom. ("Mass media", in contrast, was, according to H.L. Mencken, used as early as 1923 in the United States.

✓ **Media**

**Media** are the collective communication outlets or tools that are used to store and deliver information or data. It is either associated with communication media, or the specialized communication businesses such as: print media and the press, photography, advertising, cinema, broadcasting (radio and television), and/or publishing.

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✓ **Sexual Assault and violence against women**

**Sexual assault** is any involuntary sexual act in which a person is coerced or physically forced to engage against their will, or any non-consensual sexual touching of a person. Sexual assault is a form of sexual violence, and it includes rape (such as forced vaginal, anal or oral penetration or drug facilitated sexual assault), groping, forced kissing, child sexual abuse, or the torture of the person in a sexual manner.

Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society. Violence against women takes a dismaying variety of forms, from domestic abuse and rape to child marriages and female circumcision. All are violations of the most fundamental human rights.

### **Legal Aspects**

#### ✓ **OFFENCES AGAINST WOMEN IN INDIA**

There are a variety of psychological, economical, sociological forms of victimization of women. In our society we have been seen that women are economically discriminated at working places. At the same time women are also exploited physically, emotionally and sexually by their husbands. It is shocking to hear that women had no right to decide whether they could continue their pregnancy or terminated it. The offences are of various types. They find mention in many enactments. These under- mentioned provisions are enumerated in Indian Penal Code, 1860:

- **Section 304-B** - dowry death
- **Section 354** - Assault or criminal force to woman
- **Section 361** - kidnapping from lawful guardianship
- **Section 366** - kidnapping, abducting or inducing a woman
- **Section 372** - selling minor for purposes of prostitution
- **Section 376** - rape

- **Section 376-A** - intercourse by a man with his wife during separation
- **Section 376-B** - intercourse by public servant with woman in his custody
- **Section 376-D** - intercourse by any member of the hospital with any woman in that hospital
- **Section 494** - remarriage
- **Section 498** - enticing or taking away or detain a married woman
- **Section 498-A** - dowry cruelty

These are the main offences under the IPC against women. Certain offences are general against all women and certain offences are applicable in respect of married women.

### **Section 375 - Sexual Assault:**

Sexual assault means –

- (a) The introduction (to any extent) by a man of his penis, into the vagina (which term shall include the labia majora), the anus or urethra or mouth of any woman or child–
- (b) the introduction to any extent by a man of an object or a part of the body (other than the penis) into the vagina(which term shall include the labia majora) or anus or urethra of a woman
- (c) the introduction to any extent by a person of an object or a part of the body (other than the penis) into the vagina(which term shall include the labia majora) or anus or urethra of a child.
- (d) manipulating any part of the body of a child so as to cause penetration of the vagina (which term shall include labia majora) anus or the urethra of the offender by any part of the child's body

. The apex court in State of Punjab v. Major Singh 1967 AIR 63, while dealing with section 354 had interpreted the term 'women' denoting female of any age. It further held that an offence which does not amount to rape may come under the sweep of section 354, IPC.

- ✓ **Naming of victim of sexual assault**

**Section 228 A (1)** of the Indian Penal Code states: Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an [offence under section 376, section 376A, section 376B, section 376C, section 376D) is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

**Section 228 A (2)** provides three exceptions under which the victim's name can be published: a) by/under the order in writing of the police officer acting in good faith for the purpose of the investigation; b) with the written consent of the victim; c) with the written consent of the victim's kin if the victim is dead, minor, of unsound mind.

There is a **third sub section to Section 228 A**, It states: "The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section."

In 2003, Justice Arijit Pasayat and Justice Doraiswamy Raju, while ruling in the case of **Bhupinder Sharma v. State of Himachal Pradesh**, in which a 16 year old girl had been gang-raped by a group of strangers, decided not to disclose the name of the victim, reasoning thus: "True it is, the restriction does not relate to printing or publishing of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as 'victim' in the judgment."

This judgement could have set a precedent for the rest of the higher judiciary. But it has not - as is amply evident from the July 2013 order that cited the victim's name 62 times.

- ✓ a judgement delivered as recently as July 2013 by a two-member Supreme Court bench of Justice P Sathasivam and Justice Jagdish Khehar in a case called 'Karthi @ Karthick v. State of Tamil Nadu', where a man named Karthick was held guilty of repeatedly raping his young neighbor in a village in Tamil Nadu. "but (because) it will be regarded as the

ideal example of judicial laxity as it disclosed the identity of the rape victim 62 times in a nine pages judgment which invariably would have attracted the offence under Section 228A of the Indian Penal Code if it were others."

✓ **Freedom of Media Vis-À-Vis Responsible Journalism**<sup>310</sup>

The strength and importance of media in a democracy is well recognized. Article 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 and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India. Media is not only a medium to express one's feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions. The increased role of the media in today's globalized and tech-savvy world was aptly put in the words of Justice Hand of the United States Supreme Court when he said, "The hand that rules the press, the radio, the screen and the far spread magazine, rules the country".

Democracy is the rule of the people. A system which has three strong pillars. But as Indian society today has become somewhat unstable on its 3 legs- the executive, the legislature and the judiciary, the guarantee of Article 19 (1)(a) has given rise to a fourth pillar- media. It plays the role of a conscious keeper, a watchdog of the functionaries of society and attempts to attend to the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and taken suo motu cognizance of the matters in various cases after relying on their reports and news highlighting grave violations of human rights. The criminal justice system in this country has many lacunae which are used by the rich and powerful to go scot-free. Figures speak for themselves in this case as does the conviction rate in our country which is abysmally low at 4 percent. In such circumstances the media plays a crucial role in not only mobilizing public opinion but bringing to light injustices which most likely would have gone unnoticed otherwise.

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<sup>310</sup> Freedom of press vis-à-vis responsible journalism [http://www.legalserviceindia.com/articles/fre\\_pre\\_v.htm](http://www.legalserviceindia.com/articles/fre_pre_v.htm)

However, there are always two sides to a coin. With this increased role and importance attached to the media, the need for its accountability and professionalism in reportage can not be emphasized enough. In a civil society no right to freedom, howsoever invaluable it might be, can be considered absolute, unlimited, or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the constitution has to be exercised within reasonable boundaries. With great power comes great responsibility. Similarly, the freedom under Article 19(1) (a) is correlative with the duty not to violate any law.

Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. This is the threshold on which we are standing today. Television channels in a bid to increase their TRP ratings are resorting to sensationalized journalism with a view to earn a competitive edge over the others. Sting operations have now become the order of the day. They are a part of the hectic pace at which the media is evolving, carrying with every sting as much promise as risk. However, though technology cannot be thwarted but it has its limits. It can not be denied that it is of practical importance that a precarious balance between the fundamental right to expression and the right to ones privacy be maintained. The second practice which has become more of a daily occurrence now is that of Media trials. 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. Both are tools frequented by the media. And both highlight the enormous need of what is called ‘responsible journalism’.

✓ **Media’s Responsibility towards the Victim**

The media, whether it is newspaper, radio, or television, has a history of insensitive treatment toward victims. Photos of a victim’s blood on the street, images of body bags, and TV cameras at funerals trying to interview grieving parents are all things that happen too often. Do we really need to see these images? Does hearing the gory details of a brutal murder enhance our understanding of the story or its larger issues? Probably not, yet these are images we are inundated with daily.

While some victims report a favourable experience with the media, other victims describe a painful and draining experience. The sensitivity the victim receives will of course depend on the individual(s) the victim has to deal with. The media can intensify the feelings of violation and the

loss of control that many victims feel. Some of the most common complaints from victims concerning media are:

- interviews at inappropriate times, such as at funerals,
- footage/photographs of crime scenes,
- interviewing/photographing child victims,
- naming the victim and providing access to them,
- discussion of gruesome details,
- inappropriate/aggressive questioning,
- printing information that would negatively impact the victim's credibility,
- glorifying the violent act or the offender and,
- blaming the victim for the crime.

There is no need for any of these things. News reports should print the substantiated facts. Does the public really have the right to know the specific details of a murder victim's last moments alive? How will this better their understanding of the crime that has been committed?

Victims deserve to have some rights when it comes to contact with the media. While legislators have always left it up to the media to police themselves, many would argue that the media has done little to set guidelines for themselves. In fact, the media has no formal training or policy designed to teach reporters and photographers how to approach victims appropriately. Some of the rights that victims should have available to them during their dealings with the media include the right to:

- grieve in private,
- say no to interviews if the victim so wishes,
- select a spokesperson/advocate to deal with the media,
- select the time and place for any interviews,



- request a specific reporter,
- refuse a specific reporter,
- release a written statement in lieu of an interview,
- exclude children from interviews or harassment,
- refuse to answer any questions or avoid any topic,
- demand a correction when a mistake is made and,
- ask that cameras/reporters not attend a funeral or the victim's home, or show offensive images on television.

✓ **Present legal framework**

In 2013, according to the National Crime Record Bureau<sup>311</sup>, 1,636 cases of sexual violence were reported. With more and more cases of rape and sexual assault being reported by the media, the noise that Delhi is “rape capital of India” is getting louder.

1..Despite the change in laws and better awareness about women's rights, there is no decline in the cases of rape. On Dec. 9, 2014, a young girl was allegedly raped by the driver of a taxi she hired to return home at night. The driver, according to the girl's statement, threatened to abuse her in the same brutal manner as the paramedical student was two years ago by her rapists.

2.Delhi presents more challenges to women, especially regarding physical safety. Women often talk about their experience of being groped and molested in buses or on the streets. Streets are rarely well lit. There is a tendency among women to simply accept the sexist behavior of men rather than confront them. In other Indian cities like Mumbai, Chennai and Bengaluru, the public is less likely to tolerate such behavior.

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<sup>311</sup> Trial by media, National Bar Association of India; <http://www.nationalbarindia.org/articles/54/trial-by-media-a-legal-dilemm>

3. Sexual violence appears to be on the rise everywhere in India. Statistics indicate that the number of reported rapes, molestation and harassment of women rose the fastest among crimes since 2013. Delhi, with 18.63 reported rapes for every 100,000 women, tops the country in reported rapes as a proportion of its population. Such crimes probably get reported in Delhi more often. The two cities of Gwalior and Jabalpur (both in Madhya Pradesh, central India) have a higher number of rapes as a proportion of their populations.

4. Delhi is the preferred destination for millions of migrants from different backgrounds and value systems that often condone violence against women. Some are orthodox and cannot accept women as equals who can walk on the streets without male protection.

5. It is critical to examine the connection between sexual violence and urban destitution. A study of the profile of some of the rapists indicates that many live in a dehumanized environment. They are violent because they have grown up in a violent environment.

6. There are two aspects to the problem: the lack of government and societal responsibility to make public spaces safe for women. The other is insensitivity toward women's rights and well-being.

7. In recent months, legal experts are also pointing to the problem of false reporting of rape. In some cases, consensual sex is termed as rape by the girl's parents or guardians. The latter is usually the case where the victim is below 18 years and has eloped with a lover.



### ✓ Crime in The News

One reason that is almost always cited for the inclusion of crime details and personal information (either positive or negative) about the victim or offender is that it gives the story newsworthiness. Media outlets include the graphic details of a crime because they add “sensation” to the story and therefore make the story more likely to sell. For example, when a child is the victim of a crime, the story automatically becomes more newsworthy because children are not as likely as young adults to be victimized, and the emotional reaction leads to more interest for news. When a crime is particularly heinous or brutal, or if there were multiple victims, the media is more likely to report it. Unfortunately, because these types of crimes are more likely to be published, society’s view of crime becomes skewed. The most reported crimes tend in fact to be the less common types. This is very concerning because people believe that crimes rates are higher and more violent than they actually are, giving the public a sense of disorder. By reporting most often on the most violent of crimes the media does “sell” their stories but they also lead the public to believe that they have a higher risk of being victimized than reality.

The press is prohibited from reporting the details of some cases, particularly the names of child victims and witnesses and adult sexual assault victims. This is done to protect the victims. If the offender’s identify would lead to the identification of the victim (i.e. father-daughter incest), the

offender's name may not be published either. Publication bans have both positive and negative effects, particularly for sexual assault victims, no matter how well intended they are. For example, it is quite possible that the publication of sexual assault victims' names could discourage other victims from coming forward out of fear of being identified. However, some argue that keeping the names of the victims a secret only adds to the shame the victim experiences, and that publishing their names would show the public that sexual assault victims have nothing to hide. In fact, many sexual assault victims want their names published.

### **Comparative Study**

#### **✓ United States**

As a matter of courtesy, most newspapers and broadcast media in the United States do not disclose the name of an alleged rape victim during the trial, and if the alleged rapist is convicted, most will continue to not identify the victim. If the case is dropped or the alleged rapist is acquitted, most media will no longer shield the name of the alleged victim. This practice was probably related to laws in some states which made it a crime to publicly reveal the name of the victim in a rape case. When such laws were challenged in court, they were routinely struck down as unconstitutional.

#### **In Cox Broadcasting Corp. v. Cohn 420 U.S. 469 (1975),**

- The U.S. Supreme Court ruled unconstitutional a Georgia statute that imposed civil liability on media for publishing a rape victim's name. The news station had obtained the victim's name from public court records—a factor the Supreme Court held to be important, noting that "the First and Fourteenth Amendments command nothing less than that the States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection."

#### **West Africa**

- This is a Recent Case of West Africa where the issues are going on the Identification of the Sexual Harassment by Media which is very Controversial as there is no Law on it because Judiciary over here, Judiciary says the Identification can be done of the victim Unless Judiciary Stops the media to do so.. Women's rights groups in Sierra Leone West Africa are raising concerns about how the media is treating a 24-year-old university student who

has accused the deputy education sment minister of rape. The minister in question, Mamoud Tarawalie, was fired earlier this month after the rape charges were filed against him. Groups are concerned that media coverage of this case will discourage other

- Ahmed Sahid Nasralla is the managing director for African Young Voices, a local radio station and newspaper in Freetown that has covered the rape case.
- Nasralla has published photos of the alleged victim, an act some criticize but one he defends.
- "In one of the photos, she was wounded on her lip and that one we showed. And we distorted her eyes so you would not recognize her, but we tried to show areas where she got injured just so the public would know," explained Nasralla. The director insists he took all necessary precautions to protect her identity. Other local media outlets printed and broadcast the alleged victim's name and published a clear photo of her. Some have accused her of lying.
- An organization called LAWYERS, which stands for "Legal Access through Women Yearning for Equal Rights and Social Justice," has cried foul.
- The group says section 41 of the Sexual Offences Act of 2012 makes it an offense for anyone to publish or make public information about a rape victim.
- Simitie Laval, the president of LAWYERS, says media actions in this case will reverse the gains for rape victims that have already been made.

### **Conclusion**

Media is regarded as one of the pillars of democracy. Media has wide ranging roles in the society. Media 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 as they should be informed of public matters. It is thus needless to

emphasis that a free and a healthy press is indispensable to 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 to form broad opinion in which they are being managed, tackled and administered by the government and their functionaries. To achieve this objective people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their future course of action. The right to freedom of speech and expression is contained in article 19 of the constitution. However the freedom is not absolute as it is bound by the sub clause (2) of the same article. However the right to freedom and speech and expression does not embrace the freedom to commit contempt of court.

But when it comes to dealing with the victims of sexual assault, the media should take special care while dealing with them. As it is, the victim of sexual assault undergo immense mental and emotional pressure, the insensitivity by the media while reporting their case can damage the reputation and the state of the victim. Victims have a right to privacy when it comes to disclosure of their name and other details. Therefore, the media shall maintain a balance and take special care while launching any case of sexual assault in the society.