



A critical study of media trials influence on the justice delivery system in India

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Abstract

In India, media appears to interfere with court proceedings. The purpose of this research was to explore the impact of media trials on the Indian criminal justice system. Researcher also examines the relationship between court verdict and media trials with special reference to the constitutional mandates in India, where the constitution guarantees the freedom of press, the right to fair trial or the right to life of an accused person cannot be compromised. This paper also critically attempts to elaborate the media trials versus the right to fair trial. The concluding aim of the paper is to find a solution which involves justice being served by the judiciary and unbiased reporting by the media.

Keywords: media trials, judiciary, fair trial, justice, freedom of speech and expression

Introduction

"Fair is foul and foul is fair"

- Shakespeare's Macbeth; Act 1, Scene 2,

"Trial by media", a popular term in the early 21st century and late 20th century is used to define the influence of newspaper and television coverage on the status of a person after or before a judgment announced by the court. There has been a fiery debate between free press supporters and individuals who highlight a person's right to fair trial and right to privacy. Media is frequently accused of instigating public excitement in court cases similar to a lynch mob. There have been a lot of cases in India, the final decision for which was very manifestly affected by this process of media trial, like the infamous Aarushi murder case, Jessica Lal murder case, the very recent Sushant Singh Rajput's death case etc. The media's role in influencing trials in India especially came to attention during the Manu Sharma v. The State (NCT of Delhi). (2010) 6 SCC 1 (Jessica Lal homicide trial). The media's role was also discussed in the Santosh Kumar Singh v. State through CBI- (2010)9 SCC 747 (Priyadarshini Mattoo case). There have been several cases in which the media has been blamed for influencing the court judgment. Media trial is an unnecessary interference in the justice process. A fair trial is an important component of the judicial system.

There is no reference to trial by media in the Indian constitution. Media freedom refers to the freedom of expression and speech of the general public. Although Article 19 addresses the right to expression and speech, media trial tenets are not included. Media freedom is not complete because it is limited by Article 19 sub-clause 2 in which, free press expression refers to the lack of interference from outwitting state. A clear definition of press freedom originated from the Indian Express Newspaper vs. Union of India case (AIR 515, 1985 SCR (2) 28). Based on this case, the expression of press freedom refers to freedom from disturbance of the newspaper's circulation and content. Press freedom has been considered the heart of political and social discourse.

The media has been given immense power under Article 19(1)(a) of the constitution, several world leaders including Pandit Jawaharlal Nehru have propagated for the freedom of

the press as they believed that media is the cornerstone for democracy. The importance of Article 19(1)(a) was given emphasis by Justice Bhagwati in the case of Maneka Gandhi v. Union of India AIR 1978 SC 597,

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential."

In democratic states, press or media is considered as the fourth pillar. Media is considered as the "eyes and ears of the general public". Acting as public court, media starts its own investigation and forms public opinion. It can also not be denied that for the smooth functioning of a democratic society, freedom of press is necessary, but from recent times the freedom of expression is being misused and it acts as a deterrent to the right of fair trial of an accused person. Trial by media has become a common norm in today's society. Sometimes even judges are forced to make a decision as per the public opinion which is a result of media trials.

The Criminal law and criminal jurisprudence of our country is based on the doctrine that the guilt of any person charged in a court of law has to be proved beyond reasonable doubt and that an accused is always to be presumed innocent unless he is proved guilty in a court of law after observing all the legal safeguards of an accused. Apart from this the accused has a right to remain silent also because an accused is protected against self-incrimination. It is crucial to note that the freedom of speech is assured by several international conventions as well like the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, 1966^[17], etc.

Media Trials: A Constitutional Reference

The Supreme Court in Reliance Petro Chemicals Ltd. Case referred to Article 19(1) (a), which deals with the freedom

of speech and expression as well as the limitations/restrictions stated in Article 19(2). The Supreme Court stated that, “though the freedom of speech and expression is not limited in the American Constitution, the case of India with regard to the freedom of speech and expression is different in India because certain limitations are provided itself in the Constitution”. The Supreme Court further observed that, “In America in view of the absolute terms of the first amendment, unlike the conditional right of freedom of speech under the Indian Constitution, it would be worthwhile to bear in mind the present and imminent danger theory”. Benjamin N. Cardozo in his book “The Nature of Judicial Process” stated that, “Nonetheless if there is anything of reality in my analysis of the Judicial Process, they don’t stand aloof on these chill and distant heights; The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by”.

The constitution of India does not independently refer to the freedom of the press or the electronic media in part III. As mentioned above, the freedom of press is a derivative of the freedom of speech and expression as laid down in Article 19(1) (a). None of the freedoms in India are absolute, but are subject to reasonable restrictions and these restrictions are itself provided in the Constitution or other Statutes as the case may be. The restrictions of Article 19 (1) (a) are provided in Article 19 (2). Article 20 clause 1 of the constitution states that no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence and not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Article 20 clause 2 states that, no person shall be prosecuted and punished for the same offence more than once. Article 20 clause 3 is important and it deals with the right against self-incrimination. It states, “No person accused of any offence shall be compelled to be a witness against himself”. Article 21 is the important article which guarantees the right to life and liberty. It reads, “no person shall be deprived of his life or personal liberty except according to procedure established by law”.

Influence of media trials on the justice delivery system in India

In *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 case Supreme Court interpreted the words “according to procedure established by law” as requiring a procedure which is fair, just and equitable and not arbitrary. A question which arises is that can a publication or news highlighted by media “unconsciously influence judges and whether judges as human beings are not vulnerable to such indirect influences, at least sub consciously or unconsciously?” There are many views on this point. One view is American view which lays down that, “judges are not liable to be influenced by the media publications”. Another view is the Anglo- Saxon view, which states that, “judges at any rate may still be subconsciously (though not consciously) influenced and members of the public may think that judges are influenced by such publications and such a situation it has been held attracts the principle that, justice may not only be done but must be seen to be done”. It appears that the Supreme Court of India has accepted the Anglo-Saxon view. It can be found in the judgment in *Reliance Petro Chemicals Ltd vs. Proprietors of Indian*

Express News Paper, (1989) A.I.R. SC 190, (1988) 4 SCC 592. The acceptance of Anglo- Saxon view can be seen from the case of *P.C. Sen*, A.I.R 1970 SC 1821, 1970, CriLJ 1525, which was relied upon by the Court in the *Reliance Petro Chemicals* case. The Supreme Court has held that, “no distinction is in our judgment warranted that comment on a pending case or abuse of a party may amount to contempt when the case is tri-able with the aid of a jury and not when it is triable by a judge or judges”. This case was a case, where by way of a writ petition; a civil action was pending in Calcutta High court. A radio broadcast was made by the Chief Minister of West Bengal regarding the west Bengal Milk products control order 1965, the High Court held the Chief Minister guilty of “contempt for justifying the control order” but did not award any punishment to him. The Supreme Court on appeal, agreed with the high court that, “the speech of the Chief Minister was ex facie calculated to interfere with the administration of justice”. In the judgment, the Supreme Court held that, the action of the Chief Minister was likely to interfere with the administration of justice by influencing a judge or judges.

In a promising democracy like ours, the judiciary and the press have an important role to play. Both have to uphold the constitutional philosophy and the rule of law. The judiciary and the press have to complement each other. While the people have a right to be informed, the individual has the right to be protected and defended in a criminal case. Although it is said that the right of an individual should give way to the right of the community, but in criminal justice system, it is the right of the accused, which is supreme. His belief of innocence cannot be forfeited at the altar of freedom of speech and expression. To do so, would be to turn the entire criminal justice system on its head; it would violate Article 21 of Constitution of India, which is the heart and soul of our Constitution. If the rule of law is to be protected and promoted, administration of justice has to be given priority over the freedom of speech and expression as adored by the press.

Trial by media in India is a recent phenomenon. Hence, we find “*sporadic obiter*, but no concrete *ratio decidendi*”. With the growing technology, the role of media has become quite predominantly with the help of internet. By sitting at homes or studios, media has assumed the role of *janta adalat*, they make their findings loud and clear when the matter is still pending in the courts. This has the trend to result in maladministration of justice. The famous maxim that, “let a thousand guilty persons be free but never should one innocent person be punished” is hampered with when media adopts the role of Courts. In 2013, Khurshid Anwar, a 55 year old social activist committed suicide, after the Indian TV channel ‘India TV’ aired its analysis into a case of alleged rape in Delhi. The Channel declared the accused Khurshid Anwar as guilty. The TV channel used the words such as “India TV ladega iss ladki ko insaaf dilaane ki jung and “Iske saath ku karm karne waale ko inzaam tak pahuchaye”. His suicide was a result of the allegations and the immature judgment by the reporters made on national TV.

In *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay (P) Ltd.*, the Hon’ble Supreme Court partly dealt with the issue of freedom of press and administration of justice. Dealing with an provocative article published in the Indian Express with regard to the public issues of Reliance Petrochemicals, “the

Supreme Court had restrained all the six respondents from publishing any article, comment, report or editorial in any of the issues of the Indian Express or their related publications questioning the legality or validity of any of the consents, approvals or permissions to the [said issue of debentures]. The issue raised was about the continuation of such injunction especially when the shares had been oversubscribed though the day of allotment had not yet expired and before the allotment the subscribers could withdraw their subscriptions”.

The Apex Court held: “There must be reasonable ground to believe that the danger apprehended in continuance of the injunction is real and imminent. This test is acceptable on the basis of balance of convenience. However, the Supreme Court has not yet found or laid down any formula or test to determine how the balance of convenience in a situation of this type, or how the real and imminent danger should be judged in case of prevention by injunction of publication of an article in a pending matter. But the Court did caution that public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be preempted or circumvented by public agitation or publications”.

In *State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997), 8 SCC 386, 1997 INSC 0855., while dealing with a case of alleged attempt to rape a minor, the Apex Court observed: “A trial by press, electronic media or public agitation is the very antithesis of the rule of law. It can well lead to miscarriage of justice. A Judge has to guard himself against any such pressure and he is to be guided strictly by the rules of law”. In *M.P. Lohia v. State of W.B* 2005 (2) SCC 686 the Hon’ble Supreme Court dealt with a case where a trial for dowry death was sub-judice, when an article appeared in a magazine *Saga*, entitled ‘*Doomed by Dowry*’. The article was based on the interview of the family of the deceased, giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The Apex Court observed: “We have no hesitation that these types of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is sub judice”. However, the matter was treated as closed by the court rather than taking it further.

In *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 the Apex Court has broadly observed about the danger of trial by media. It opined as under: “There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which out rightly hold the suspect or the accused guilty even before such an order has been passed by the court. Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defense of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial”. It further held: “Presumption of innocence of an accused is a legal

presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it would be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution”.

In *Anukul Chandra Pradhan v. Union of India & Ors. Writ Petition (Criminal) No. 137 of 1996*, it was held that, “It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice.” In the 2012 Delhi gang rape case widely known as ‘*Nirbhaya case*’ the media has taken up the role of an activist but has reported cases of sexual offence callously and without due diligence. The recent NUJS law intern case and Tehelka case are other instances in which the media has become self-proclaimed justice system by labeling and making uncorroborated charges. One of the articles ‘*trial and error*’ has very precisely explained this: -“Part of the legacy of the December 2012 Delhi gang rape is a newly activist media that is both a symptom and a cause of the increased public revulsion against such cases. Laudable as it may be, this media activism is also disquieting, and not just because it might partially be fuelled by a competitive rush to attract larger audiences. Even when well intentioned, recent coverage of sexual violence has tended to degenerate rapidly into a series of trials by media, with the media arrogating to itself and the public the powers of both judge and jury. As a consequence, the media has chipped away at the already precarious agency of assault victims, and also undermined the possibility of justice being delivered.”

The recent Sushant Singh Rajput suicide case in 2020 created a clash between the rights of the accused and the rights of journalists. The accused Rhea was condemned by media trials and was harassed and teased publicly, thereby violating her fundamental rights as well as the principle of natural justice i.e. innocent until proven guilty. The Bombay high court in the instant case even confessed that media trials were being conducted. It even gave directions to the media as to how reporting should be done on matters of death and suicide. Despite directions the court did not announce any punishment to the violators so as to discourage the practice of trial by media.

Media trials V. fair trials: A critical analysis

In the recent times, media reports some things even before the police has found about it. This investigative journalism is good in a participative democracy, but it should be kept in mind that the hindrance by media in the fair trials is more harmful for the sustenance of democracy. While media has a freedom of expression and investigation, the right to privacy and the right to fair trial of an individual should not be compromised. The essence of every democracy is the balancing of interest, so a balance must be maintained between the right to the media to investigative journalism and the right of the individual to fair trial.

Trial by media evolved in the 20th century, with the evolution and growth of print media as well as electronic media and the constant flow of new information in a competitive market gave rise to sensational style of journalism. It was used to increase audience base and

viewership amongst the masses. Trial by media was a new way of spreading information of not just the reforms made by the legislature and how they were implemented by the executive but also how they were upheld by the judiciary. However as explained in the research paper, trial by media even though was a concept to spread information to the masses and to bring about the awareness of the nefarious realities of society forward, the line between informing and deciding has gotten unclear over time.

In its 200th Report, the Law Commission has "opined that today there is a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even Judges and in general on the administration of justice. It said that publications which interfered or tend to interfere with the administration of justice would amount to criminal contempt under the Contempt of Courts Act, 1971. It further suggested that "if in order to preclude such interference, the provisions of the Contempt of Courts Act were to impose reasonable restrictions on freedom of speech, such restrictions would be valid. Since Section 3(2) of the Contempt of Court Act claims that a criminal proceeding is said to be pending, where it relates to the commission of an offence, when the charge-sheet or challan is filed, the Law Commission has suggested this part of the section be amended to lay down that the criminal proceeding is said to begin from the moment of arrest of the offender. It has further suggested that publications with reference to character of the accused, previous convictions, confessions, judging the guilt or the innocence of the accused or discrediting witnesses could also be considered as criminal contempt. It further suggested that the power to restrain the press from publishing or broadcasting or telecasting adverse reports about a criminal case should be given to the High Courts. Although the said Report has not been accepted by Parliament, but the recommendation of the Report are possible pointers to the future scenario involving the freedom of the press?

The media today pierces through the judiciary and does not only form an opinion but constantly feeds the opinion to the public so much so that the public blindly follows the media. The media today has become like the Pope, just like earlier times, the Church was never questioned and blindly followed by the masses, the same is being done with media. the media has been given so much power that news channels and other mediums have become untouchable. Due to overnight emergence and evolution of media and technology, the laws regulating control are lacking today. There are several lacunas that are needed to be filled by the legislature on regulating laws in bringing about control. Several ambiguities in the Contempt of Court Act and The Press Council of India are being taken advantage of and the media channels have escaped liability because of the same.

The 200th law Commission Report "Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971), has recommended a law to debar the media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial."²⁵ The report clearly states that several pre-trial publications have a prejudicial impact in the administration of justice which acts adversely to the institution of the judiciary.

In India, several fundamental rights are given to the citizens; it is not surprising that one might not be in accordance with another. However in the case of trial by media the two conflicting rights are right to freedom of speech and expression which is crucial for running of a smooth democracy and the other being right to a fair trial which go to the root of principles of natural justice. Both rights are equally valuable. However, it is extremely important that one should not overlap the other. The media needs to be checked, they cannot be given such power that in the name of news they can state any biased information or create facts for that matter that interfere with the administration of justice and hide under the ambit of freedom of speech and expression. The right was given to each individual to express their opinions and not to tarnish the reputation of the other or to themselves become the justice system.

The media cannot be given such power as to become the adjudicating authority, it is the function of the court to administer justice and the function of media to report it. The judiciary in India has been given an independent status so that there is no bias and it is the judiciary which should be given the power to administer justice and none other.

The media cannot sway the judges and the public to make a decision. It is the duty of the judiciary to be impartial and look at the facts of the case and the law in place and not be swayed by emotions. The media has plays on the emotions of the public while taking advantage of the lack to checks by the government on the media. It is crucial to act on amending the laws and control the media; otherwise it will become the strongest organ because of the massive support of the public

Suggestions and conclusion

The most suitable way to control or regulate the media is by enforcing stricter punishments and filling in the lacunas that persist in the laws that regulate the media. We cannot allow media to cause hindrance to the administration of justice. It is essential for the courts to act independently in civil as well as criminal cases. The media cannot be allowed to do as it pleases.

It is the duty of the legislative to help protect the judiciary and not let aggressive journalism disrupt the sanctity of the courts. The law cannot allow media to manipulate the masses against the government, moreover the media cannot decide a mans life, the media does not have the power to decide if an accused is guilty or not, neither should be negatively influence the public to believe that the justice system is rigged and bias. Any such perusal should not be allowed to hide under the ambit of freedom of speech and expression, and should be severely punished for the same. The laws need to develop and the media needs to be held accountable. The media needs to understand that with great power comes responsibility. The journalist should follow the ethics of responsible journalism.

Furthermore, we cannot allow the right to freedom of speech and expression trump the right to fair trial, even though right to fair trial is not a fundamental right, it is crucial to understand that it is a basic human right and is embedded in the principles of natural justice. In my opinion, the right to fair trial of an accused is anyway more important that the right of freedom of speech and expression, because in one place a man is fighting for his life and personal liberty and on the other hand certain media channels are trying to gain more viewership at the expense of another's

life. Such acts should be punished and should act as examples to deter other media channels for negatively influencing the masses.

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