

## A critical analysis of media trial and its effect on Indian judiciary

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Received: January 24, 2019

Accepted: March 05, 2019

**ABSTRACT:** *Media gets freedom of press under Article 19(1) (a) of the constitution of India which provides for freedom of speech and expression, by the virtue of this freedom media goes on reporting the news and publishing the articles based on the interview of the witnesses and other parties regarding the matters which are sub judice pending before the court of law and by doing this the media can cause pre judice to the case and affect the administration of justice which will lead to the miscarriage of justice. Media in high profile cases through conducting the investigations and continuous reporting of the news can create so much of hype on the sub judice matters that can cause prejudice and will affect the administration of justice and may lead to miscarriage of justice, the judge has to be impartial and shall pass the verdict only on the basis of the facts and the evidence produced in the court of law but the hype created by media prejudices the mind of judges and may force the judge to pass the verdict against the accused even though the accused is innocent. This paper focuses on how such trial conducted by the media affects the right to fair trial of the accused and brings the conflict between the freedom of press, fair trial and independence of judiciary.*

**Key Words:** *Administration of Justice, Fair Trial, Media, Prejudice, Publications, Sub-judice.*

### INTRODUCTION

The criminal jurisprudence followed in India is based on the theory that an accused is entitled to fair trial and is innocent till proven guilty beyond any reasonable doubt. On account of exclusive coverage media goes a long way to cover and publish interviews of witnesses, victim's relatives, comments of the members of legal fraternity etc. which may cause prejudice to a trial proceedings in particular the judicial mind. In fact this affects the perception of public at large because media reaches out to the mass promptly. In the last decade we have witnessed rapid growth of media influence in the process of access to justice in plethora of cases relating to corruption, rape, murder, sexual harassment, terrorist activities etc. Media activism imposes an indirect pressure on the adjudicating authorities to deliver justice to victims which may interfere with the trial proceedings and may cause prejudice to the accused and the chance of proving his innocence. Trial by media means the impact of the newspaper and television coverage on a person's reputation by creating widespread perception of guilt regardless of any verdict in court of law. Freedom of media in today's world is perceived to be the freedom of the People. Also, it is gratuitous to emphasize on the fact that every citizen has a right to be cognizant on all matters affecting them through media. But it is thought provoking that the media in the present day is such a powerful entity that it manipulates and builds public opinion as the word it promulgates are presumed to be true without questioning its authenticity. Media overlooks the primary idea that governs trial in India which is "Guilty beyond reasonable doubt" and "Innocent until proven guilty". In order to attract more viewers the media end up maligning and tarnishing the image of mere suspects and tagging them as guilty even before the judges. Media by emphasizing on one-side allegations and taking the easy route of just fuelling the public outrage without trying to unearth the reality can be very damaging, which is barely considered by the media.

Freedom of speech and expression is the most powerful key that helps media perform its functions. The freedom of speech and expression is entailed in Article 19(1) (a)<sup>1</sup> of the Constitution of India, however it is not absolute freedom but it is subjected to restrictions established by law. Despite of the reasonable restrictions of freedom of speech and expression, one can see the way in which the media abuses this freedom in the name of its own trial to interfere in the administration of justice which is punishable under Section 12 of Contempt of Courts Act, 1971.<sup>2</sup> Therefore, publications which interfere or tend to interfere with

<sup>1</sup>Tata Press Ltd. v. Mahanagar Telecom Nigam Ltd., AIR 1995SCC 139

<sup>2</sup>State of Kerala and Anr. v. N.M. Thomas and Ors., AIR 1976SC 490.

the administration of justice amount to criminal contempt under the Contempt of Court Act and if in order to preclude such interference, the provisions of the Act impose reasonable restrictions on freedom of speech, such restrictions would be valid. Media's freedom to circulate one's views by word of mouth or in writing or through audio visual media which also includes

Media, subjects the entire judicial process and the justice system to public scrutiny. Media is considered to be the watchdog of society and catalyst of reforms. For the smooth functioning of democracy under Article 19(1) (a) media impliedly claims the right to investigate, reveal, expose and criticize to create a constructive check. The media correspondingly has a duty to responsible and accountable journalism. Free and robust reporting, criticism and debate contribute to public understanding of the rule of law and for a better comprehension of the entire justice system.<sup>3</sup> In a democracy the freedom of press is very essential as the public has right to know and right to be informed. The media has to take utmost precaution while publishing news and cases pending before court as it would lead to media trial. The investigative role of press has been useful to set right the mal-administration of government, exposing crimes and unlawful acts and disseminating information of public interest. But the expression public interest has no fixed connotation. The Media trial has become an acute problem with the ever expanding role of media.<sup>4</sup> The phenomenal growth in technology ensures quick flow of information.

The word, 'trial' has been defined as a formal judicial examination of evidence and determination of legal claim.<sup>5</sup> Due to the rapid growth and advent of electronic media, extensive media coverage and opening up of too many media channels in all medium and the high profile cases have led to changes in publication pattern of the media which are likely to have pre-judicial impact on the suspects, accused, witnesses and judges and on general administration of justice. Citizens have right to know & media is a gateway to channel the voice of masses. Media has reinforced its role, through which criminal justice hierarchy system is known.

Media reincarnates public perception of order and disorder in the society. Sensationalism of media coverage has led to heated debates between free speech and fair trial as claimed by those who shore up for free person one hand and right to individual's fair trial as proclaimed by the judiciary.<sup>6</sup> Media in high profile cases through conducting the investigations and continuous reporting of the news can create so much of hype on the sub judice matters that can cause prejudice and will affect the administration of justice and may lead to miscarriage of justice, and such trial conducted by the media also affects the right to fair trial of the accused and brings the conflict between the freedom of press, fair trial and trial by media also affects the independence of judiciary, the judge has to be impartial and shall pass the verdict only on the basis of the facts and the evidence produced in the court of law but the hype created by media prejudices the mind of judges and may force the judge to pass the verdict against the accused even though the accused is innocent.

### **MEDIA REPORTING OF CRIME AND FAIR TRIAL**

Trial by media starts much before the actual trial in the court. In matters such as Arrest, Bail, Search, Confessional statements, Interrogation the media conducts the parallel proceedings with the idea of increasing the circulation or influencing the course of justice. It puts a burden on a trial court which has a constitutional duty to minimize the effects of prejudicial publicity. Media and judiciary discharges public duties and should continue to enjoy the independence and freedom to act without any external threats or interference. While granting anticipatory bail to an accused in a dowry death case pending before Kolkata court, the Supreme Court has castigated the media which published an article touching the merits of pending case, the article was based on the interview of the family of the deceased. It was found that the facts narrated was one-sided which might be used in the forthcoming trial prejudicing the fair trial procedure.<sup>7</sup>

A trial is an event that keeps a check on administration of justice. Trial is nothing but judicial Transparency and media plays an important role in transpiring judicial proceeding to the community in large. Judicial independence is very vital in the society, but there are many instances when judicial independence has been vindicated and media has interfered with the judiciary. Trial by Media means the extensive media

<sup>3</sup>Justice R.S.Chauhan Trial by Media: *An International Perspective*, (PLOctS-38,2011), <http://www.supremecourtcases.com/index2.php>, last visited on June 28,2016.

<sup>4</sup>AbolishRather&KonicaSatan,*Judicial Intervention in the Sub-judice-The emerging issues of Trial by Media*, Bharati Law Review, (2015).

<sup>5</sup>Henry Campell Black,*Black's Law Dictionary*, West Publishing Co, (4<sup>th</sup> Ed,1968).

<sup>6</sup>200<sup>th</sup> Report of the Law Commission on "Trial by Media: Free Speech v Fair Trial Under Criminal Procedure (Amendment to the Contempt of Court Act, 1971)".

<sup>7</sup> MP Lohia v State of West Bengal Civil Appeal 219 of 2005

coverage on a person's public relations or the effect of media on a trial proceeding, mostly in criminal proceedings. With the fierce competition and advent of technology between channels with each other for breaking news leads to labeling the accused even before the investigation is undertaken which are impairing administration of justice and having a prejudicial impact on individual's fair trial.<sup>8</sup>

The efficacy of legal system is enhanced when guilt is established by due procedure of law, not by infusing external factors or intruding in the procedure. The judicial system in their pronouncement have preserved freedom of press, have allowed press to fairly criticize the court system, scrutinize working of administration of judges, fair reporting of matters and merits of the case.

The intervention of media in recent times has drawn appraisal as constant effort of media to discover truth has played a pivotal role in delivering justice in the infamous Jessicalal Case, Nirbhaya Case. In *Jessica Lal murder case*<sup>9</sup> there was a delay in justice as all the witnesses turned hostile and the accused Manu Sharma was acquitted then the media through justice for Jessica campaign and Tehalka played a crucial role in delivering the justice. In *Mattoo case*<sup>10</sup> justice for Jessica campaign steered trial of the accused charged with rape and murder of the law student named Priyadarshini Mattoo and with the intervention of media investigation of the case was fast-tracked and the accused was convicted. In *Sanjeev Nanda Case*<sup>11</sup>, Nanda, son of a businessman alleged with hit and run case killing over six people while driving his BMW in intoxication. Media intervened and case was sub-judice. NDTV news channel conducted a sting operation showing Nanda's lawyer bribing the witness, while the state prosecutor being complicit and helped in the discovery of the truth. In the case of *Arushi Talwar*<sup>12</sup> media created frenzy. In high profile cases media is often creating a wide spread public opinion, regardless of depriving the basic human right of accused. *Sheena Bora Murder* case has given rise to controversial aspect of reporting of trial proceedings of the accused as every aspect of her life was under public scrutiny which had nothing to do with the case or the general public. In *Nanavathi* case due to the reports of the media the jury got influenced and there was prejudice to the case which affected the administration of justice. The media can interfere with the administration of justice by the way of scandalizing the judges, interfering with witnesses, interfering with investigation procedure by tampering evidence and contentious publications in connection with the proceedings which are pending before the court. These interferences impose a threat to fair administration of justice and constitutional guarantee of fair trial.<sup>13</sup>

### THE REPERCUSSIONS OF A TRIAL BY THE MEDIA

The trial by media will have effect on judiciary if the publication of news reports by media are inaccurate which can prejudice the mind of judges and that may lead to miscarriage of justice, interfere with administration of justice and effect the independence of judiciary. The repercussions of media trial in India can be seen in the following landmark cases which had both positive and negative impact on the judiciary.

In *R.K. Anand v Delhi High Court*<sup>14</sup> the important questions relating to trial by media were examined by the Supreme Court. The case arose out of a sting operation carried out by a private television channel, NDTV to expose the unholy nexus between the prosecution, its witness and the defense in the infamous BMW hit and run case resulting in the death of six persons by speeding BMW car which was driven by the scion of an influential and wealthy family. While the trial was pending even after the eight years of the incident, NDTV telecasted a sting operation to expose the manner in which a senior advocate appearing for the accused was negotiating with the help of special public prosecutor to sell out in favor of defense, the Delhi High Court then initiated the Suo-Moto contempt proceedings and held the special public prosecutor and the defense counsel guilty of contempt of court and they were debarred from appearing in the Delhi High Court and its subordinate courts for four months. Then the appeal was filed before the Supreme Court, it was contended that NDTV was guilty of trial by media and it could have telecasted the stings only after obtaining the

<sup>8</sup>20<sup>th</sup> Report of the Law Commission on "Trial by Media: Free Speech v Fair Trial Under Criminal Procedure (Amendment to the Contempt of Court Act, 1971)".

<sup>9</sup>Manu Sharma v State of Delhi, (2010) 6 SCC 1.

<sup>10</sup> Santosh Kumar Singh v State (2010) 9 SCC 747

<sup>11</sup> State v Sanjeev Nanda (2012) 8 SCC 450

<sup>12</sup> Nupur Talwar v Central Bureau of Investigation and Another (AIR 2012 SC 1921)

<sup>13</sup>Arpan Banerjee, *Judicial Safeguards Against "Trial By Media": Should Blasi's "Checking Value" Theory Apply In India?* Vol.2, p. 28, Journal of Media Law & Ethics, (2010).

<sup>14</sup> (2009) 8 SCC 106.

permission of the High Court. The Supreme Court of India rejected the contention holding that such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. The Supreme Court held that NDTV was not guilty of trial by media and the phenomenon of trial by media was described as “The impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of the guilt regardless of any verdict in a court of law”. The Court dismissed the appeal of R.K Anand and issued him a notice for the enhancement of punishment.

In the case of *Manu Sharma v State of Delhi*<sup>15</sup> (*Jessica Lal Case*) which is also known as the Jessica Lal Murder Case. The case arose out of the cold blooded murder of a young women in 1999. The women was a bartender at a high profile restaurant in Delhi. The main accused Manu Sharma was a son of a powerful politician. The Delhi trial court in 2006 acquitted all the nine accused in the case. With regard to the acquittal there was a huge public dismay, the media launched a blitzkrieg on the manipulation of the trial through the political connections of accused, and the manner in which the witness turned into hostile, and the shoddiness with which the prosecution conducted the case. The media went on to report reactions from the public at the farcical failure of justice. As a result the Delhi High Court without awaiting for the state’s appeal against the acquittal of the accused ordered a suo moto reinvestigation of the case. The retrial which took place mainly because of the pressure mounted by the media led to the conviction of accused who were acquitted earlier.

In *Nupur Talwar v Central Bureau of Investigation*<sup>16</sup> (Arushi Talwar Case) which involves the murder of a 14 year old school girl in her home, took tabloid journalism to a new nadir, in their scurrilous coverage of the investigation, the sections of media displayed a brazen lack of concern for the law. The matter raised serious legal concerns which require redress apart from trial by media, violation of privacy, breach of confidentiality, and the defamation of both living and dead persons. The media pried into the personal lives of Aarushi and her parents, which published the private correspondence of Aarushi and the father of Aarushi was portrayed as a murderer. The victim’s parents have been framed for the murder of their daughter before the same was yet to be proved by the court. Due to the intervention of media which prejudiced the minds of judges, the parents of the victim were sentenced to life imprisonment and the parents of the victim have appealed against the conviction and then after hearing the appeal the Allahabad High Court acquitted the parents of Arushi Talwar and held that the CBI had failed to prove the guilt of the parents beyond reasonable doubt. Media has fetched a negative result in the case of Arushi Talwar by framing the parents of the victim for murder before the verdict of the court.

In *Sahara India Real Estate Corporation Ltd. v SEBI*<sup>17</sup> which is also known as the media guidelines case, the Supreme Court of India in 2012 constituted a constitution bench of five judges to consider whether the guidelines shall ought to be framed by the court in respect of the media reporting of the ongoing cases or reporting of the cases which are pending before the court, in this case there was an unauthorized leak of privileged communication by a private television channel and the communication was related to the settlement proposal exchanged between the lawyers on two sides. The Supreme Court of India passed an order saying that “We are distressed to note that even without prejudice proposals sent by the learned counsel for the appellants to the learned counsel for SEBI has come on one of the television channels, such reporting by television channels not only affects the business sentiments but also it interferes with the administration of justice” the court ordered both the counsels to make a written application to the court in the form of interlocutory application, so that appropriate orders could be passed by the court with regards to the reporting of sub judice matters pending before the court, the Sahara filed an application complaining the unauthorized broadcast by the television channel and the Supreme Court of India opened a debate on media reporting of court cases on behalf of media houses and journalists. The mysterious leak to the media sparked the confidential exchange between the lawyers in the case, snowballed into an open ended debate on media transgressions and the need to rein it in with the guidelines. The Supreme Court of India while recognizing the media’s right to report the court proceedings and recognizing the presumption of open justice held that there may be certain exceptional cases where the reporting by media might adversely impact the administration of justice, in such cases the reporting may be deferred for a limited duration by the Supreme Court or the High Courts, Such order of postponement must pass the tests of necessity and proportionality

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<sup>15</sup> AIR 2010 SC 2352.

<sup>16</sup> AIR 2012 SC 1921.

<sup>17</sup> AIR 2012 SC 3829.

In several high profile cases involving the wealthy and powerful for example the *Jessica Lal murder case*, involving the cold blooded murder of a young women serving the drinks in the restaurant was shot dead when she refused to serve drinks to the son of a rich and powerful politician; *Nitish Katara murder case* where the young man was kidnapped and murdered who was in love and dated the daughter of a powerful politician; the *priyadarshini motto* case where the young law student was raped and murdered for spurning the advances of influential police officer's son. In these cases the media through persistent campaigns for justice, highlighting shoddy investigations, exposing the nexus between defence and prosecution the media played a prominent role in ensuring that justice was done and made sure that the victim's families get justice. The media mobilized the opinion of public and transformed what would have ended as a losing fight for the families of the victim into public demand which is strongly articulated for a fair trial.

### CONTEMPT OF COURT AND TRIAL BY MEDIA

Under Contempt of Courts Act, 1971. Contempt is classified under civil and criminal heads Contempt legislation is a well settled comprehensive legislation, it is enacted to maintain dignity of courts and to protect the administration of justice. Any actor any publication that tends to bring down the dignity of court or a judge, tends to lower authority of the court or judge, or tends to interfere with the lawful process of court or interfere with due course of justice is Contempt of Court. Contempt of Court Act, 1971 contains provision in relation to balancing between Contempt power of court, press freedom, judicial approach to press freedom and protection of judiciary from wrongful interference affecting administration of justice.

The Constitution of India puts a restriction on the freedom of speech and expression if it amounts to contempt of court. In exercise of the right of freedom of speech and expression a person cannot be allowed to lower the prestige of the court in the eyes of the public. Article 19(2) puts a restriction so far as the contempt of court is concerned. The law of contempt is a recognized exceptions under Article 19(2) to the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution of India. The right to freedom of expression cannot be equated or confused with the license to make irresponsible allegations. Articles 129 and 215 of the Constitution of India empowers the Supreme Court and High Courts respectively to punish a person for Contempt of the Supreme Court and High Courts as a case may be.<sup>18</sup>

The basic reliance of contempt legislation is to protect fairness of trial, absence of prejudice and an opportunity to defend.<sup>19</sup> The object of the power of court to punish for a contempt is to enable the court, to ensure proper administration of justice and maintenance of the rule of law<sup>20</sup>.

Mass media often conflicts with contempt citation, failure to obey court orders, critical Commentary about court, tampering jury. In recent times contempt provisions are maintained to harmonies freedom of press with due process of law. High Court and Supreme Court judges claim the right to punish those who disobey the orders for the civil contempt<sup>21</sup> as well as those who interfere with proceedings and, obstruct the administration or scandalize the reputation of the judges of the court for criminal contempt.<sup>22</sup>

The purpose of the law of contempt is not just to make the judicial process work, but also to protect, sustain and enhance the majesty of courts and the justice system. Law of Contempt exudes concern about four practical aspects of the work and functioning of the courts they are Discipline inside the courts, Compliance with court orders and directions, Exclusivity and integrity of the justice system, Prestige and reputation of judges and the courts. Trial must be held in open and reporting of trial is essential as it maintains judicial accountability.

Media plays the role of a mediator between what transpires in the court and public right to know. Open justice is an essential too linen Suring fair administration of justice. It is the duty of the media to keep public informed, but this responsibility comes with accountability as well. Media must reports facts and not comment. Reporting must be done prudently, lack of knowledge of pendency, contents or tendency of causing prejudice to a trial by reporting is no excuse. 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

<sup>18</sup> Article 129- "The Supreme court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself"

Article 215- "Every High Court shall be a court of record and shall have all the powers of such a court including power to punish for contempt of itself"

<sup>19</sup>Ibid.

<sup>20</sup> Commissioner, Agra v Rohtas Singh, AIR 1998 SC 685

<sup>21</sup> Section 2(b) Contempt of Courts Act 1971

<sup>22</sup> Section 2(c) Contempt of Courts Act 1971

that it is not for the press or anyone to pre-judge a case. Justice demands that people should be tried by courts of law and not pilloried by the press.<sup>23</sup>

In the *State of Maharashtra v. Rajendra Jawanmal Gandhi*<sup>24</sup>, the Supreme Court deprecated the “Saga” magazine for publishing extensive details of an interview by the deceased girl’s father in which father gave his own version of the case. The court held that “The facts narrated therein are all materials that may be used in the forthcoming trial which would interfere with administration of justice.

In *Bijoyndav Balakush*<sup>25</sup> was whether Freedom of press is privileged and if publication initiates contempt proceedings as publication are made for the benefit of public. However, the court expounded that in contempt matters no special privilege can be granted to the press. Media reporting of judicial proceeding is justified on the grounds of public trial as it ensures administration of justice. However, Press Council of India has laid certain restrictions on reporting sub-judice matters. Press Council Act, 1978 regulate matters which are sub-judice in the form of norms and ethical code. They are not strict neither legally enforceable, hence limited in their scope.

In *Reliance Petrochemicals Ltd v Indian Express Newspapers Ltd*<sup>26</sup> the court did not think it necessary and advisable to restrain the press from publishing on a matter of general interest, but the court kept the possibility open that press could be subsequently punished if it was found to have committed criminal contempt by trying to influence matter pending for decision in the court.

The court has the power to punish for the contempt of court not only to protect the dignity of the court against injury or insult but also to vindicate and protect the right of public so that the administration of justice is not prejudiced.<sup>27</sup>

In the case of *Vishwanath v E.S. Venkataramaih*<sup>28</sup>, a former chief justice of India gave an interview on the eve of his retirement to a journalist which created a controversy in the interview he is reported to have said that “The Judiciary in India has deteriorated in its standards as the judges are being influenced by whisky bottles”. The Bombay High Court held that the words of former chief justice did not amount to the contempt of court as the statements given did not denigrate the judiciary but instead they were made with a view of engendering a positive change in the judiciary system.

In *Court On Its Own Motion v MK Tayal*<sup>29</sup>, the Mid Day newspaper published a cartoon depicting the former chief justice of India, YK Sabarwal holding a bag with currency notes flowing out of it wearing his court robes and along with that the newspaper also published the cartoon of a man who was sitting on the door and was crying “Help, the mall is in your court”, the Delhi High Court held the editors, cartoonist and the publisher of Mid-Day newspaper guilty of Contempt of Court and convicted them accordingly. The newspaper also published an article corruption by former chief justice of India, the notice was issued by the Delhi high court to the journalist and the journalist sought to avail the defence of truth which is a legitimate defence to the charge of contempt by an amendment to the contempt of courts act 1971.

Any publication by the press is considered as the Criminal Contempt if such a publication scandalizes or tends to interfere or interferes or tends to obstruct or obstructs authority of the court, due course of judicial proceeding and administration of justice would be considered as the Criminal contempt under the Contempt of Courts Act 1971. Thus press by publishing any articles or reporting any news which lowers the authority of the court or obstructs the due course of judicial proceedings will be treated as a criminal contempt under contempt of courts act 1971.

### **PRESS COUNCIL AND NORMS OF JOURNALISTIC CONDUCT FOR TRIAL BY MEDIA**

The Press Council of India was set up in the year 1966 by the parliament on the recommendations of the first press commission with the object of preserving the freedom of press and for improving the standards of press and maintaining press in India. Even though the press council doesnot have punitive powers to discipline the media, it is the only available instrument outside the defamation law and contempt to influence media policies relating to judicial proceedings. It will be useful to interrogate the scope of some of the norms of journalistic conduct adopted by the press council to act as guidelines in media reporting of crime or any legal issues. Media is mandated to follow certain ethics in disseminating and collecting the

<sup>23</sup> (1997) 8 SC 386

<sup>24</sup> (2005) 2 SCC 686

<sup>25</sup>AIR 1953 Orissa 249.

<sup>26</sup> (1998) 4 SCC 592

<sup>27</sup> Delhi Judicial Service Association v State of Gujarat, (AIR 1991 SC 2176)

<sup>28</sup> (1990) 92 Bom LR 270

<sup>29</sup> (2007) 98 DRJ 41.

information that is ensuring authenticity of news, use of socially acceptable language which is restrained for ensuring fairness in reporting, keeping in mind its cascading effect on the individuals and on the society. The fundamental objective of journalism is to serve the people with news, comments, views and information on matters of public interest in an accurate, fair, sober, decent and in unbiased manner. Press is expected to conduct itself in keeping with certain norms of professionalism which are recognized universally.<sup>30</sup> There are various norms of journalistic conduct by the press council for the trial by media which includes Right to Privacy, Newspapers to Eschew Suggestive Guilt, Investigative Journalism, its norms and parameters, and Caution in Criticizing Judicial Acts.

### ***Right to Privacy***

*Norm 13:-* “The Press shall not intrude upon the privacy of an individual unless outweighed by genuine overriding by genuine overriding public interest, however, once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes legitimate subject for comment by press and media among others”

*Norm 14:-* “While reporting crime involving rape, abduction or kidnapping of women or sexual assault on children or raising questions and doubts touching the personal character, chastity and the privacy of women, the names, the photographs of the victim or any other particulars leading to their identity shall not be published”.

*Norm 15:-* “Minor children or infants who are the offspring of sexual abuse or forcible marriage or illicit sexual union shall not be identified or photographed”.

### ***Newspapers to Eschew Suggestive Guilt***

*Norm 20:-* “Newspapers should eschew suggestive guilt by association. They should not name or identify the family or relatives or associates of person convicted or accused of a crime, when they are totally innocent and a reference to them is not the matter reported”

*Norm 21:-* “It is contrary to the norms of journalism for a paper to identify itself with and project the case of any party in the case of any controversy or any dispute”.

### ***Investigative Journalism, its Norms and Parameters***

*Norm 45:-* Norm 45 of the journalistic conduct talks about the norms and parameters of investigative journalism

(iv) Imaginary facts or ferreting out or conjecturing the non-existent should be scrupulously avoided. Facts, facts and yet more facts are vital and they should be checked and cross checked until the moment the paper goes to press.

(v) The Newspaper must adopt strict standards of fairness and accuracy of facts. Findings should be presented in an objective manner, without exaggerating or distorting that would stand up in a court of law, if necessary.

(vi) The reporter must not approach the matter or the issue under investigation in a manner as though he were the prosecutor or the counsel for the prosecution nor should the investigative reporter conduct the proceedings and pronounce his verdict of guilt or innocence against the person whose alleged criminal acts and conduct were investigated, in a manner as if he were a court trying the accused.

(vii) In all proceedings including the investigation, presentation, and publication of the report, the investigative journalist/ newspaper should be guided by the paramount principle of criminal jurisprudence, that a person is innocent unless the offence alleged against him is proved beyond doubt by independent and reliable evidence.

### ***Caution in Criticizing Judicial Acts***

*Norm 47:-* “Expecting where the court sits in camera or directs otherwise, it is open to a newspaper to report pending judicial proceedings, in fair, reasonable and accurate manner, but it shall not publish anything which in its immediate and direct effect creates a substantial risk of obstructing, impeding or prejudicing seriously the due administration of justice or in its nature of running commentary or debate or records the paper’s own findings, conjectures, comments or reflection on issues which are sub judice and which might amount to arrogation to the newspaper the functions of the court or regarding the personal character of the accused standing trial on charge of committing a crime. Newspapers shall not as a matter of caution, publish or comment on evidence collected as a result of investigative journalism, when after the accused is arrested and charged, the court becomes seized of the case, nor they should reveal, comment upon or evaluate a confession allegedly made by the accused.

<sup>30</sup> Press Council of India, Principles and Ethics of Norms of Journalistic Conduct.

*Norm 48:-*“While the newspapers, in public interest make a reasonable criticism of a judicial act or the judgement of a court for public good, they shall not impute improper motives or personal bias to the judge or they should not cast scurrilous aspersions on. Nor they shall scandalize the court or judiciary as a whole or make personal allegations of lack of ability or integrity against a judge”.

*Norm 49:-*“Newspapers shall as matter of caution avoid unfair and unwarranted criticism which by innuendo attributes to judge extraneous consideration for performing an act in due course of his/her judicial functions, even if such criticism does not strictly amount to criminal contempt of court”.<sup>31</sup>

These are the norms of the journalistic conduct, if one were to go by the press council guidelines and norms of journalistic conduct, one would get the impression that there is nothing to worry about the media rule of law. However any objective analysis of the contemporary scene drives one to an opposite conclusion. Either the reporters, publishers, editors don't care for the guidelines and the authority of the press council, or they find it profitable to go about sensationalizing or commercializing matters of sub judice, Courts are increasingly reluctant to exercise contempt power unless media publicity directly scandalizes courts and judges. The law of defamation is an ineffective deterrent, given the delay in judicial proceedings and the cost involved in litigation. As such media trial goes on with impunity threatening the very foundations of the rule of law and the fair trial under law.

### **CONTEMPORARY INSTANCES OF TRIAL BY MEDIA**

Recently Sarvjeet Singh who had been falsely accused by one Jasleen Kaur for harassing her where she posted a picture of him on Facebook which went viral and led to the arrest of Sarvjeet Singh after the inquiry it came to light that Sarvjeet Singh was innocent but due to the media coverage and hype created by media, the media labelled him as a harasser and Sarvjeet Singh faced public humiliation and was sacked from his job. This incident clearly shows how the media can ruin the life of an innocent through its coverage with out verifying with the true events.

The Principal of St. Stephen Institution Mr. Valson Thampu alleges that the media has targeted his institution as they are minority institution and contented that they were the victim of Media Trial, in this case the professor of St. Stephen Institution was accused of molesting the student who showed audio clips as an evidence for the molestation, and the allegation on Mr. Thampu was he pressurized the student to withdraw the complaint against the teacher. Mr. Thampu claims that he was the victim of Media Trial and said that this was not the first time he is been targeted he's been targeted twice already and it was proved to be false and this is the third attack on him and Mr. Thampu alleges that he has been falsely implicated by the media and his institution has been targeted because the institution was minority institution the principal of the institution demanded for a probe by the Central Bureau of Investigation and offered to resign if he was found guilty.

All India Majlis-e-Ittehadul Muslimeen (AIMIM) recently condemned the media trial of controversial Islamic preacher Zakir Naik. AIMIM legislator from Aurangabad Imtiaz Jaleel, in a statement said that his party respects and follows the rule of the land and feels nobody could be pronounced guilty unless the court gives its judgement by following the due process of law. By hounding Zakir Naik, the media, particularly some national television channels, have already pronounced their judgement even when a formal case is yet to be registered against him. On mere hearsay, the media cannot pronounce anybody as supporter of terrorism. This media trial of Naik should end. If any individual, whosoever it may be, breaks the rule of the land, the law should take its own course. He further said that if there is concrete proof of violation of any law by anyone, strict action should be initiated,"The AIMIM legislator said that the right to practice religion and the right to free expression are fundamental rights of every Indian as enshrined in the Constitution. This means any individual can practice, profess and propagate his religion without hurting the religious beliefs and sentiments of other religions," The general trend in recent days is that the investigating agencies charge someone with wrongdoing and the media pronounces the accused as guilty even before the court delivers its judgement. This poses a grave threat to the social fabric and democratic set up of the country and could prove to be detrimental to communal harmony, so the legislator has expressed his opinion that the media trial on Zakir Khan should end and media should stop labelling him as terrorist.

Senior advocate Indira Jaising claimed that the police leaked information to the media even before charges were brought before a competent court, which amounted to interference in the administration of justice. The Supreme Court said that there is a need to strike a balance between the freedom of the press and the victim's right to a fair trial in cases of crime against women.

<sup>31</sup> Press Council of India, Principles and Ethics of Norms of Journalistic Conduct.

Senior advocate Indira Jaising, who assisted the court as an *amicus curiae*, told a bench of judges Madan B Lokur, S Abdul Nazeer and Deepak Gupta that the media had conducted a parallel trial in matters of sub-judgment and that the court should draw up guidelines on how to report cases of crime against women. Ms Jaising also claimed that even before filing charges, police leaked information to the media. The touchstone question is whether it is interference in justice administration. Reporting court proceedings is one thing, running a parallel trial is another thing. Parallel trial is interference in the administration of justice in matters of sub-judice. She referred to the sensational case of gang rape and murder in Kathua and said that even before the accusations were brought before the court, the media pronounced the decision that some of the accused were innocent and not guilty of the offences. An eight-year-old girl from a nomadic minority community was allegedly raped and killed on January 2017 in Kathua in the Jammu region. Her body was found a week later in the same area. In the course of the arguments, Ms Jaising referred to the provisions of the Indian Penal Code (IPC) and the POCSO Act, It deals with the disclosure of the identity of victims of such crimes and the procedure to be followed by the media in reporting such cases, as well as the Contempt of Courts Act.<sup>32</sup>

## CONCLUSION

Freedom of speech and expression is an imperative right in every democracy. Media also enjoys the same right and in a broad perspective they exercise the same for the betterment of the society. In a competitive environment, the participants in the media industry try their level best to attract more audience and readers. They go beyond mere facts statements and use many innovative techniques. Sensationalizing news is not a new phenomenon but assuming themselves in the role of police and judges by investigation, collecting an evidence and making a decision is a major concern. When a crime is committed it is taken as something affecting the society and hence state comes immediately as the complainant and proceeds with the matter.

The criminal justice system followed in India is based on the theory that an accused is entitled to fair trial and is innocent until proven guilty beyond any reasonable doubt. But the media on an account of exclusive coverage media goes a long way to cover and publish interviews of witnesses, victim's relatives, comments of the members of legal fraternity, which may cause prejudice to the trial proceedings in the particular judicial mind. In fact this affects the perception of the public at large because media reaches out the mass promptly. In the last few decades we have witnessed rapid growth of media influence in the process of access to justice in plethora of cases relating to corruption, rape, sexual harassment, murder etc. Media activism imposes an indirect pressure on the adjudicating authorities to deliver justice to the victims which may interfere with the trial proceedings and may cause prejudice to the accused and a chance of proving his innocence. The system may have many flaws, the media should help to deal with the flaws in system but instead of that they started playing the role of investigator and finding the guilt of the persons, which may lead to confusion in the mind of people at large and there is always a risk of manipulation and innocent people may be implicated. The situation raises few important legal issues first is accused person's right to get fair trial another facet of the problem is victim's right. Media has played the role of conducting checks on functioning of all organs of the government and has yet managed to emerge as a fora for public voice and opinion. Media trial during investigation stage, contempt of court, irresponsible reporting and hype on the sub judice matters and the constant pressure to stay competitive in the market has now led to overstepping of boundaries by the media.

Under the hood of "Media Trial", where the media itself conducts a separate investigation, builds public opinion against the accused even before the court takes cognizance of the case, by this way it prejudices the public and the judges and as a result the accused, that should be assumed innocent, is presumed as a criminal. The role of media in the administration of justice is very important, the recent trends in investigative journalism and high competition among newspapers and channels to impress the common man through their reports poses serious threats to due administration of justice. The trend of investigative journalism leads to give over importance to crimes, criminal activities, trials, development of cases in courts, acquittal or conviction of the accused, these things affect the fair trial. The trial by media influence the witness also, the witness may modify their depositions in tune with media reports and public opinion created by the media. The repeated reports in media may leave witness in a state of confusion and they may be deviated from what they have seen or heard.

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<sup>32</sup> <https://www.ndtv.com/india-news/media-runs-parallel-trials-in-sub-judice-matters>

The hype generated by 24/7 media coverage of an event sometimes tends to distort and recreate the crime scene ensuing viewers including judges to visualize it and get influenced by the same. The criminal justice system considers the accused innocent until proven guilty. The concept of fair trial which is again an important principle of justice system, gets undervalued due to media trial. This practice of vibrant media has been opposed by various groups as being against the interest of the accused and the principle of criminal justice system, the issue is in debate for a long time without a concrete solution as yet.

Though the 17<sup>th</sup> law commission of India in its 200<sup>th</sup> report came across this problem, no serious step has been taken in this regard except with a recommendation to treat sub judice period from the time of arrest instead of filing of the charge sheet. The step is too inadequate to deal with the administration of justice under the head of media trial. Thus a separate law is required in India to control media from unduly interfering with the administration of justice under the pretext of media trial.