

*Original Article***Media Trial: Violating the Fundamental Right of Speech and Expression****Kartikey Raja****Author Affiliation**

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Abstract

“I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press.” As beautifully remarked by the first Prime Minister of India Pandit Nehru. This paper primarily talks about the violation of fundamental right of freedom of speech and expression through media and media trial. This has been discussed in five parts i.e. (a) Evolution of Media Laws in India, (b) Free Press and Freedom of Speech and Expression, (c) Trial by Media and misuse of Freedom of Speech and Expression, (d) Subconscious effects on Judiciary, (e) India and International status with respect to media laws. Free press is the hallmark of a democratic society. It has to play a vital role in safeguarding the rights and liberties of people. The fundamental right of Freedom of speech and expression has been enshrined under the Constitution of India with regard to both the individual and the media but on the other hand this does not confers an absolute right to speak and disseminate without responsibility whatever one wishes. This paper talks about the evolution of media laws to free press, extending the meaning of freedom of speech and expression to freedom of press, supported by case laws. Also, it talks about the contribution of media to trials in India both positively and negatively by indirectly affecting the judiciary and emerging out to be the ‘modern court of the people’. Lastly, it talks about the misuse of this freedom along with its consequences followed by international scenario.

Keywords: Evolution of Media; Free Press; Freedom of speech and expression; Media Trial; Subconscious effect on Judiciary; Fourth Pillar of Democracy; Modern court of people.

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Introduction

“I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press.”

As beautifully remarked by the first Prime Minister of Independent India, Pandit Nehru. As billions of Indians celebrate the spirit of freedom every year, on the same hand we have media and

press enjoying immense freedom. The “Freedom of Speech and Expression” has been finely incorporated in Art. 19(1)¹ of the Constitution of India which makes it quite easy for anyone to intervein in such a formidable democratic atmosphere in the name of “Freedom of Speech”. This expression of freedom of speech and expression has been extended to “Freedom of Press”². Art. 19(1)(a)³ of the Indian Constitution, which gives freedom of speech and expression includes within its ambit, freedom of

press. The existence of a free and independent media is the keystone of a democracy, especially in a democracy like India. Today, media is not only a medium to express once 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. Thus, acting as a pivotal role in order to mobilize the thinking process of millions. Free Press⁴ is the hallmark of a democratic society. It plays a vital role in safeguarding the rights and liberties of people. The media has been provided with many freedom and immunities so that this 'fourth pillar of democracy'⁵ stands stronger. But what *Lord Atkin* relates with power is also well placed with the notion of liberty. Liberty does corrupt into license and is prone to be abused. 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 anarchy⁶. We should not forget that freedom of expression is not an absolute or unfettered power and if unrestricted freedom of the speech and expression is allowed, it would only result in an uncontrolled license which itself can become dangerous for any healthy democracy.

Indian Criminal Justice System is already working on the motto of "hundred criminals can be escaped, but one innocent should not be punished". Here the question arises whether the judiciary or the media will decide the guilt and innocence of one going under trial. During the course of development, media has now transmigrated itself into a 'modern court of people' and has started interfering into court proceedings. It completely overlooks the vital gap between an accused and a convict and also, indirectly it violates the 'Principles of Natural Justice' on the part of person under trial and therefore keeping at stake the golden principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. Now, in a media trial the media itself does a separate investigation, builds a public opinion against the accused and also at times damages the prosecution case even before the court takes cognizance of that particular case. Thereby, it prejudices the public and sometimes even judiciary and as a result the accused, that should be assumed innocent unless proven guilty, is presumed as a criminal leaving all his rights and liberty unredressed. Excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial and it amounts to undue interference with the "administration of justice", calling for proceedings for contempt

of court against the media. Now, unfortunately rules which are designed to regulate such type of journalistic conduct are not adequate to prevent the encroachment of civil rights. Democracy can blossom not only under the vigilance of legislature, but the guidance of public opinion and media also matters. The purpose of the press is to advance public interest by publishing facts and opinions that are relevant and does not quash present judicial system. At the same time baseless, frivolous, unwanted information may cover the dignity of the institution, so, the need is to make a balance between freedom of press and speech and expression with regard to the dignity of the judiciary.

Evolution of Media

Knowledge and information form a rational man and this urge to know more and more actually gave birth to media and press in India. Moving from the ancient period where the information is supplied orally to the pre and post-independence, media holds an important space in our history. The growth and development of press in India has been a product of struggle against the continuing repressive measure of British ruler over long period of time. The Indian media shares its roots to the immigration of European in India wherein the Portuguese introduced the Press in India⁷. Soon after gaining Independence, the Government of India set up a 'Press Laws Inquiry Committee'⁸ in 1947 under the Chairmanship of Sri Ganga Nath Jha. The committee was required to (i) examine and report to the government on the laws regulating the Press in a Principal countries of the world including India; (ii) to review the Press Laws of India with a view to examine if they were in accordance with the fundamental Rights formulated by the constituent Assembly of India; and (iii) to recommend to the government any measures of reform with press laws considered expedient upon such review. The Press Council of India was first established in the year 1966 by the Parliament of India, recommended by the first Press Commission. The object was to preserve the freedom of the press and for maintaining and improving the standards of the press in India. Presently, the function of the council is governed under the Press Council Act, 1978. It is a statutory, quasi-judicial body which acts as the watchdog of the press. It adjudicates the complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively.

Free Press and Freedom of Speech and Expression

"Democracy is a government, of the people, by the people and for the people" – Abraham Lincoln said. However, Justice Hidayatullah added "Democracy is also a way of life and it must maintain human dignity, equality and the rule of law. It requires strong public opinion, independence and fearlessness in the press and in educated men and woman who are not complaint to authority wrongly exercised."⁹ Diversified and strong public opinion through media as a medium is *sine quo non* for a vibrant democracy. Therefore, it is very necessary that press and media should be free from any social religious or political restrain and shall enjoy full freedom in any democracy. The expression 'Freedom of the Press' has not been defined or referred to anywhere in the Indian Constitution but many different people have interpreted it in many different ways. Freedom of the press traditionally meant, freedom of publication without any previous restraint. In a broad sense, freedom of the press means all activities that are connected with press-specific dissemination of news and opinions."¹⁰ In other words, the freedom of the press is the right to publish with impure truth reflecting on governmental or individual magistracy. According to the Jowitt's Dictionary of English Law, the concept of 'liberty of the Press' simply means that such a thing as an impersonator is now well known to the law, and that every man may print and publish what one pleases although, of course, one will be liable to a prosecution if one prints everything which is a criminal libel, or which is obscene, blasphemous or seditious, and to civil proceedings of one prints defamatory matter.¹¹ Professor Bounard Schwarty described that the concept of 'Freedom of the Press' means at least two things: (i) A constitutional interdiction against any system of licensing, and (ii) Freedom from prior restraints upon publication (other than that included in licensing), particularly those imposed by systems of censorship.¹²

The learned judges, in case of *Bennett Coleman, and Company Limited v. Union of India*¹³ has expressed that it was indisputable that by freedom of the Press is meant the right of all citizens to speak, publish and express their views. The freedom of the Press, Ray, J. further explained, embodies the right of the people to read and it is not antithetical to the right of the people to speak and express. According to Lord Denning freedom of the press is of the fundamental importance in the society and includes not only the right of the press to impart information of general interest or concern but also the right of the public to receive it. Blackstone

expresses that the liberty of the press was essential to the nature of a free state and consisted in laying no restraints upon publications, and not in freedom from censure from criminal matter when published. It is thus evident that freedom of the press has both negative and affirmative content. In negative sense, it means absence of external interference whether to suppress or to constrain generally.

A free press is the sine qua non of any free democracy where there is no throttling of dissemination of news and views. A free press indicates that the press is allowed to function in the country under the minimum normal restriction conceived in the interest of the prosperity and stability of the very democracy which the press wants to safeguard. It is worthwhile quoting have the Government of India Press Laws Enquiry Committee of 1948 says that: "When great executive power is concentrated in the hands of the cabinet a lively instructed and critical public opinion is the only safeguard against the misuse of executive authority. Democracy can only survive in the atmosphere of constant controversy; it is essential Authority to it that any Government, however strongly entrenched and however well intentioned, shall be aware that its actions are under constant scrutiny and that there hangs always over its head the sword of public criticism. The press plays a vital part in the administration of Justice; it is the watchdog to see that every trial is conducted fairly, openly and above board. Any misconduct in a trial is sure to receive notice in the press and subsequent condemnation by public opinion.

The press is one of the vital organs of modern life, especially in a democracy. The Press has tremendous powers and responsibilities. The Press must be respected and it must also have co-operation. Where there is no publicity, nowadays, there is no justice. Therefore, publicity is the soul of justice. The Constitution of India explicitly declares that all citizens shall have the right to freedom of speech and expression¹⁴. The constitution of India recognizes the freedom of speech as a fundamental and by virtue of it we are free to express whatever we feel like but with limited restrictions have been also put up in order to preserve the sovereignty and integrity of the nation. Freedom of press was as such not recognized till the time the case of *Indian Express*¹⁵ came into picture. Way back in 1972, the Supreme Court in *Bennett Coleman & Co. v. Union of India*¹⁶ had held that although Article 19(1)(a) does not mention the freedom of the press, it is the settled law that freedom of speech and expression includes freedom of the press and circulation. It had earlier observed in *Express Newspapers Ltd.*

*v. Union of India*¹⁷ that the Press has the right of free propagation and free circulation without any previous restraint on publication. The existence of a free and independent media is the cornerstone of a democracy. Media is not only a medium to express one's opinions and views, but it is also responsible and instrumental for building opinions and views on various national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions. Blackstonian concept of freedom of press which was expressed as early as in 1769 contained four basic points.¹⁸ Which still form the crux of the concept of press freedom. They are as follows:

1. Liberty of the press is essential to the state.
2. No previous restraints should be placed on the publications.
3. That does not mean there is press freedom for doing what is prohibited by law.
4. Every freeman has the undoubted right to lay what sentiment he places before the public, but if he publishes what is improper, mischievous or illegal he must take the consequence of his own temerity.

Another practice which has now become more of a daily occurrence is that of Media trials. Initially media trials were started in order to show people the actual truth about the cases going on, which have now started interfering dangerously with the justice delivery system. The Supreme Court made following observations in *R. Rajagopal and Another v. State of Tamil Nadu and Others*¹⁹ are true reminiscence of the limits of freedom of press with respect to the right to privacy. But the legal implications arising out of the concept of 'press freedom' are many and hence they are not confined to the constitutional provisions alone. The different aspects of it infringe inter alia on criminal law, law of contempt, Copyright Act, Official Secrets Act, Freedom of Information Act, Law of torts, Prevention of Insults to National Honor Act etc., to name a few. These laws deal with different issues like those of decency or morality. There are also exclusive press laws like Working Journalists Act, Press Councils Acts, Newspapers Act, Press and Registration of Books Act etc. The Press Councils Act created the quasi-judicial body- Press Council of India. *Gandhi had said about press freedom: "Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation."* According to our law, a suspect/accused is entitled to a fair procedure and is presumed to be innocent till proved guilty in a Court of law. None can be allowed to prejudge or

prejudice his case by the time it goes to trial. Art. 19 (1) (a) of the Constitution of India guarantees freedom of speech and expression and Art. 19 (2) permits reasonable restrictions to be imposed by statute for the purposes of various matters including 'Contempt of Court'. Art. 19 (2) does not refer to 'administration of justice' but interference of the administration of justice is clearly referred to in the definition of 'criminal contempt' in sec. 2 of the Contempt of Courts Act, 1971 and in sec. 3 thereof as amounting to contempt. Therefore, publications which interfere or tend to interfere with the administration of justice amount to criminal contempt under that Act and if in order to 2 preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid. At present, under sec. 3 (2) of the Contempt of Courts Act, 1971 read with the Explanation below it, full immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case, if by the date of publication, a charge sheet or challan is not filed or if summons or warrant are not issued. Such publications would be contempt only if a criminal proceeding is actually pending i.e. if charge sheet or challan is filed or summons or warrant are issued by the Court by the date of publication.²⁰

Pandit Nehru once said - "To my mind, the freedom of the Press is not just a slogan from the larger point of view but it is an essential attribute of the democratic process. I have no doubt that even if the government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the Press. By imposing restrictions, you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a completely free Press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated Press."²¹

Trial by Media and Subconscious Effect on Judiciary

Whether civil or criminal, any case which gets special attention of media comes under the purview of Media Trial. Media trial means the pre-trial and in-trial reporting of the case, which is likely to prejudice the fair trial-the Constitutional right of every accused along with violation of natural justice system. This fourth pillar of democracy is the mirror of the society. It has the power to influence and

revolutionize the masses. From the ink of its pen to the sound of its mic, Media can build and destroy an image of a person simultaneously.

Adjudication by media in cases before or after the verdict of court has become a trend in the present scenario with a sole motive to increase the circulation and TRP of newspapers and news channels. Media has not only forgotten their responsibility but also the fundamental gap between an accused and a guilty person. Today, it influences the masses by making an innocent a culprit thereby changing the perceptions. Every coin has two sides in the same manner Media-Trial has two phases one that leaves a positive impact on judiciary along with society. Media creates an external pressure indirectly on judiciary in order expediate the matter in concern much faster and at-times it helps in creation of deterrence and actually holding the actual person guilty. But on the other hand, Media-Trails can be dangerous too. Firstly, some cases are sensitive to such extent that even prosecution-defense and judiciary requires time to understand that in-depth and during this time the involvement of media not only damages the prosecution-defense case but also creates a mockery of whole case and secondly it pressurizes and create unnecessary prejudice in the subconscious minds of our learned judiciary that it makes difficult to actually find truth. Indeed, Various Judges of Court have criticized the trial by media as it leads to psychological variation while giving any degree. There is No doubt that media trial has exposed many criminals of the high-profile cases like Jessica Lal Murder and Nitish Katara case but it is illegal due to the restrictions mentioned to the freedom of speech and expression in the Indian Constitution. Media has helped the dejected common man in getting justice. But, at the same time the pre-decision given by the media in *Aarushi Murder case* was not praiseworthy. Their manipulations changed every single day and proclaimed Aarushi's parents as her murderer's. However, CBI didn't find any clue and the court's final sentence came after many years.

The effect of media following a criminal case has definitely good effects on the adjudication of trial. One of the positive by products spurred by the media and addressed by the courts is that the people are more aware of their Constitutional rights and the way the police and courts try cases to find a person guilty or innocent." Criticism of judicial decisions in a healthy manner, if used effectively, is a powerful weapon in the hands of the masses and can have far reaching consequences. In the *Mathura Rape Case*.²² The Supreme Court's decision

in this case acquitting the accused policeman who allegedly raped a poor girl in the police station raised hue and cry. Public criticism provided an impetus for the law to be amended. Higher punishment for custodial rape was included in the Indian Penal Code. In *Ruchika Murder Case*²³, the court got 400 hearings, 40 adjournments and the case continued for 9 long years. It was media's intervention which brought relief to the parents of the victim. Similarly, in *Jessica Lal Case*²⁴, the accused Manu Sharma was acquitted of all charges in 2006. However, he was sentenced to life imprisonment owing to intense media and public pressure.

However, Media act as a soft painless bullet that directly hits the mind of the people and people automatically believe what media show us. Media has a great social responsibility which they should respect. The most talked about rape cases in Delhi is the '*Nirbhaya Rape Case*' where group of 5 men brutally raped an innocent girl in a moving bus. Firstly, there is nothing to talk about a sensitive issue of rape unless anything comes from court. The Media so much interfered into this case that because of this media trial, complete case of prosecution was damaged as many evidences and statements which were important were already out in public so in the name of supplying information the affected the prosecution case badly. Yes, it was her parents who killed Aarushi', we concluded before the final judgment of the court that put a question mark on the social responsibility of the media. Several times the media has overlooked the 'contempt of court' that clearly punishes the one who interferes and arbitrates in the matters of court.

Medial trial is a threat to the right of fair trial and a blow at the sanctity of the judicial system. Media by reporting frill details of the case, confession of the accused, presenting biased view points during the pendency of the judicial proceeding is not only transgressing its limits but also makes mockery of court proceedings. When there is trial by Media, there is always a conflict between two constitutional rights i.e. fair trial and freedom of the Press. 'Trial by media' is a phrase popular to describe the impact of television and newspaper coverage on the reputation of a person by creating a widespread perception of guilt regardless of any verdict in a court of law. Media has a tremendous power to awaken the people. But that power has to be exercised with the precision and circumspection. Media can point out the lapses in the investigation and thus highlight is so as the plug and loopholes and set the system rights. That is constructive role of the media. Instead, what happens many a time is, in the garb of highlighting the system failures, more often

it turns out to be trial by media. A fair trial requires that the judges and jury make their judgment solely on the basis of the evidence introduced in the court room, and of course they must be subjected too no outside pressures in reaching their decisions. Media is bold and powerful. On a positive note, Media is a change as trial by media helps hanging the true convicts who are proven innocent by corrupt and tampered evidences in the court premises. But, the adverse effect of media trial is to be criticized. Media should maintain its code of laws and ethics, social responsibility and credibility by not interfering in the matters of court so early.

Another worrying factor upon media trial is prejudicing the judges presiding over a particular case. The media create an unconscious indirect pressure on a judiciary in a high-profile case. Since judges knows that they are being watched there is always a chance that judges get influenced by the flowing air of remarks made upon a particular controversy. The media present the case in such a manner to the public that if judges passes an order against the media verdict, he or she is deemed either corrupt or biased. Justice Katju and P. Sainath have attacked the media for focusing attention on 'non issues' and 'trying to divert attention of the people from the real issue to 'non-issues'²⁵ and 'stifling of smaller voices.'²⁶ A line between information and entertainment should be drawn. These cases which are being reported by Media are not for increasing the TRP but for supplying relevant information thus, in order to help the judiciary in creating deterrence. Psychological pressures storming from media scrutiny could possibly print verdicts to conform to public opinion rather than the evidence offered at trial. Further the credibility of a judge is at stake when a trial by media declares a person guilty but the judge gives a differing opinion based on facts.²⁷ The Right to justice of a victim can often be compromised in other ways as well, especially in rape and sexual assault cases. Secondly, the media treats seasoned criminal and ordinary one, sometimes even the innocents, alike without any reasonable discrimination. They are treated as a 'television item' keeping at stake the reputation and image. Even if they are acquitted by the court on the grounds of proof beyond reasonable doubt, they cannot resurrect apart, even victims and witnesses suffer from excessive publicity and invasion of their private rights. Police are presented in poor light by the media and their movable too suffers. Such kind of exposure provided to them is likely to jeopardize all these cherished rights accompanying liberty.

Conclusion

The ground reality is that the media does not go with the flow, but the flow goes with the media, and surprisingly we the people are this 'flow'. It is correct to say the likewise everyone Media also enjoys their right to freedom of speech and expression but media owns an element of social responsibility which needs to be taken care by media. Reason behind is the persuasiveness and conviction that media carries today. Although Art. 19 has been extended to Freedom of Press but misuse of any freedom in not a sign of healthy democracy. Media being the fourth pillar of democracy contribute heavily to nation. There is no doubt that media has contributed positively in sending many people behind bar but the need of the hour is to draw a line between the permissible limit of interference in judiciary. During criminal proceedings Media Trail not only created difficulty for the judiciary but also for the victim, accused and also the witnesses. Media can create a pre decided prejudice for accused but also it creates sense of danger for witnesses and most importantly it defames the parties along with victim involved. Although, the 20th Law Commission Report explains about 'Contempt of Court' which applies to the media also. The need to impose restrictions on the freedom of speech and expression in relation contempt of court arises from the following interests that have to be subserved. (a) The judiciary should not be designated because people will lose faith in it and ultimately this will erode its social legitimacy; (b) Judicial decision must not be allowed to be flouted, because it will weaken the credibility of the judiciary. Media being the responsible organ of democracy should become a support system for judiciary but not an obstruction. Therefore, Media should respect the privacy of judiciary and the parties involved in the case. Media should acknowledge the fact that whatever they publish has a great impact over the spectator. Thus, the role of media has to be confined to factual reporting of cases and not building public opinion either in the favor of accused or complainant lest it causes the miscarriage of justice, and the role of media should be monitored closely and exemplary punishment should be given for deviations from the same.

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