

Original Article

## Judiciary and Media Trial: A Need for Balance

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<p><b>Author Affiliation</b> <sup>1,2</sup>Faculty of Law, Jamia Millia Islamia, New Delhi 110025, India.</p> <p><b>Corresponding Author</b> <b>Utkarsh Dwivedi</b>, Faculty of Law, Jamia Millia Islamia, New Delhi 110025, India. <b>E-mail:</b> <a href="mailto:aqib9628@gmail.com">aqib9628@gmail.com</a></p>	<p><b>Abstract</b></p> <p>Though Media is regarded as one of the four pillars of democracy and plays a vital role in moulding the opinion of the society, however, with the increased role and importance attached to it, the accountability and professionalism in today's media cannot be effectively emphasized. Media should not usurp the functions of the judiciary and diverge from objective and unbiased reporting. The trial by media is definitely an undue interference in the administration of justice. Judges while making decision start considering Media criticism if they goes opposite from the view of the Media that's why in mostly high profile cases verdict passes by media becomes the final verdict in trial courts. There is a need to maintain a balance between the freedom of the press and the right of a victim to have fair trial in case. Thus, Media wields enormous powers that can subliminally affect a case. The problem does not lie in media's exposing the wrongs in the society. The problem arises when they go beyond the rights conferred to them and do things which they shouldn't. The thin line between 'innocent until proven guilty' and 'guilt beyond reasonable doubt' is easily crossed which can endanger a trial in process. Steps need to be taken in order to prevent media trials from eroding the civil rights of the citizens, whereby the media have a clearer definition of their rights and duties, and the courts are given the power to punish those who flagrantly disregard them.</p> <p><b>Keywords:</b> Judiciary; Media; Democracy.</p>
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**How to cite this article:**

Mohd. Aqib, Utkarsh Dwivedi. Judiciary and Media Trial: A Need for Balance. Indian J Law Hum Behav. 2019;5(2):155-161.

### Introduction

Technically democracy is the rule of the people, a system which has three strong pillars i.e.; judiciary, executive and legislature. But with the rise of the media and its power to reach every corner of the state it can also be considered as the fourth pillar of a democracy. It plays an important role of a conscious keeper, a watch dog of the functionaries of society and attempts to attend to the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. The media can be

commended for initiating a trend where it plays an active role in bringing the accused to hook. Especially, with the advent of cable television, local radio networks and the internet the reach and impact of the mass media has greatly enhanced. The circulation of newspapers and magazines has also been continuously growing in our country. Coupled with the use of modern technologies, this ever-expanding readership and viewership has given media organizations an unprecedented role in shaping popular opinions.

However, there are always two sides of a coin.

Like all other freedoms guaranteed by the Indian Constitution, the freedom of press is also not absolute and must be exercised within the reasonable boundaries. With this increased role and importance attached to the media, the need for its accountability and professionalism in reportage cannot be effectively emphasized. Media plays a vital role in moulding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. Presently, the increasing competition between various news agencies/channels to gain more viewership and TRPs has worsened the situation leading to a degraded quality of news followed by distortion of facts and unreasonable interference in the private life of individuals. The increased role of the media in today's globalized and tech-savvy world was rightly put in the words of Justice Learned Hand of the United States Supreme Court when he said, "*The hand that rules the press, the radio, the screen and the far spread magazine, rules the country*"<sup>1</sup>.

Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. This is the threshold on which we are firmly standing today. Television channels in a race to increase their Television Rating Point (TRP) ratings are resorting to sensationalized journalism with a view to earn a competitive edge over the others.

The present circumstances reveal that Media has now transformed itself into a 'public court' (Janta Adalat) and has started interfering into court proceedings. This phenomenon is popularly called as media trial.

### Media Trial

The Indian media has gradually developed as the primary source of information over the past decades with innumerable newspapers, magazines and other forms of newsgathering available in vernacular languages. News channels, infotainment apps, and the internet nexus have augmented the reach of media. Media has now transformed itself into a 'public court' and has started interfering into court proceedings. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. Now, what we observe is media trial where the media itself does a separate investigation, builds a public opinion against the accused even before the court takes cognizance of the case. By this way,

it influences the public and sometimes even judges and as a result the accused, that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty unrepressed.

If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it may result to undue interference with the "administration of justice, calling for proceedings for contempt of court against the media. Unfortunately, rules designed to regulate journalistic conduct are inadequate to prevent the encroachment of civil rights.

Further, the trial by media of matter sub-judice in the court of law hinders the justice delivery and fair trail of such matter. In the recent past, few media driven cases include the Arushi murder case, Jessica Lal murder case, BMW accident case, Nirbhaya rape case, Nira Radia case. Apart from this there were scams like the 2G scam, Bofors scam, Commonwealth Games scam and Harshad Mehta stock market scam. All these cases pertain to various diverse fields but do share a common ground of being driven by the media. This takes us back to the question raised in the very beginning; how much interference may be passed off as the work of a healthy regulator and when does it start to interfere with the process of the court. However, it needs to be appreciated that Media also plays a good role while divulging corruption in government exchequer and in bringing out the government's inaction on many occasions to the lime light and eventually action is taken. But at the same time, conflicts arise when media transgresses its domain and tries to usurp the power of judiciary and make judgmental comments on pending trials.

### Media trial v Freedom of Speech

Right to Freedom of Speech and Expression" is a fundamental right of the citizens of India as mentioned in Part III of the Constitution of India - Article 19(1). This Article is so wide in scope that Freedom of the Press is included in Freedom of Speech and Expression. Thus, freedom of the press flows from the freedom of expression which is guaranteed to all citizens by Article 19(1)(a).

In *Printers (Mysore) Ltd vs Asstt. Commercial Tax Officer*<sup>2</sup>, the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression.

Freedom of the press has always been a

cherished right in most of the democratic countries and the press has rightly been described as the fourth chamber of democracy. However In a civil society no right to freedom, howsoever invaluable it might be, can be considered absolute, unlimited, or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the constitution has to be exercised within reasonable boundaries. Excessive publicity by media hinders the justice delivery by the courts and affects the suspects victims, accused and witnesses by invasion of their privacy rights.

### **Media trial and its interference with the judicial process**

#### *Fair Trial*

A trial conducted by a judge in an impartial way is said to be a Fair Trial. The question regarding whether a trial is fair or not depends upon the procedure as laid down by the Code of Criminal Procedure, 1973 and the prevailing system of criminal justice. In India, even an accused cannot be denied his right to life and personal liberty. Indian Constitution through its Article 21 renders the fair trial a part of life and personal liberty. Right to fair trial includes the right to be tried an unbiased or prejudiced judge. This right was enunciated in *Bhajan Lal, Chief Minister, Haryana v. Jindal Strips Ltd*<sup>3</sup>.

The Supreme Court in the case of *Rattaram v. State of Madhya Pradesh*<sup>4</sup>, observed that the fair trial is the heart of criminal jurisprudence. A fair trial is a fundamental right which flows from article 21 of the Constitution. Denial of the fair trial is the denial of human rights. Also, the court in *Mohd Hussain @ Julfikar Ali v. The State (Govt. Of NCT)*<sup>5</sup>, stated that every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty. Thus, right to a fair trial being a fundamental right cannot be refused to any person by the virtue of Constitution.

Trial is very much effected by the Media sensation. The trial by Media or the Media trial effects and hinders the free and fair trial for the purpose of imparting justice. In many cases, the media exceeds its freedom of speech and expression by broadcasting and publishing materials which are prejudicial to the interest of the parties like the character of the parties, photographs, criticism of the witnesses, etc. A media trial may be prejudicial to the case of the parties, or it may influence the opinion of the court because to be very honest, no

person can be completely impartial and unbiased. It is human nature to be biased towards a certain view, and even a Court can fall into this trap.

The media presents the case in such a manner to the public that if a judge passes an order against the "media verdict", he or she may appear to many either as corrupt or biased, therefore the Judges while making decision start considering Media criticism if they goes opposite from the view of the Media that's why in mostly high profile cases verdict passes by media becomes the final verdict in trial courts.

In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr*<sup>6</sup>, it was held by the Supreme Court that: "No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case."

#### *Right to be Represented*

Another factor affected by the trial by media is the right of the accused to have fair trial. Sometimes, media trials create a lot of pressure on the lawyers, not to take the case of a particular party, thereby forcing the accused party to go through the trials without having any defense.

Take the case of Ajmal Kasab for instance. Yes, it was very evident that he was the guilty party. But didn't he also deserved a fair trial?, Abbas Kazmi, the lawyer of Ajmal Kasab, in the case, said that he was deeply hurt and distressed with the harassment meted out to him, by the media (largely) and the Public Prosecutor. The media and the prosecutor foregrounded the fact that Mr. Kazmi and the accused belonged to the same religious sect, and made it work in their benefit by calling him a "Terrorist Lawyer" and equating him to the main conspirators in the case.

#### **Justifications by the Media**

Trial by media is often justified by giving the argument that the media highlights the mindset

and prevalent notions in the society. Media is also supported through the argument that in a democracy, having a transparent and accountable setup is of utmost importance. The media through its campaign journalism provides a platform to the public to express its opinion and hence ensure their participation.

In *Re: Harijai Singh and Anr. and In Re: Vijay Kumar*<sup>7</sup>, the Supreme Court had the occasion to decide on the scope of the freedom of press, recognized it as "an essential prerequisite of a democratic form of government" and regarded it as "the mother of all other liberties in a democratic society" In case of *Secretary, Ministry of I and B. v. Cricket Association, Bengal*<sup>8</sup>, it was held that "The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution".

The Supreme Court has stated that the main principle in giving the freedom to the Press it enjoys is that the public has the right to know<sup>9</sup>. However, it must also be remembered that though media has freedom of speech and public has the right to know but the media shouldn't engage in making up stories to sensationalize matters. Highlighting the merits of the media in the *Bofors Case*<sup>10</sup>, the Supreme Court was of the view that those who know anything about the matter might come forward with information, it reduces crime through society's disapproval of certain acts, and most importantly it leads to a public discussion of important issues.

### **Effect of Media trial on some prominent cases in the recent times**

#### *Noida Double Murder Case*

This is a case where a fourteen-year-old girl Aarushi Talwar and a forty-five-year-old Hemraj Baanjade was murdered.

There was huge media coverage of the case. Both the print and electronic media overloaded with the news of Aarushi Talwar's murder in the month of May 2008. It was very shocking to see the media's insensitivity while reporting about the incident. The media began simulating objectionable scenes of Aarushi and Hemraj together and Rajesh coming with a golf club and hitting them. They were trying to portray Rajesh as the murderer without any Court verdict. Many spoke about the character of the minor girl, who already died. Even some of the media houses stooped so low that they kept talking

about wife swapping and how it lead to Aarushi's death because she came to know about the dark secrets about her parents. All of these severely affected the reputation of the minor girl, the family and also the people who were mentioned by the media to be involved in such wrong doings.<sup>11</sup>

A PIL was filed by Dr. Surat Singh, an advocate, disappointed by the role played by the press in the case. The Supreme Court expressed its serious concern regarding the coverage of the Arushi Talwar's murder case by media. The Court said that the media, both print and electronic, while publishing any news relating to the case in question should be cautious because it may prejudice the "defence of the accused" or may damage the reputation of every person associated with the case.<sup>12</sup>

Again in the year 2010, Rajesh Talwar sought for "judicial intervention against media reports allegedly making scurrilous insinuations on the character and motives of the Talwar family."

#### *Tarun Tejpal Sexual Assault Case*

This case was related to an accusation of committing a rape against the chief editor of "Tehelka" Mr. Tarun Tejpal on his colleague. The accusation was brought by a women journalist who worked with Tejpal and accused him of sexually assaulting her in an elevator in a five star hotel in Goa during a conference.

In June 2017, a trial court in Goa passed an order restricting from publishing the court proceedings. It held that the proceedings will take place in-camera. It was meant for preserving the dignity, privacy and respect for both the parties involved in the case.

On 28 May 2018, a renowned news channel showed a videotape depicting two persons whom the channel claimed to be Tarun Tejpal and his colleague who made an accusation against Tejpal. It was a CCTV footage and it was shown repeatedly in the channel's prime time show. There was a lot of debate and discussion based on that videotape. The channel did not show any kind of respect for the "rights of the accused" or the "privacy of the complainant" Supreme Court lawyer Rebecca Mammen responded to such violations committed by the channel and said:

"Section 327 (2) and (3) of The Code of Criminal Procedure makes it clear that Rape trials shall be conducted in camera. It further states that it shall not be lawful for any person to print or publish any matter in relation to such proceedings, except with

the previous permission of the court. The footage that was aired yesterday is an exhibited document in the trial. In an ongoing trial, you cannot play any footage on your night show without the permission of the court. The court had not granted any such permission. On the contrary, it has prohibited public viewing of the footage."<sup>13</sup>

Though after a lot hue and cry all the information and online videos of that debate was deleted from the website of the channel, perhaps because of fear of legal consequences. But this does not erase the wrong done by the channel which has affected the reputation of the parties involved in the case and may also eventually affect the trial.

### *Sunanda Pushkar Death Case*

The case was regarding the mysterious death of Sunanda Pushkar, the wife of renowned politician Shashi Tharoor. After her death on January 17, 2014, the police conducted investigations.

By October 2014, the medical team examining Pushkar's death came to a conclusion that the death was due to poisoning. Then the police on January, 2015 filed an FIR and the murder case was registered against an unknown person.<sup>14</sup>

But Media started with their media trial on the very same day of the death of Sunanda Pushkar and declared Shashi Tharoor as the murderer by disclosing of half-truths, cherry-picking of facts and twisting of statements. Some media houses even showing a statement of some distant cousin of Pushkar claiming that it was a clear case of murder and Tharoor was the murderer.

In the year 2017, Shashi Tharoor filed a defamation suit in Delhi High Court against a well known media house. The Court observed that the "right to silence" of Shashi Tharoor must be respected by the Journalist and his channel during the pendency of the investigation in Sunanda Pushkar's death case. The Court further said that the Journalist and his channel are free to state facts in relation to the investigation but cannot announce Shashi Tharoor to be the murderer. The ground on which the suit was filed was that by incriminating Shashi Tharoor in the death of Sunanda Pushkar it risked prejudicing the investigation and any subsequent trial. The suit also raised the concern for a balance between free speech and media trial.<sup>15</sup>

### **The Law Commission Report**

In its 200<sup>th</sup> report titled as *Trial by Media: Free Speech*

*vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)*, the Law Commission has aptly elaborated the positive and negative aspects of media trial. In this report, the Law Commission recommended various amendments to address the damaging effect of sensationalized news reports, and accused victimization by media, on the administration of justice and measures of postponement of proceedings and further said that such powers cannot be vested in the subordinate courts where the criminal proceedings are 'active'. This is because under the Contempt of Court 1971 Act, the subordinate courts have no power to take action for contempt. Under Section 15(2), they can only make a 'reference' to the High Court. Commission has recommended prohibiting publication of anything that is prejudicial towards the accused – a restriction that shall operate from the time of arrest. It also reportedly recommends that the High Court be empowered to direct postponement of publication or telecast in criminal cases.

The Report also mentions in what publications can be prejudicial if made after a person is arrested and made recommendations for amending the Provisions of the Contempt of Courts Act, 1971 which talks about using 'active' and 'arrest' in sec 3 and 'real risk of serious prejudice' in new sec 14A. It was suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case. The Commission in its report further suggested that the High Court should be empowered with such powers as to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast. The 17<sup>th</sup> Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

The Law Commission of India, in Chapter IX of its above mentioned report has stated various forms of conduct by the press which constitutes interference in the due course of administration of justice. These include, (1) Publications concerning the character of accused or previous conclusions; (2) Publication of Confessions; (3) Publications which comment or reflect upon the merits of the case; (4) Photographs related to the case which may interfere with the identification of the accused; (5)

direct imputations of the accused's innocence; (6) Creating an atmosphere of prejudice; (7) Criticism of witnesses; (8) Premature publication of evidence; (9) Publication of interviews with witnesses.

### Impact of Media trial on judicial proceedings

#### *Influence on Accused, Victim and Witness*

There can be serious prejudice to the suspect or an accused. If the media projects such suspect as if he has already been adjudged guilty well before the trial in court. Even if ultimately the person is acquitted after the due process in the courts, such an acquittal may not help the accused to rebuild his lost image in society. Also, if the identity of witnesses is published, there is danger of the security of the witnesses getting jeopardized due to the pressure both from the accused or his associates as well as from the police. Further, in certain cases there is a necessity to keep the identity of the victim secret in order to avoid any infringement of the privacy of such person.

#### *Influence on Judges*

The Supreme Court in *State of Maharashtra v. Rajendra Jawanmal Gandhi*<sup>17</sup> observed that has held that a trial by press, electronic media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice and a Judge is to guard himself against such 'pressure'.

Trial is very much effected by the Media sensation. Like all other human beings, judges are also not immune from criticism either in respect of their judicial conduct or any of their conduct in a purely private capacity. A media publication can unconsciously influence Judges or Juries. Judges while making decision start considering Media criticism if they go opposite from the view of the Media that's.

### Suggestions

Following are some of the suggestions which may help in reducing the danger of trial by media -

- Firstly for the purpose of preventing the media from making prejudicial publications and affecting the administration of justice, there is a need to make certain changes in the Contempt of Courts Act, 1971. The starting point of the "pendency of a criminal proceeding" should be made from the time of "arrest". It was also recommended by

the 200th Law Commission Report. But this recommendation has not been implemented yet and

- Secondly, the "Press Council of India" (PCI) which is a statutory body is concerned with improving and maintaining the standards of print media. The PCI has very limited powers under the Press Council of India Act 1978. There is a need to amend the Act for making the PCI more powerful to take actions.
- Third, the Press Council Act, 1978 only deals with the print media and there is a need to include the electronic media within its ambit. If the broadcasting media is inserted into the said Act then there will be some form of external regulation in addition to self-regulation of Broadcasting media.
- Fourth, there should be a prescribed minimum standard to enter into the media profession. The media persons should be made known about the media laws and also about the restrictions on media. This will help them to be aware of their boundaries from the beginning of their professional life.

### Conclusion

From the above account it becomes clear that the media trial has a more negative influence rather than a positive effect (except for a few exceptions).

Though the importance of media cannot be denied as it keeps the public informed, educated and vigilant and at times it also behaves as a watchdog of the government functions and its abuses, by making them available to the public by way of various mediums like television, radio, newspaper, etc.; but the media houses, acting as "public court" are starting to interfere with the proceedings of the court which completely overlooks the crucial gap between an "accused" and a "convict" keeping at stake the golden principles of "presumption of innocence until proven guilty" and "guilt beyond reasonable doubt".

Despite of all the importance attached to the media, the fact remains that media has to be a regulated in some way or the other. They cannot remain unchecked and do a trial which gains more publicity. The problem does not lie in media's exposing the wrongs in the society. The problem arises when they go beyond the rights conferred to them and do things which they shouldn't.

The trial by media affects the accused, his/her family, witness, lawyers and most importantly it affects the Judges of the court. It might be enlightening to examine how other countries combat the problem of 'trial-by-media'. Most countries admit that such practices undermine the authority of courts and result in loss of confidence in the judicial system, for example the view taken by the courts in New Zealand is laudable: "*In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all other things being equal, the latter should prevail.*"<sup>18</sup>

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

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