

The Balance Required In Judiciary and Media For Fair Trial

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Abstract- *This paper focuses on the trials conducted by media and then, how it affects a fair trial. The fourth pillar of democracy is media. To check government and its organs an independent media is required. But in recent times media is overstepping its boundaries due to too much of corporatization and its never ending race to engage maximum viewership. It has been seen that media ends up violating the principles of a fair trial by announcing its own verdict even before the beginning of the trial. As a result even before the verdict is delivered in court the person accused is held guilty in the eyes of the public. This sort of sensationalism also somehow affects the Judges as they are humans after all. The opinion created by media is bound to have a sort of effect on them. The suggestion proposed hereunder is to have a responsible self restrain by media along with more of public participation in polity to create a balance between a fair trial and independent media.*

I. INTRODUCTION

The Article 19(1) incorporated in Indian constitution has one of the most important and useful rights that is free speech and expression. This happens to be the crucial facilitator for media for a wide spread engagement within democratic environment. The media is able to operate and function by using this freedom.

It is a widespread concept in democracy where popularly it is coined that media is one of the pillars in a democratic country. It is often seen as the mother of all liberties in a democratic society. For effective judicial administration a responsible press can be instrumental. The reason being, that media has a wide range of different roles to play and is found to be vital in shaping the thoughts and opinion of people at large. But as in the case of every liberty and freedom given, even the freedom of speech and expression is found to be misused and mishandled by media on many occasions. At large, all establishments and institutions are prone to be used and abused. Likewise, even if liberty is left unchecked and unrestrained it would develop to be a notion which can be used at random will, no matter if it would lead to anarchy or disorder.

In recent times media activism is seen through the window of ‘Trial by media’. Generally, this trial by media indicates the impact which television and newspaper creates by coverage on a person and his reputation. Thus, creating uproar of guilt and accusation which is widespread in society, irrespective of any verdict given in a court of law. This is seen especially during those court cases which are hugely publicized. In such cases the media creates such hype and hysteria in public where the accused is already judged guilty in the eyes of the public irrespective of the verdict of court. Due to this, the person accused lives his whole life under public scrutiny at all times which becomes taxing for an individual to bear at all times.

Moreover, trial is actually a process which is carried out by courts and is related to the process of justice. Nowhere, there is a mention of legal system in which the media is given the authority to hold trial related to a case. A fair trial is a right of an accused as this is an integral part of any judicial system and cannot be denied by creating uproar against the person who is accused but not convicted by court.

In India, recently trial by media has reached to a significant scale. The nation has witnessed number of instances, situations and cases where even before the judgment of the court, the media lands up in conducting a trial of its own and passes the verdict on the accused.

II. MEDIA’S ROLE AS A WATCHDOG OF DEMOCRACY

Without a shadow of doubt, Media has played an instrumental role to ensure that justice is brought to those who were disadvantaged, weak and on the brink of not receiving justice due to the influence of a certain section of people in society used to twisting the law by sheer use of money and power. One possibly cannot ignore the role of media which was not less than heroic in cases which are known commonly as ‘Shalini Malhotra, case, Sudha Gupta, Billa Ranga case, Baba Nirankar, etc. If the media would not have been active, then the howl and pain of the victims who were subjected to brutal khap killing of Haryana would have been lost and unheard of. For long, the fear and paranoia of khap backed by

police and certain politicians as a barbaric practice in modern times would have been continued unleashed had not the media brought it to light in front of the world. Moreover cases like Tandoor case, Jessica Lal murder case, Arushi murder case and the recent Sheena Bora murder case, the IPL Row where the matches played were found to be fixed and many who's who of the society were found involved in degrading the game were brought out into light without any prejudice by the media. Its efforts are indeed laudable as this is an extremely welcoming act done by media.

However, Media is also a full fledged business nowadays. Advertisements, eyeball encatchment, viewership, ratings are the success mantra of this business. In this context, whatever which can be sole is given the shape of news which means anything which grabs the attention of people is served as news no matter in substance how much trifle it is. In other, term anything which can be 'sensationalized' can be served as news. If one sees the present day presentation of news reporting, it seems most often than not ethics and journalism are two distant factors. For democracy to function without hinderance and hiccups, journalists and media persons are expected and supposed to be unbiased facilitators of truth. To achieve this media must adopt and include principles of virtue such as honesty, truth, fairness, objectivity, accuracy, respect, unbiased reporting and autonomy. These virtues are one of the basic parts of democratic process and expectations. Having said that, it is rather unfortunate to note that these days certain section of media is more overwhelmed by materialistic realizations over the professional ethics and sincerity towards their profession. To win the race of cut throat competition, journalists and reporters become the medium to satisfy media managers by meeting deadlines continuously, achieving targets, thereby reduced to publish and present anything in which public is interested in lieu of what is important in public interest.

III. IS IT TIME TO REGULATE MEDIA ACTIVITY WHICH IS UNHEALTHY?

On neutral ground, one has to acknowledge the fact that the Judiciary is not at liberty from human fallacies. Though, the holder of any judicial office does his/her best to ensure that what has been said or heard does not get inside their head. So, that they are not influenced. But after all, the judges with all due respect are after all humans too and we know that humans are not free from faults. A person, at will cannot shut is mind off from what he/she had read, seen or heard as a result the person may get affected by it and can be judgmental to a certain extent. Until, the court of justice administers law by sidelining or abstaining from pressure of

widely popular opinions made viral, judiciary will not be independent of this phenomenon.

For instance, on analyzing the judgment which given in the case of Reliance Petrochemicals Vs. Proprietor of Indian Express in the light of the judgment given by P.C.Sen, inference can be drawn of the acceptance of Supreme Court to the fact that judges are prone to be subconsciously influenced by the publicity generated by media.

Another example can be cited in the same pretext of a case related to a woman's suicide in Calcutta where the Supreme Court was critical to the way this news was presented in a magazine. Post the suicide of the woman in her parent's residence, the deceased woman's husband along with his family under the Indian Penal Code charged them with death due to dowry. Subsequently, the accused husband had filed number of documents to show and prove that his wife was a psychotic patient and was suffering from Schizophrenia, on the other hand the parents of the woman ended up filing documents in support to prove and establish their allegations regarding the demand of dowry made by the husband and his family which had resulted in the tragic end of their daughter. It should be kept in mind in midst of all this, trial was yet to start. Bail was not granted by the lower court to the deceased woman's husband. Later, when Supreme Court granted interim bail to the accused, the honorable court was highly critical of a magazine which had carried out two articles related to this incident in its final orders. The court expressed disapproval of the fact related to both the articles that the news article just highlighted one side by the story which was given by the deceased woman's parents but did not give space to the documents which were produced by the husband stating that the woman was schizophrenic. Viewing such approach as tilted and opinionated, the Supreme Court observed that "these types of articles appearing in the media would certainly interfere with the course of administrative justice".

To protect the risk of biasness, there definitely should be provision of some sort of regulations in relation to the nature and kind of publications and news related to an incident when the trial related to the same is going on.

IV. WHICH IS MORE IMPORTANT: TRIAL BY MEDIA OR FAIR TRIAL?

There have been number of instances where the section of media have acted as self proclaimed judge and jury, where the criminal law in India states and manifests that the guilt of a person needs to be proven beyond the realm of reasonable doubt, and further the accused is to be presumed as

only guilty until proven otherwise in the court of law after providing all legal aids and safeguards to the accused.

Justice and being fair are the two main pillars on which the structure of democracy lays rest. Sometimes due to prejudged and conclusion drawn publications against the accused literally robs him/her of a fair trial. We need to observe under the light of justice denial of fair trial can be received as an obstruction in the working process of justice for a person in midst of trial. One should remember that all parties have a constitutional right to get a fair trial in the court of law which is uninfluenced by dictate of media or popular outcry which is opinioned by the wave created by media, by a tribunal which is impartial.

In Anukul Chandra Pradhan vs. Union of India the Supreme court observed that “no occasion should arise for an impression that the publicity attached to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial”. The liberty to the press is subjected to be the subordinate of administration in justice, but not to interfere during the course of justice.

V. RIGHTS OF HUMAN AND ITS VIOLATION

The fact that media has a large audience it has to shoulder greater responsibility in comparison to an individual. The reputation of respectable person cannot be damaged, or close the doors of justice under the garb of freedom of press and start using it unrestrictedly and using it as an license to set attack on litigants without considering the consequence which the person may have to bear in his/her entire life.

Media does extra snooping as a byproduct if in case the accused has tainted reputation. There have been many instances where apart from suspects and accused even the witnesses and victims suffer and face the brunt of excessive publicity and uncalled for invasion to private life. In the much talked about Jessica Lal murder case when Manu Sharma was tried and convicted for murder, the court held that “There is danger, of serious risk of prejudice if media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if media publishes statements which out rightly hold the suspect or accused guilty even before such an order has been passed by the court”.

Related to the same case, there was a lot of confusion in the public in regards to description of assailants and number

of suspects, due to some particular articles which were published immediately after the unfortunate incident.

Regardless, of any verdict in the court of law, there is absolutely no excuse to taint the reputation of a person by creating a hype and hysteria of guilt amongst people in the society. What follows after this is that even if the court finds the person innocent, his/her future still stands on vulnerable ground due to the perception (read negative) built by media against that person. Due to rash and irresponsible media reporting many times, security of witnesses have been endangered. As when the identity is revealed the witness comes across the eye of danger which can even account be life threatening. This, is one of the primary reasons why people are afraid, hesitant to appear as witness in a case, much less report a crime. On the other hand, the morale of the police and investigation takes a big hit, when media conducts sting operation to expose weak links in the case and start their own trails even before the trial or investigation has reached some considerable progress. During this whole situation, it is a given instance where more often than not police is made the scape goat. The media goes over frenzy and jumps the wire of being over enthusiastic and creates a situation where it feels that the case should be solved with a snap of a finger. This creates a lot of unnecessary pressure on the investigation team, where they feel the heat to speed the investigation and it lands them in dangerous situation where they end up arresting wrong persons due to hasty investigation to negotiate with the pressure and public expectation inflated by media to extreme proportions.

VI. CONCLUSION

It needs to be understood responsibly, that freedom of expression is not unlimited or absolute and cannot be used as a validating license to be unfettered. The judiciary comprises of judges who are human after all. As a human they are subjected to occasionally get influenced by some considerable public view apart from the objective approach of law and justice. It cannot be stated that judges are completely disconnected from the influence which is created by the hype of media.

It is time when media should call itself for responsible self regulation. The media should ensure that its trials should not deter a fair trial and more so should not create prejudice against the defendant of the accused. If, any of this influences the final One can forward the solution that occasional exercise of the court can be used to punish those who cross the line of responsibility to condemn and restrict such actions. On stricter grounds the government can start regulating the media. But this will defeat the whole purpose for which democracy is known for. Rather, there should be

responsible civic body engagement by the people. As a cultivated, educated and engaged civil society would result in the best watch dogs not only over governments but also the media.

This can possibly help to restore much needed balance amongst the most important pillars of the country. At last we should remember the famous common rule law laid in R.V. Sussex Justices: Exparte McCarthy “Justice should not only be done, it should manifestly and undoubtedly be seen to be done”.

Outcome of a trial it would be a disaster and mockery of the judicial system. Along, with this a wrong practice would start as this phenomenon would be used as a monkey wrench to get desired outcome and everything for which media usually stands i.e. for the right would be lost and would always start transgressing the natural principles of justice.

REFERENCES

- [1] Lecture IV, Adherence to Precedent. The Subconscious Element in the Judicial Process (1921) Yale University Press.
- [2] M.P. Lohia v. State of West Bengal, 2005(2) SCC 686
- [3] Sidhartha Vasisht v. State (NCT of Delhi), AIR 2010 SC 2352
- [4] Effect of trial by media before courts, <http://www.lawteacher.net/commercial-law/essays/effect-of-trial-by-media-before-courts-lawessay.php>
- [5] Enact law to regulate trial by media: Law Commission, The Hindu, September 3, 2006
- [6] S.L Rao, Trial by Media-Television should have no role when criminal cases are in court, The Telegraph, July 25,2011
- [7] Anil Dharker, An abortion of Justice, Sunday, March 5, 2006,
- [8] <http://skashijuneja.com/blog/2006/02/22/jessica-lal-case-justice-not-served/>
- [9] Express Newspapers v. U.O.I., (1997) 1 SCC 133 AIR 1970 SC 1821 TRIAL BY MEDIA AND TRIAL OF MEDIA
- [10] <http://www.rrtd.nic.in/MassMediaIndia2009.pdf>
- [11] Right to Privacy in Sting Operations of Med