



Media and democracy-legal prospective

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Abstract

Democracy cannot be successful without free press. Free press is very essential, as it is the voice of the people. But media shall not fall as a victim to some monetary or any other temptations, and shall keep on honestly serve the people. The Chairman of Drafting committee Dr. Babasaheb Ambedkar strongly argued that: "The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of press or the manager is all citizens and therefore when they choose to write in news paper they are merely exercising their right of freedom of speech and expression and in my judgment therefore no special mention is necessary of the freedom of press at all". Media in contemporary era is not seem to be a platform for raising the people's concern but appreciate the government and its policies which are directly effecting the basis of democracy. Most of the channels are act as an agent of the government which is danger for any democratic government. Media trial is also one of the major concerns which are weakening the faith of people from judiciary. Instead of the many reasonable restrictions imposed by Constitution and other laws, media is not checked by any agencies of government effectively. Now it is believe that those who have media in pocket rule the country. And this is against the constitutionalism and ethics of media profession. Main purpose of this paper is to discuss the main concerns of expression by media and check and balance on it by law. The author has tried to point out the reasons for loosing popular faith on media by people. Further the author has tried to focus how the media can play important role in formation of healthy democratic government by focusing on major issues of the people in the spirit of constitution.

Keywords: democracy, media ethics, good governance, corporate media

Introduction

Democracy is a system of government where citizens are allowed to participate in the proposal and creation of laws. The success of democracy is not only depending upon the awareness and participation of people but also depends upon the correct awareness and information reached to them. Media is called as the fourth pillar of democracy and its affect on the people sometime changed the government also. One of the crowing glories of the democratic system is the freedom of expression and the space that is provided to views from different sections of the society. A democratic system can run to its utmost potential when there is wide participation on the part the general mass which is not possible without people getting informed about various issues. Reliable information resources are an important constituent of any democratic society. Print media, being the leader over a considerable period of time has now got competition from Television, which is reshaping many of the social responses. Radio apart from providing news and views has also developed a flair for entertainment, thereby getting a lot of acceptance. There is also the new media with internet being its flag bearer. Internet has indeed made it possible to disseminate information and ideas in real time across the globe. However, among all these developments there is a cause of concern. Also, often the media publish correct news but place too much emphasis on frivolous news such as those concerning the activities of film stars, models, cricketers and so on, while giving very little

prominence to much more important issues that are basically socio-economic in nature. What do we see on television these days? Some channels show film stars, pop music, disco-dancing and fashion parades (often with scantily clad young women), astrology, or cricket. Is it not a cruel irony and an affront to our poor people that so much time and resources are spent on such things? What have the Indian masses, which are facing terrible economic problems, to do with such things?

But the question is whether media is really fulfilling its social responsibility? Is media truly presenting the really problem of the country and exposing the thread to the democracy? Now a day we can easily seen that how media is supporting even the wrong policies of the government and looks like an agent of the government. There was a time when the people used the believe the version of the media but not now. They are presenting only that information which can increase their TRP and support of the government.

Is media really free?

Luois Brandies J, of Supreme Court in his classic statement says that freedom of speech and expression is the bulwark of democratic government ^[1]. Freedom of speech and expression means expression of own's conviction and opinion freely without any intervention with few restrictions.

According to the Halsbury's Law of England- Freedom of

¹ Witley v. California, 247 US 204

expression incorporates both right to receive and express ideas and information and secrecy of private communications ^[2]. The United Nations assembly has declared May 3rd as the World press freedom day. Freedom to Speech in India has lead to many controversies recently. Is media actually free? Do they actually enjoy the freedom they deserve? In India, freedom of the press has been treated as part of the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution, vide *Brij Bhushan and Another vs. The State of Delhi*, AIR 1950 SC 129 and *Sakal Papers (P) Ltd vs. Union of India*, AIR 1962 SC 305, among others. However, as mentioned in Article 19(2), reasonable restrictions can be placed on this right, in the interest of the sovereignty and integrity of India, the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Hence, freedom of the media is not an absolute freedom. However, the media have a great responsibility also to see that the news they present is accurate and serve the interest of the people. If the media convey false news that may harm the reputation of a person or a section of society, it may do great damage since reputation is a valuable asset for a person. Even if the media subsequently correct a statement, the damage done may be irreparable. Hence, the media should take care to carefully investigate any news item before reporting it. Sometimes the media present twisted or distorted news that may contain an element of truth but also an element of untruth. This, too, should be avoided because a half-truth can be more dangerous than a total lie. The media should avoid giving any slant to news, and avoid sensationalism and yellow journalism. Only then will they gain the respect of the people and fulfill their true role in a democracy. Recently, reports were published of paid news — which involves someone paying a newspaper and getting something favorable to him published. If this is correct, it is most improper. Editors should curb this practice. Some sections of the journalist are presenting what their boss is directing not what is correct to present. In recent time many journalists resigned from leading channels, alleging pressure from his bosses to ignore stories about human suffering and present what is provided to him. There is a no check on the media who are violating the basis ethics of the journalism only because they are attached with some political parties. And if any journalist or channel wants to expose the bad policy of the government then they are facing problems and thread by the supporter of the government. Many of the journalists were killed only because they tried to expose the wrong policies of the government. One of the most respected television journalists in India, Sardesai was forced to exit CNN IBN, a news channel he had helped build from scratch.. If media will not remain free then the country will not have a healthy democracy. India ranks a lowly 133 among 180 countries in the World Press Freedom Index 2016 of Reporters without Borders. Freedom House has put India on its watch list of regions where censorship is on the rise, along with China, which ranks 176. He reporter is chased by his or her own demons. Everyone has a price and by price I don't mean people are paid to plant stories, that do happen, but the price one talks about here is a different kind of price. If a journalist

cannot be bought or cultivated, then they can be threatened, or attacked. An upright journalist with fire in his belly could turn into damp squib if his family is threatened.

Constitutionality of media trials in India

The strength and importance of media in a democracy is well recognized. Article 19(1) (a) of the Indian Constitution, which gives freedom of speech and expression includes within its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India. Media is not only a medium to express one's 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. The pivotal role of the media is its ability to mobilize the thinking process of millions. The increased role of the media in today's globalized and tech-savvy world was aptly 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" ^[3].

The media in recent case of Ram Rahim and Hanipreet, Arushi case, Sheena Bohra case and in many more have pierced the personal life of the parties. Every aspect of her personal life and character which have nothing to do legally with the investigation of the murder are under public lens of scrutiny via the media. The ethics of journalism have been again in a controversial area due to their prying eyes on the accused. In an increasingly competitive market for grabbing the attention of viewers and readers, media reports often turn to distortion of facts and sensationalisation. The pursuit of commercial interests also motivates the use of intrusive newsgathering practices which tend to impede the privacy of the people who are the subject of such coverage. The problem finds its worst manifestation when the media extensively covers sub judice matters by publishing information and opinions that are clearly prejudicial to the interests of the parties involved in litigation pending before the Courts.

In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. Some famous criminal cases that would have gone unpunished but for the intervention of media, are *Priyadarshini Mattoo case*, *Jessica Lal case*, *Nitish Katara murder case* and *Bijal Joshi rape case*. The media however drew flak in the reporting of murder of *Aarushi Talwar*, when it preempted the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder, the CBI and HC later declared that Rajesh Nupur Talwar were not the killer. Only because of the media trial in *2G spectrum allocation scam case*, the UPA government lost general election in 2014 and finally on 21th of December, 2017 Central Bureau of Investigation(CBI)special court in New Delhi acquitted all accused, including former telecom minister A Raja and DMK MP Kanimozhi.

Trial by Media it is the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law.

² Fourth Edition, Volume 8, Page No-834

³ Right to Privacy in Sting Operations of Media

Media is now a day famous for rebelling any person terrorist without any evidence and trial before the court. Many innocent boys are lost their life and reputation only because of the wrong presentation of media before society. The practice which has become more of a daily occurrence now is that of media trials. Something which was started to show to the public at large the truth about cases has now become a practice interfering dangerously with the justice delivery system. And it highlights the enormous need of what is called 'responsible journalism'.

Media trial and fair trial

Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Similarly, the persons in power should be able to keep the people informed about their policies and projects, therefore, it can be said that freedom of speech is the mother of all other liberties. In *R. Rajagopal v. State of T.N* ^[4] the Supreme Court of India has held that freedom of the press extends to engaging in uninhabited debate about the involvement of public figures in public issues and events. But, as regards their private life, a proper balancing of freedom of the press as well as the right of privacy and maintained defamation has to be performed in terms of the democratic way of life laid down in the Constitution.

The media exceeds its right by publications that are recognized as prejudicial to a suspect or accused like concerning the character of accused, publication of confessions, publications which comment or reflect upon the merits of the case, photographs, police activities, imputation of innocence, creating an atmosphere of prejudice, criticism of witnesses, the Indian criminal justice system. *Zahira Habibullah Sheikh v. State of Gujarat*, the Supreme Court explained that a "fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated" ^[5].

The observations of the Delhi High Court in *Bofors Case or Kartongen Kemi Och Forvaltning AB and Ors. vs. State through CBI* ^[6] are very much relevant, as the Court weighed in favour of the accused's right of fair trial while calculating the role of media in streamlining the criminal justice system. "It is said and to great extent correctly that through media publicity those who know about the incident may come forward with information, it prevents perjury by placing witnesses under public gaze and it reduces crime through the public expression of disapproval for crime and last but not the least it promotes the public discussion of important issues. All this is done in the interest of freedom of communication and right of information little realizing that right to a fair trial is equally valuable."

In *State of Maharashtra vs. Rajendra Jawanmal Gandhi* ^[7], the Supreme Court observed "There is procedure established by law governing the conduct of trial of a person accused of

an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law." The Hon'ble Supreme Court in the case of *Rajendra Sail Vs. Madhya Pradesh High Court Bar Association and Others* ^[8], observed that for rule of law and orderly society, a free responsible press and an independent judiciary are both indispensable and both have to be, therefore, protected. The aim and duty of both is to bring out the truth. And it is well known that the truth is often found in shades of grey. Therefore the role of both cannot be but emphasized enough, especially in a "new India", where the public is becoming more aware and sensitive to its surroundings than ever before. The only way of orderly functioning is to maintain the delicate balance between the two. The country cannot function without two of the pillars its people trust the most.

Is media trial a contempt of court?

Trial by Media is Contempt of Court and needs to be punished. The Contempt of Court Act defines contempt by identifying it as civil and criminal. No publication, which is calculated to poison the minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt ^[9]. Commenting on the pending cases or abuse of party may amount to contempt only when a case is triable by a judge ^[10]. No editor has the right to assume the role of an investigator to try to prejudice the court against any person ^[11].

The law as to interference with the due course of justice has been well stated by the chief Justice Gopal Rao Ekkbote of Andhra Pradesh High Court in the case of *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr* ^[12], where in it was observed by the learned judge that:

"..... When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings. To this general rule of fair trial one may add a further rule and that is that none shall, by misrepresentation or otherwise, bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint or defence. It is always regarded as of the first importance that the law which we have just stated should be maintained in its full integrity. But in so stating

⁴ (1994) 6 SCC 632

⁵ (2005) 2 SCC (Jour) 75

⁶ 2004 (72) DRJ 693

⁷ 1997 (8) SCC 386

⁸ (2005) 6 SCC 109

⁹ Roop Chand Sharma vs. Avtar Singh Brar, AIR 1943 lah 329(FB).

¹⁰ Subhash Chandra v. S. M. Agarwal, 1984 Cri LJ 481 (Del).

¹¹ Dm v. MA Hamid Ali Gardish, AIR 1940 Oudh 137.

¹² AIR 1975 AP 30.

the law we must bear in mind that there must appear to be 'a real and substantial danger of prejudice.'"

Fair trial Parties have a constitutional right to have a fair trial in the court of law, by an impartial tribunal, uninfluenced by newspaper dictation or popular clamor^[13]. The obstruction or interference in the administration of justice vis a vis a person facing trial. The prejudicial publication affecting public which in term affect the accused amount to denial of fair trial. Prejudicial publication affecting the mind of the judge and Suggesting the court as to in what manner the case should be preceded.

In *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr*^[14]. 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."

Conclusion and Suggestion

From the above account it becomes clear that the media had a more negative influence rather than a positive effect (except for a few exceptions here and there). The media has to be properly regulated by the courts. The media cannot be granted a free hand in the court proceedings as they are not some sporting event. The law commission also has come up with a report on "Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure" (Amendments to the Contempt of Court Act, 1971)' [Report number 200 prepared in 2006].

The most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct. The use of contempt powers against the media channels and newspapers by courts have been approved by the Supreme Court in a number of cases as has been pointed out earlier. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. The print and electronic media have gone into fierce and ruthless competition, as we call them 'aggressive journalism' that a multitude of cameras are flashed at the suspects or the accused and the police are not even allowed to take the suspects or accused from their transport vehicles into the courts or vice versa. Earlier, journalism was not under pressure to push up TRP ratings or sales. So the journalists did their work with serious intent and conviction, with courage and integrity. They did not pronounce people guilty without making a serious attempt to study the charges, investigate them, and come to their own independent conclusions, without fear or favour. They did not blindly print what law enforcers claimed, what the bureaucracy said or what politicians planted on to them. That

is why people trusted them. But now we are seeing a different self-acquired role of media in form of 'media trial'.

Everyone manipulates the media to serve their own interests or hurt their rivals. The problem does not lie in media's exposing the lacuna of a bad investigation by police, or mal-performance of the duties ordained to the civil servants but the eye-brows start to raise when the media ultra vires its legitimate jurisdiction and does what it must not do. Be it highlighting the sub-judice issues into public keeping at stake the sanctity of judicial procedures and 'right to life with dignity' of accused and suspects. The media trial has now moved on to media verdict and media punishment which is no doubt an illegitimate use of freedom and transgressing the prudent demarcation of legal boundaries.

From the above account it becomes clear that the media had a more negative influence rather than a positive effect. The media has to be properly regulated by the courts. The media cannot be granted a free hand in the court proceedings as they are not some sporting event. Any institution, be it legislature, executive, judiciary or bureaucracy, is liable to be abused if it exceeds its legitimate jurisdiction and functions. Media trial is also an appreciable effort along with the revolutionary sting operations as it keeps a close watch over the investigations and activities of police administration and executive. But there must be a reasonable self-restriction or some sort of regulations over its arena and due emphasis should be given to the fair trial and court procedures must be respected with adequate sense of responsibility. Media should acknowledge the fact that whatever they publish has a great impact over the spectator. Therefore, it is the moral duty of media to show the truth and that too at the right time. The most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct. The use of contempt powers against the media channels and newspapers by courts have been approved by the Supreme Court in a number of cases as has been pointed out earlier. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. An ideal proposal will be that the Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process. What will an ideal proposition in allowing the media trial at this moment. It's definitely an ideal proposition to allow controlled media reporting of the cases once the media is supposed to come out of the profit and sensational considerations. The media has to play the role of a facilitator rather than tilting the scales in favor of one or the other party. Heinous crimes must be condemned and the media would be justified in calling for the perpetrators to be punished in accordance with the law. However, the media cannot usurp the function of the judiciary and deviate from objective and unbiased reporting. While a media shackled by government regulations is unhealthy for democracy, the implications of continued unaccountability are even more damaging. Steps need to be taken in order to prevent media trials from eroding the civil rights of 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. What lessons does the Jessica Lall fiasco teach us? There is definitely a case for intensifying efforts to upgrade the quality of policing. There is at the same

¹³ Cooper v. People (1889) 6 Lawyers Report Annotated 430(B).

¹⁴ AIR 1961 SC 633

time a need to improve judicial performance. For instance, the Jessica trial took nearly seven years to get completed. Hardly anyone has commented on this. Will it be unreasonable to demand that this should be taken up by the Delhi High Court as a kind of case study to find out why there was such delay? The public would like to satisfy themselves that the failure was not because of judicial lethargy, but rather because of several extraneous factors such as police indifference and wanton delaying tactics on the part of the defense. The current popular perception is that judicial accountability is an unrealizable dream. It is for the judiciary to prove this perception wrong.

The above analysis reveals us the gravity of the situation as it persists in India. An ideal proposal will be that the Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process. It's definitely an ideal proposition to allow controlled media reporting of the cases once the media is supposed to come out of the profit and sensational considerations. The media has to play the role of a facilitator rather than tilting the scales in favour of one or the other party. Heinous crimes must be condemned and the media would be justified in calling for the perpetrators to be punished in accordance with the law. However, the media cannot usurp the function of the judiciary and deviate from objective and unbiased reporting. While a media shackled by government regulation is unhealthy for democracy, the implications of continued unaccountability are even more damaging. Steps need to be taken in order to prevent media trials from eroding the civil rights of 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. The judiciary has been critical of the overactive and prejudicial reporting by the media. In the Labour Liberation Front case, Justice L. Narasimha Reddy lamented the "abysmal levels to which the norms of journalism have drifted." In *M.P. Lohia v. State of West Bengal*, the Supreme Court cautioned the publisher, editor and journalist of a magazine that had reported the facts of a case that was sub-judice, thus "interfering with the administration of justice."

The observations of Mr. Andrew Belsey in his article 'Journalism and Ethics, can they co-exist' quoted by the Delhi High Court in *Mother Dairy Foods & Processing Ltd v. Zee Telefilms* aptly describe the state of affairs of today's media. He says that journalism and ethics stand apart. While journalists are distinctive facilitators for the democratic process to function without hindrance the media has to follow the virtues of 'accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people'. These are all part of the democratic process. But practical considerations, namely, pursuit of successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying Media Managers by meeting growth targets, are recognized as factors for the 'temptation to print trivial stories salaciously presented'. In the temptation to sell stories, what is presented is what 'public is interested in' rather than 'what is in public interest'. The Indian Law Commission's recent report entitled *Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)* has made recommendations to address the

damaging effect of sensationalized news reports on the administration of justice. While the report has yet to be made public, news reports indicate that the 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 credibility of news media rests on unbiased, objective reporting. It is in the media's interest to ensure that the administration of justice is not undermined.

References

1. Dr Tiwari, Mahendra. "Freedom of Press in India: Constitutional Perspectives." *The Practical Lawyer*, Viewed on 3 July 2011, (<http://www.Ebc>)
2. The Madrid Principles on the Relationship between the Media and Judicial Independence, established by a group convened by the International Commission of Jurists, its Centre for the Independence of Judges and Lawyers, and the Spanish Committee of UNICEF,
3. Freedom of press, available at, <http://thehoot.org/web/FreedomofthePress/2729-1-1-40-true.html>(2004) 4 SCC 158
4. Assange, Julian. "Why The Media (And Particularly Wikileaks) Is Important?", 2008" *WikiLeaks*, 2008, Viewed on 5 July 2011(<http://www.wikileaks.org/About.html>).
5. Singh MP. *Comparative Constitutional Law, 'Free Speech in Germany'*, (Eastern Book Company, 2011), 193.
6. United Nations ESCAP. "What is Good Governance", 2009. <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>
7. http://shodhganga.inflibnet.ac.in/bitstream/10603/36776/1/1/11_chapter%202.pdf
8. American Bar Association (Legal Advisory Committee on Fair Trial and Free Press), *The Rights of Free Trial and Free Press*, (Chicago, Ill.:1969).
9. Steven B. Hantler, *et al.*, *Extending the Privilege To Litigation Communications Specialists In The Age Of Trial By Media*, 13 *CommLaw Conspectus* 7 *CommLaw Conspectus* 2004.
10. <http://www.thehindu.com/opinion/op-ed/media-trial-most-foul/article7604416.ece>
11. <http://www.thehindu.com/news/justice-markandey-katju-on-the-role-of-media-in-india/article13473879.ece>
12. <http://www.frontline.in/the-nation/trial-and-errors/article8017823.ece>
13. <https://www.ndtv.com/india-news/journalists-challenge-order-gagging-media-in-sohrabuddin-case-1792437>