



Media trial and Indian legal system

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Abstract

Modern world aims at latest innovations in mass communication media. Now the 21st century revolutionized the media world and this era witnessed a fundamental shift in the way we communicate from traditional print media like newspaper, and television and the modern media like social media. The driven force for all communication is the freedom of speech and expression under Art: 19(1) (a) of the Indian Constitution.

Keywords: media trial, innovations, communication, revolutionized

1. Introduction

The words 'freedom of speech and expression' must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities under Art:19(1)(a) of the Constitution. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel such the radio, the television and the social media. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic or social media subject of course to permissible restrictions imposed under Art 19(2) of the Constitution ^[1].

The exercise of this right however can be restricted by our constitution on the grounds of sovereignty and integrity of the country, security of the state, friendly relation with foreign state, public order, decency, or morality or in relations to contempt of court, defamation or incitement to an offence as placed in Art:19 (2) of the Constitution of India.

2. Concept of media trial

Trial is essentially a process to be carried out by the courts. The trial by media is definitely an undue interference in the process of justice delivery. Before delving into the issue of justifiability of media trial it would be pertinent to first try to define what actually the 'trial by media' means. Trial is a word which is associated with the process of justice. It is the essential component on any judicial system that the accused should receive a fair trial. Recently, Honorable Justice Kurian Joseph of Supreme Court of India while addressing Bar Council of India Meet at Chennai on 26-07-2015 citing pressure on the judiciary during the Nirbhaya rape case ^[2], had remarked that Media Trials in pending cases should be avoided and thereby judges saved of the enormous strain created by it. "Please stop trying (cases) in the media till a case is over. Never try a case in the media, it creates a lot of pressure on judges, they are also human beings," Referring to "the amount of pressure that is built," he recalled how a judge who dealt with the case had once told him that "had he not given that punishment, they would have hung him." The Judge said "If I had not given that punishment they

Would have hung me, the media had already given their verdict, (like) it is going to be this only". He however, added, "He (the Judge who went into Nirbhaya case) had reasons to give the punishment, not because the media said it, but because he had reasons.

3. Media trial and contempt of courts act

Contempt of court operates on a slightly different plane. The paramount considerations here are dignity of the court and fairness of trial. Hence it follows that once a case has reached the court no one is allowed to publish his own versions of facts. Violation of this rule amounts to contempt of court. The rule evolved judicially which is supplemented by special statutory provisions, which prohibit the publication even of certain matters actually taking place in course of trial. Now the question arise is whether this negative approach of law is inconsistent with the constitutionally guaranteed right of freedom of speech and expression. In this connection it may be pointed out that the constitution in Art: 19(2) expressly save the operation of law of contempt of court.

While Judiciary is the third pillar of the democracy media is considered to be an integral part of it. Media cross the demarcating line of control which resulted invasion on functions of other organs of democracy especially judiciary. Unfair and inaccurate reporting of pending cases adversely affects the criminal justice administration in India. The remedy against such an act is the Sec.2 of Contempt of Court Act 1972. The Contempt of Court Act defines contempt as both civil and criminal. In *M.P. Lohia V. State of West Bengal* ^[3] the Supreme Court strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the Courts ^[4].

Saibal Kumar V. BK. Sen, the Supreme Court tried to discourage the tendency of media trial and remarked, "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 published the details of 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.”

4. Publications and Contempt of Court

With the rise of public interest litigation and a more activist judiciary, courts have been regularly thrust into the limelight in recent years, often provoking confrontations with the media that result in contempt proceedings. The rationale of contempt proceedings is to prevent erosion of public confidence in the administration of justice.

The law of contempt is one of the grounds for reasonable restrictions under Article 19(2) to the freedom of speech and expression. While civil contempt refers to the willful disobedience to any judgment or order of a court and criminal contempt is an offence under Section 2(c) of the Contempt of Courts Act, 1971, and is punishable by imprisonment of up to six months. It is defined as the publication of any matter which lowers the authority of any court, or scandalizes or tends to scandalize, prejudices or tends to prejudice, or obstructs or tends to obstruct any judicial proceedings, or the administration of justice.

5. Fair trial V Freedom of Press

The media has again come in focus in its role in the trial of Jessicalal murder case ^[5]. The concept of media trial is not a new concept. The role of media was debated in the Priyadarsini Mattoo case ^[6] and likewise many other high profile cases. There have been numerous instances in which media has been accused of conducting the trial of the accused and passing the ‘verdict’ even before the court passes its judgment ^[7].

Jessica Lal murder case i.e., *Manu Sharma v. State (NCT of Delhi)* ^[8], the court held that despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defense of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

Recently in *Dr. Shashi Tharoor v. Arnab Goswami and Anr* ^[9], The court held that it is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence. In fact, presumption of innocence and a fair trial are at the heart of criminal jurisprudence and in way important facets of a democratic polity that is governed by rule of law. Journalists are free to investigate but they cannot pronounce anyone guilty and/or pre judge the issue and/or prejudice the trial. The grant of the fairest of the opportunity to the accused to prove his innocence is the object of every fair trial. Conducting a fair trial is beneficial both to the accused as well as to the society. A conviction resulting from unfair trial is contrary to the concept of justice.

In India, the courts have the power to pass pre- publication or pre-broadcasting injunction or prior restraint order in sub-judice matters. The two-pronged test of necessity and proportionality has to be satisfied before ordering postponement of publication. Moreover, the injunction order should only be passed if reasonable alternative methods or

measures would not prevent the said risk.

Before airing any story pertaining to the plaintiff, the defendants shall give the plaintiff a written notice, by electronic mode, asking for his version. If the plaintiff refuses or does not reply within a reasonable time, he will not be compelled to speak and the story will be aired with the disclosure that the plaintiff has refused to speak to defend.

6. Freedom of press and its restrictions under press laws

In spite of these constitutional restrictions there are several general laws and state legislations for regulation of freedom of speech and expression. The Indian Penal Code, the Criminal Procedure Code, the Press laws of the States etc which governs various media. In addition to this, there exists some Organization such as News Broadcasting Association, Press Council of India etc for regulating the freedom of speech and expression by the media. But the self-regulation by Press Council of India failed in publication and broadcasting lead an encroachment upon individual privacy and three pillars of Government-legislature, executive and the judiciary

7. Freedom of speech under press council of India act

The Press Council of India Act, constituted a body named Press Council of India. It is a statutory autonomous body. Its object broadly was to preserve freedom of press. The Council could warn, admonish, or censure a newspaper or a news agency for any professional misconduct, or breach of code of journalistic ethics, or offence against the public interest. It could also condemn the Government or other Organizations for interfering with freedom of press. It enjoyed the same powers, while holding an inquiry under Press Council Act, as are vested in a civil court while trying a suit under the Code of Civil Procedure. The Council could also ask a defaulting newspaper to publish the council’s finding. The Council is empowered on complaints made it or otherwise, against offending newspapers ^[10].

The Press Council safeguards freedom of press maintains and improves standards of newspapers and news agencies. It is comprised mainly from the newspapers that are charged with the responsibility of regulating the conduct of brethren. The Council has thus assumed the role of a self-regulating body of the newspapers themselves. The Council has the power to consider complaints *suomoto*; in addition to enquiry into complaints brought before it. It has empowered to make observation against authority, including Government, if it considers it necessary for the performance of its functions ^[11].

Thus the Press Council is a statutory, quasi-judicial and self-regulating body without teeth (power to impose legal penalties).The power of Press Council of India is limited and increase in tendency of media sensationalism and competition among the newspapers which accelerated media to deviate from their traditional accountability and ethical values. Consequently the invasion on individual rights as well as collective rights is raising, thereby a need for a strengthened statutory body is need of the media world.

8. Freedom of Speech and Expression in Broadcasting Sector

In addition to Press Council of India, there exists an Organization named News Broadcasting Association for regulating the freedom of speech and expression by the

media. But the jurisdiction of News Broadcasting Association is confined only those electronic outfit which submits its jurisdiction and the body itself is accountable only those who accept its jurisdiction and not to the people. The Press Council of India which is a corrective mechanism which imposes self-regulation against Governmental control and censorship. But the self-regulation by Press Council of India failed in publication and broadcasting lead an encroachment upon individual privacy and three pillars of Government-legislature, executive and the judiciary.

Dr. Shashi Tharoor v. Arnab Goswami ^[12], the Apex Court high lightened the freedom of media. Court's reasoning on freedom of expression includes the freedom of the media and constitutes one of the essential foundations of our democratic society. The constitutional guarantee of free speech does not confer a right to defame persons. There is needed to strike a balance between the competing rights – right to fair trial and freedom of speech and expression.

Harnarain v. Gumouri Ram ^[13], Punjab High Court observed that 'Liberty of press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not adjudication of cases.

In addition to the Broadcasting regulation, there exist other legislations for regulating media, which are summarized below.

10. Judicial remarks on media trial

In the words of Justice Pathanjali Sasthri, it is stated that Art: 19(1) (a) is the foundation of all democratic institution ^[14]. Without free political discussion public education is not possible. The free media is essential for the proper functioning of democracy.

Dr Ambedkar in his speech in Constituent Assembly Debates (Vol. VII 980) says "The press has no special rights which are not to be given or which are not to be exercised by the citizens in his individual capacity. The editor of press or the manager is merely exercising the right of expression, and therefore no special mention is necessary of the freedom of press ^[15].

Indian Constitution does not specifically mention the liberty of mass media. But the speech and expression covers the rights relating to broadcasting. The decision in Maneka Gandhi's case ^[16] reinforces this view. In this case it is held that "it is not correct view that the right which is specifically mentioned by name can never be a fundamental right or takes of same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of named fundamental right. The court declared that the day this clearing house closes down would toll the death knell of democracy. The constitution of India provides regulatory provisions to protect both sides of electronic media ventures. The broadcaster as well as the beneficiary of the media is brought within the umbrellas of protection as well as regulation. Art: 13 prescribes that any law in derogation to the principle of fundamental right are void abinitio. Indian Constitution does not specifically mention the liberty of mass media, but the word speech and expression upheld this view ^[17].

The Press Council of India has expressed that "Democracy can thrive not only under the vigilant eye of the legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which

Opinion can become articulate. Binod Rao v. Minochar Rustom Mustani ^[18], the Bombay High Court held that "True democracy can thrive only in a free clearing house of competing ideologies and philosophies, political, economic and social. In this, the press has an important role to play the right relating to broadcasting".

The landmark decision in Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal ^[19], the court give a wider meaning to freedom of speech and expression, which emphasized that every citizen has the right to telecast and broadcast to the viewers any important event through electronic media. Television and radio have also provided that the Government had no monopoly over such electronic media and such monopolistic power of government was not mentioned anywhere in the constitution or any other law prevailing in the country. This judgment thus brought about a great change in the prevailing broadcast media and such sector became open to the citizens. The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of speech and expression is necessary for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates of social and moral issues. It is the best way to find out the truest model of anything sincere which is only through it that widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy ^[20].

Conclusion

No freedom, however sacred it may be, can be absolute. This is also true of press freedom. Not only the freedom of press is subject to the laws of the land, such as contempt and libel, but also is responsible to the society it serves. It should accept certain responsibilities in the discharge of its function. The press has an obligation –voluntary and self-imposed that in presentation of truthful news and fair comment it adheres to certain norms of decency and decorum, and that it does not indulge in vulgarity, obscenity, character assassination, violation of citizen's privacy and incitement to offence, disorder and disintegration of the country ^[21].

The press is a public service and, therefore, accountable to the community as a whole. Press freedom means not only freedom from unnecessary restraints, but also freedom for the purpose of advancing certain basic concepts enshrined in the constitution. It is agreed by all that press is an essential organ of democratic set up, an important vehicle of communication and a vital instrument in the creation of public opinion. As such it is necessary that the media persons should regard their profession as a trust to serve public interest ^[22].

Any code, to be drawn up in future, should provide that the press must "present a truthful, comprehensive and reliable account of the events in a context which gives them meaning, project a representative picture of constituent groups in the society, regard itself as a forum for comment and criticism and discharge its social responsibilities by clarifying the goals and values in the society". Also in presentation of news as well as comments, the press should avoid sensationalism and vulgarity. It should eschew publication of reports tending to incite violence which may lead civil disorder, mutiny or rebellion. Anything obscene or

Tending to encourage the crime or unlawful activities should be kept out of both news and advertisement columns. Rumours, gossips and scurrilous reports concerning the private life of an individual should be avoided ^[1].

It has been 68 years since India became Republic and commencement of the Constitution there is been a lot of ups and down in our democracy and the press also has come across age. As being a subject of the largest democracy of the world we should remember the words of our former Prime Minister Rajiv Gandhi, that the time has come for the press of the largest democracy in the world to work with hand-in-hand with judiciary for the welfare of its subjects ^[2].

Acknowledgement

I, Dr. Sumayya. H, hereby declare that the article titled "Media Trial and Indian Legal System is a bonafide and original work by me and have not published in any journals or books.

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3. (2005) 2 SCC 686.
4. S.2 of Contempt of Courts Act 1972 states that) "contempt of court" means civil contempt or criminal contempt;
5. (b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
6. (c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
 1. scandalizes, or tends to scandalize, or lowers or tends to lower the authority of, any court; or
 2. prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 3. interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;
 4. (d) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.
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¹ Mukul Sakai. (2011), Media Law and Ethics, Delhi, Wisdom Press, p.8.

² Mukul Sakai, (2011), Media Law and Ethics, Delhi, Wisdom Press, p13.