



WWJMRD 2019; 5(7): 18-22
www.wwjmr.com
International Journal
Peer Reviewed Journal
Refereed Journal
Indexed Journal
Impact Factor MJIF: 4.25
E-ISSN: 2454-6615

Dr. Seema Yadav
Private university in Greater
Noida, Uttar Pradesh, India

Media Trial effects upon Human rights & Judiciary

Dr. Seema Yadav

Abstract

Media is regarded as one of the pillars of democracy. Media has wide ranging roles in the society. Media plays a vital role in molding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Freedom of media is the freedom of people as they should be informed of public matters. To achieve this objective people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their future course of action. The right to freedom of speech and expression is contained in article 19 of the constitution. Hence media can play effective role in democracy in regard of Human rights & Judiciary.

Keywords: Constitution, Democratic, Media Trial, Trial Prejudices, Judicial Process

Introduction

Trial by media is a phrase made popular in the late 20th century and early 21st century to describe 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. In every democratic country there is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and fair trial. Media has now reincarnated itself into a 'public court' (Janta Adalat) 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 prejudices 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 amounts 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 and human rights¹.

Free Speech and Fair Trial

In the criminal justice system, which we have been following, the guilt is to be proved beyond reasonable doubt and the law is governed by senses and not by emotions. While displaying our emotions, the media and the masses forget that it puts tremendous pressure on the judge presiding over the case. How can we expect a fair judgment from a judge who is under such tremendous pressure from all sections of the society? A person is presumed to be innocent unless he is held guilty by the competent court, but here the trend is to declare a person guilty right at the time of arrest. The media is there to report facts or news and raise public issues; it is not there to pass judgments.

According to Ray Surette, 'trial-by-media' have "three basic flavours": "Sinful Rich type",

Correspondence:
Dr. Seema Yadav
Private university in Greater
Noida, Uttar Pradesh, India

¹ https://en.wikipedia.org/wiki/Trial_by_media

“Evil Stranger, psychotic killers” and “Abuse of Power trial”. For instance, Jayendra Saraswati, head priest of Kanchi Kamakoti, was accused of killing two mill-workers as sacrifice, based solely on newspaper reports². The Andhra Pradesh High Court in *Labour Liberation Front v. State of Andhra Pradesh* held that the writ petition filed to force the authorities to investigate relied upon incorrect facts that should have been verified. The court observed that “once an incident involving prominent person or institution takes place, the media is swings into action, virtually leaving very little for the prosecution or the Courts”. The media clamor created in the Jessica Lal and Priyadarshini Mattoo cases would be illustrations of the ‘Sinful Rich type’ and ‘Abuse of Power trial’. Now we discuss the two main parts of our paper first is the effect of media trial on the judicial process and second is effect on human rights.

Human Rights to be Legally Represented

Through media trial, we have started to create pressure on the lawyers even not to take up cases of accused, thus forcing these accused to go to trial without any defense. Is this not against the principles of natural justice? Every person has a right to get himself represented by a lawyer of his choice and put his point before the adjudicating court and no one has the right to debar him from doing so. For an instance, when eminent lawyer Ram Jethmalani decided to defend Manu Sharma, a prime accused in a murder case, he was subject to public derision. A senior editor of the television news channel CNN-IBN called the decision to represent Sharma an attempt to “defend the indefensible”. This was only one example of the media-instigated campaign against the accused. As we all knew that in that case we had one of the best lawyers of the country, Gopal Subramaniam, appearing for the state and the case of Manu was handed to some mediocre lawyer. Media went hammer in tongues when Mr. Jethmalani took the case and posed him as a villain. Don’t we want to give equal opportunity to the defense to prove its case, or have we lost faith in the judiciary? The media have to understand their limit before it becomes too late. Suspects and accused apart, even victims and witnesses suffer from excessive publicity and invasion of their privacy rights. Police are presented in poor light by the media and their morale too suffers. The day after the report of crime is published; media says ‘Police have no clue’. Then, whatever gossips the media gathers about the line of investigation by the official agencies, it gives such publicity in respect of the information that the person who has indeed committed the crime, can move away to safer places. The pressure on the police from media day by day builds up and reaches a stage where police feel compelled to say something or the other in public to protect their reputation.

In a modern state, the rule of law and the role of law are the twin factors that play an important part in the lives of people. While law recognizes certain rights and liberties, it, at the same time, casts certain obligations and puts limitations upon the exercise of those rights. According to Immanuel Kant, “Law is the ensemble of conditions whereby the will of each can co-exist with the will of others, according to a universal law of liberty.” “Law itself,

said Kant, is concerned with the external practical relations of one person to another. These relations, to be ordered at all, involve the ordering of the arbitrariness of each man on others, in the light of the concept of freedom. Kant thus proceeded to combine the *a priori* concept of freedom and [arbitrariness]: “law is the sum total of the condition under which the arbitrariness of one is compatible with the arbitrariness of others according to the general law of freedom.” Therefore, while one is free to express his desires and effectuate his will and exercise his rights, it is also incumbent upon him to abide by the restrictions laid down by law. The classical principle of liberty holds that the law is justified in interfering with conduct when that conduct threatens the liberty of other persons. It must be taken note of that absoluteness is a concept alien to human existence. No right or liberty can be absolute, howsoever important it may be. Law simply regulates the lives of people to ensure a society where a person can enjoy his freedoms without undue interference.

Today trial has shifted from courtroom to living room. And the result of such a shift is that rights of people stand to be affected in a manner that has not been seen ever before. Media today is commercialized and globalize. Their primary aim is to increase their profit / TRP ratings. One cannot imagine social responsibility on the contemporary commercialized media. Their primary aim is profit. However, as everything comes for a cost in today’s modern world, the profit making too has some cost. And the cost is human rights of the accused. The role played by media has led to the victimization of innocent people and violation of their fundamental human rights. The accused is held guilty even before the beginning of the trial. For instance, the recent controversies arisen after the *Jamia Encounte*³ has raised many questions regarding the role of the media in such cases.

Human dignity which forms the heart and soul of human rights notion stands infringed and frustrated. There are scores of cases that hogged media attention in not so distant past and led to, in some of the cases, unwanted, undesired and underserved attention of the public at large. A ‘media trial’ ensued Afzal’s arrest. A week after the attack on Indian Parliament, in a press conference called by the police, Afzal ‘incriminated himself’ in front of the media which media played negative role in influencing the conscience of general public before Afzal was even tried. Similarly, S.A.R. Geelani, one of Afzal’s co-defendants in the *Parliament Attack Case*, was initially sentenced to death for his alleged involvement notwithstanding the stunning paucity of evidence. He was presented before the public as a dangerous terrorist. The Delhi High Court while overturning Geelani’s conviction described the prosecution’s case as “at best, absurd and tragic⁴”.

Further, there are many questions that remain to be answered. First of all, are media/ journalists competent to conduct a trial in the way they do? This remains increasingly open to question. Most of the journalists are not properly trained or acquainted with law. One need not be a law graduate to become a journalist. For instance, the media as a conclusive determination of the accused’s guilt represents confession by the

² Ray Surette, *the Media, the Public and Criminal Justice Policy*, 2003.

³ Del Vecchio, *Philosophy of Law*, 103(1953), The Catholic University of American Press, Washington, DC

⁴ <https://www.scribd.com/document/239415936/L-J-PROJECT-1>

accused, even made to the police. This shows the ignorance of media about the basic principles of law. Sec. 25 of the Indian Evidence Act, 1872 categorically prohibits the confession to the police as admissible in law. Thus, something, which is inadmissible in law, becomes sufficient to taint the accused with guilt in the eyes of ordinary people. It is difficult to find a single news channel explaining the rationale behind such inadmissibility or even a mention about the section in their reports. It is germane here to refer to the concern of the Law commission of India which said:

“The media also creates other problems for witnesses. If the identity of witnesses is published, there is danger of the witnesses coming under pressure both from the accused or his associates as well as from the police. At the earliest stage, the witnesses want to retract and get out of the muddle. Witness protection is then a serious casualty. This leads to the question about the admissibility of hostile witness evidence and whether the law should be amended to prevent witnesses changing their statements. Again, if the suspect’s pictures are shown in the media, problems can arise during ‘identification parades’ conducted under the Code of Criminal Procedure for identifying the accused.”⁵

The growing irresponsibility of the media is a matter of grave concern both for the lawmen and the laymen, as both are getting affected. It misleads the public and unfairly acts towards the accused. The question thus remains: How far is it just? Does it not lead to miscarriage of Justice? Being a part of the civil society media has a constructive role to play to see that their irresponsible way of functioning does not result in the violation of the rights of the people, which are succinctly referred to as ‘Human Rights’. Judge Cobb observes:⁶

“Liberty includes the right to live as one will, so long as that will do not interfere with the rights of another or of the public. One may desire to live a life of seclusion; another may desire to live a life of publicity; still another may desire to live a life of privacy as to certain matters and publicity as to others.... Each is entitled to a liberty or choice as to his manner of life, and neither an individual nor the public has a right to arbitrarily take away from him his liberty.”⁷

Lastly, one of the much debated issues has been the influence of the media on the decisionmaking process of the judges. Sensationalized journalism has also had an impact on the judiciary. For example, in upholding the imposition of the death penalty on Mohammed Afzal for the December 2001 attack on the Indian Parliament, Justice P. Venkatarama Reddi stated, “the incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.” In *Priyadarshini Mattoo* case, Mattoo was raped and murdered by Santosh Kumar Singh, the son of a Police Inspector-General. The trial court acquitted the

accused. Delivering the judgment in the trial court proceedings in 1999, the Additional Sessions Judge, J.P. Thareja said of Santosh, that though he knew that “*he is the man who committed the crime,*” he was forced to acquit him, giving him the benefit of doubt⁸. These observations are reminiscent of Jerome Frank’s formulation of realism. Stir caused by media does not leave the judges untouched. Undoubtedly, judges are human beings and the pressure created by the media too influences them. As Justice Cardozo has famously said “The tides and currents that engulf the rest of men cannot turn aside and pass the judges by...” emphasizing on the fact that judges too are the product of the society and are not outside it. Thus, their influence is all too human. The Supreme Court 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. A Judge is to guard himself against such pressure.

Judiciary

The media plays a pivotal role of providing the general public with educational reporting of all the happenings during the court proceedings. The media coverage ought to be shaped to fit well with the rules of judicial process that are designed to ensure justice is delivered. Cases of criminal justice involve third parties of neutral interest whose conduct stand to be affected by media coverage. The media can either intimidate or expose the parties to future insecurity. In the past, media reporting have presented difficulties as parties involved have either been influenced in one way or another. Measures to ensure balanced media coverage should therefore be instituted to protect the sanctity of the judicial process⁹.

The edifice of the Indian criminal justice system is based on the twin principles of ‘*guilt to be proved beyond reasonable doubt*’ and ‘*presumption of innocence until proven guilty*’. In *T. Nagappa v Y. R. Muralidhar*¹⁰, the Supreme Court reiterated, “An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India.”

Sensational journalism has also had an impact on the judiciary. For instance a ‘trial-by- media’ began almost immediately after Afzal’s arrest in the attack on the Indian Parliament case. Only one week after the attack, on 20 December 2001, the police called a press conference during the course of which Afzal ‘incriminated himself’ in front of the national media. The media played an excessive and negative role in shaping the public conscience before Afzal was even tried. This can be demonstrated by the observations of Justice P. Venkatarama Reddi in upholding the imposition of the death penalty on Mohammed Afzal, “the incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.”

⁵ <https://www.basicknowledge101.com/subjects/laws.html>

⁶ *Pavesich v New England Life Ins. Co.*, 50 S.E. 70 (Ga. 1905).

⁷ <https://books.google.co.in/books?id=ehnkWQOPdt8C&pg=PA67&lpg=PA67&dq=>

⁸ <https://www.theguardian.com/commentisfree/2013/feb/10/hangin-g-afzal-guru-india-democracy>

⁹ <https://www.lawteacher.net/free-law-essays/judicial-law/media-effects-on-the-judicial-law-essay.php>

¹⁰ 2008 (6) SCALE 642, (2008) 5 SCC 633.

If the public believes that justice is a noose around Afzal Guru's neck in the *Parliament Attack case*, then no dearth of evidence against him will justify his acquittal. The heightened public clamor created by the media leads to a conviction in 'the court of public opinion', a precursor to a conviction in a court of law. Similarly, S.A.R. Geelani, one of Afzal's co-defendants in the Parliament attack case, was initially sentenced to death for his alleged involvement despite an overwhelming lack of evidence. Even though the prosecution's case was based on a lone telephonic conversation between Geelani and his brother, the media portrayed him as a dangerous and trained terrorist. On appeal, the Delhi High Court overturned Geelani's conviction and described the prosecution's case as "at best, absurd and tragic". Even though the Supreme Court has tacitly admitted that adverse publicity may deny the accused person a fair trial, it denied Vikas Yadav's plea for transfer of appeal against the conviction by the Delhi High Court to the Allahabad High Court in the *Nitish Katara* murder case.¹¹

Subconscious Effect on the Judges

Another worrying factor and one of the major allegations upon 'media trial' is prejudicing the Judges presiding over a particular case. The American view appears to be that Jurors and Judges are not liable to be influenced by media publication, while the Anglo-Saxon view is that Judges, at any rate may still be subconsciously (though not consciously) influenced and members of the public may think that Judges are influenced by such publications under such a situation. Therefore, Lord Denning stated in the Court of Appeal that Judges will not be influenced by the media publicity, a view which was not accepted in the House of Lords. Cardozo, one of the greatest Judges of the American Supreme Court, referring to the "forces which enter into the conclusions of Judges" observed that "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the Judges by"¹².

Meddling with the Criminal Justice System

Due to such high-powered salesmanship of ideas, the proactive stance of the media is beginning to intervene with the administration of justice. There is excessive pressure on the police. A recent example of the media meddling would be the Reliance Infocomm murder case of its employee, Anandita Mishra, where due to the media reports; the prime accused in the murder absconded. The Bombay Police Commissioner is upset with the media for jumping the gun, "I think that he got a whiff of it after reading the reports and gave them the slip. Now a manhunt has been launched to nab the accused."¹³

The lives of witnesses are compromised. In *State (N.C.T. of Delhi) v. Navjot Sandhu*¹⁴, the Court deprecated the practice of exposing the accused persons to public glare through TV and in case where Test Identification Parade or the accused person being identified by witnesses (as in the present case) arise, the case of the prosecution is vulnerable to be attacked on the ground of exposure of the accused

persons to public glare, weakening the impact of the identification. Due to media propaganda, lawyers of unpopular accused persons are subjected to public derision. Every person has a right to get himself represented by a lawyer of his choice and put his point before the adjudicating court and no one has the right to debar him from doing so. For an instance, when eminent lawyer Ram Jethmalani, the Indian Clarence Darrow, decided to defend Manu Sharma, a prime accused in a murder case, he was subject to public derision and ridicule by the media.

So these are few examples which show the role of media in judicial system. Cases like the Jessica Lall and Nitish Katara murder cases, which involve high profile and powerful people as the accused persons, do benefit from such incessant media exposure. Neelam Katara, mother of the deceased in the Nitish Katara murder case, succeeded in getting a verdict from the lower courts due to the support of the media and the public opinion generated through print and electronic media. In *Praful Kumar Sinha v State of Orissa*,¹⁵ a writ against sexual exploitation of blind girls in school was filed before the Supreme Court on the basis of an article published in a newspaper. Even though sexual assault was difficult to prove, the Apex Court, on the basis report submitted, gave directions to the institution for proper management. Renowned journalists like Sheela Barse, a champion of human rights, have time and again knocked the doors of Supreme Court to take notice of the plight of the disempowered and marginalized. In *Sheela Barse v Union of India*¹⁶, the journalist, through a letter addressed to the Chief Justice of India, made the Apex Court take cognizance of the deplorable conditions of the mentally challenged woman locked up in the Presidency jail, Calcutta. Due to this initiative, Commissioners were appointed to investigate and report on the conditions of prisons where women and children were detained¹⁷.

Conclusion

It may be said Trial by Media has its obvious fallouts. It needs to be careful and cautious in its conduct. The solution lies not in the curbing of media freedom altogether but in making efforts to make it more responsible. No person charged of any crime should be judged by the media because that person is innocent until proven guilty, and it one the basic premise of criminal jurisprudence. The rule of law as well as the role of law demands a fair trial of any person who comes to the portal of justice seeking justice. To use the words of Ronald Dworkin, it matter how judges decide cases. And, talking in terms of the reality as it exist in society, and as has been documented herein before, there is every possibility that media by creating a 'pressure condition' may fetter the judicial process¹⁸. The media has to be properly regulated by the courts. Besides above, media cannot be granted a free hand in the court proceedings as they are not some sporting event. The law

¹¹ https://www.nalsar.ac.in/pdf/Journals/MLR%20Vol_2.pdf

¹² <https://indiankanoon.org/doc/42810882/>

¹³ <https://www.news18.com/news/india/vikas-yadav-alert-294153.html>

¹⁴ AIR 2005 SC 3820, para 139.

¹⁵ AIR 1989 SC 1783.

¹⁶ (1995) 5 SCC 654.

¹⁷ <https://www.coursehero.com/file/p6lj5ic/The-Bombay-Police-Commissioner-is-upset-with-the-media-for-jumping-the-gun-I/>

¹⁸ <https://www.youthkiawaaz.com/2019/02/media-the-world-of-truth-and-lie/>

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].