

MEDIA TRIAL AN ETHICAL DILEMMA - A STUDY FROM THE PERSPECTIVE OF MEDIA CONSUMERS

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ABSTRACT

Press is considered as a revolutionary tool and for the dissemination of information to mould the public opinion since centuries. The human minds are always in search of information, hence the media is essential part of human civilization. The term media consumer in this research paper would mean the recipient of information disseminated by the media. The media consumer is larger prospective of individuals that include all wings of democracy and their need of information. The modern economical world is dependent upon each other consequently media has gained huge importance than any other era of human civilization. With the inceptions of democracies, media has always been considered the fourth pillar of democracy. Press is essential for strengthening of the democracy therefore the most vibrant democracies has granted absolute right of freedom to media. The role of press is to act as a watchdog of society and to become the voice of people by reporting injustices to bring transparency to the system. Media is mandated to expose corruption and give voice to the unprivileged, whose rights are infringed. In modern days Media is venturing to move into the system rather than exposing the system. The media has reincarnated as public court, special detective and forms public opinion in tune to needs of media organizations. Free speech or freedom of speech and expression in simple words means the liberty to say what one feels like. It is the expression of thoughts into words without any sort of restraints. It is considered to be an innate right with minimal restrictions in India. The study stresses upon this liberty of media must function strictly within the frame work of ethical norms. This paper is analyzing the role of media involvement and its impact on media consumers. Media people must exercise their right without infringing the rights of individuals or other pillars of democracy. Journalists ought to be vigilant to safeguard the freedom of press and should be aware to act with a sense of responsibility. The present study stresses upon the positive and negative role played by the media in democratic country like India.

KEY WORDS: Media, Judiciary, Media Ethics, Media Trial, Media dilemma.

OBJECTIVES:

- To know the role of media and its impact on media consumers.
- To examine the role of the media and its impact on society as whole.
- To analyze at what extent the information to be conveyed by media is manipulated or fact based.
- To study the positive and negative aspects of Media Trial in criminal justice system.

RESEARCH METHODOLOGY

The research methodology of the current study is carried by doctrinal method to find out the fact-situations and grounds related perceptions to the topic of the research. The methodology adopted in the preparation of the research paper is mainly based on secondary sources. The study will be made by use of various secondary sources such as books, journals, newspaper articles, online sources, and research articles etc.

I. INTRODUCTION

The unparalleled power of the press to reach and influence people is promptly recognized since the origin of the human civilization. A free press which is essential for the smooth function of democracy and to shape the society in a better manner. Freedom of expression is engrossed the controversy by the sub clause (2) Article 19 of the Constitution of India. But according to the demand of current situation, media significantly involves when justice is totally denied or delayed. Though media helps in social, political changes but sometimes it is also seen frequently that media involves into the money making business. In a liberal democracy, guaranteeing of the right to free speech is of utmost importance. It creates an opportunity for free discussion of issues. Media and the judiciary are institutions inhabiting separate spheres and their functions do not overlap. One cannot and must not use the other for discharge of its functions. Media should only engage in acts of journalism and not act as a special agency for the court. The misuse of media power by the media organization and business houses to serve their interest turn the media as puppet in the hand of power. Hence media being working for the people, by the people and of the people is becoming '*Goddi*' Media rather protecting the people of the nation? More

often these issues give birth to the media trials in which the media proof someone guilty or innocent before the judgement of the court.

II. CONSTITUTIONAL PROVISIONS OF FREEDOM OF SPEECH AND EXPRESSION

The media derives its power from right of the freedom of speech and expression under Article 19(2) of constitution of India alike any other citizen of India. This means the rights of the press and the rights of an individual are same one can write, publish, and circulate. The media including individual journalists and media organizations demand freedom because of the functions and purposes they discharge for the purpose of the society. To achieve all of these purposes freedom of the press is very important. But at the same time, it is also expected from the media that it does not derail from its path and get involved in sensationalizing news, distorting facts, damaging reputation, making judgments etc. So, the freedom cannot be unbridled because it may affect the administration of justice and harm any individual and society at large. The freedom relating to media does not find its mention anywhere in the Part III of the Indian Constitution. There is no such explicit guarantee under the Constitution of India about this freedom of media. This freedom is implied in Article 19 (1) (a) of the Constitution of India and Supreme Court of India interpreted the same as guaranteed right of “freedom of speech and expression”. Mahatma Gandhi was in favor of complete freedom to press but the constituent assembly debated upon this issue in length and breath. In Constituent Assembly Debates, Dr. B. R. Ambedkar said that: “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 a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press. These words of Ambedkar shaped the Article 19 of constitution of India and express provision was deleted.

III. MEDIA TRIAL AND EFFECTIVE JUDICIAL COURT PROCEEDINGS

India was under colonial regime for about two centuries and effect thereof is still visible. The government of the day still wants to act like colonial government and wants to control the media in one way or the other. The Courts are also functioning as per procedure prescribed during colonial era however complete independence to judiciary in its day to day functioning has permitted the administration of justice to move forward. It is pertinent to mention here that courts were establish to do justice to the parties but since the government is largest litigant in India more often courts also lean towards government on the pretext of no interference in government policy.

The importance of the media in the context of preservation and protection of the rights and freedom is immense, and it is perhaps enable the sentiments of the people to be conveyed both domestically and internationally. Sometimes, media trial is necessary. In those cases which are being kept a secret from the media consumers, media trial plays a very important role. Media is the only platform through which a person can know what actually is happening around the nation. The media played important role in highlighting the Nirbhaya case, Hathras case, Unnao case, Sahara India Real Estate Corporation. Ltd. V. SEBI, but also interfered in legal proceedings hence courts were forced to pass judicial orders defining the mode of reporting. In Manu Sharma case, The Supreme Court outlined the dangers of a "media trial". It observed that there existed a serious risk of prejudice being caused if the media exercised unrestricted and unregulated freedom in so far as carrying out parallel trial procedures without being held up to any standard. Furthermore, carrying out a relentless scrutiny of any accused without any definitive exposition by a competent court of law goes against the rights of the accused as well. One of the basic tenets of criminal jurisprudence is presumption of innocence and prosecution is required to prove the case beyond reasonable doubts but with the current state of affairs this no longer seems to be the case.

IV. JOURNALISTIC ATTRIBUTION IN THE INDIAN MEDIA

The journalist became the facilitator to highlight the happenings around the world. A journalist refines the words of 'the elites' for consumption of his consumers. The reasoning behind this function is that the public is not in a position to analyze a growing and complex flurry of information therefore an intermediary is needed to filter news for the masses. The India is residing in villages and media consumers are not smart enough to understand complicated, political issues. Furthermore, the public was too consumed with their daily lives to care about complex public policy. Therefore the public needed someone to interpret the decisions or concerns of the elite to make the information plain and simple. In achieving the vital role, Journalists assumes a crucial part in molding the opinion of the general public. Every institution is liable to be abused, and every liberty if left unbridled, has the tendency to become a license that would lead to disorder and anarchy. Reporting should be free from distortion or exaggeration. There should be distinct separation between news and views. A journalists have to pay attention to accurate attribution of statement made by individuals and other news media. A journalist is always free to go about gathering facts and details, doing research of the facts, interview, he has to however keep in mind the principle of limitation before harming others.

In modern days the media is acting with bias to gain TRP that creates pressure on administration of justice. It is very common to see that the accused is put on trial by media and is declared as convict without even giving an opportunity to the other side to be heard, which blatantly harms the natural justice principle. In Hathras case a section of media had attempted to portray the victim as accused of giving false evidence to save the outrage of the government of the day. Similarly a section of media was bullied by government by imposing ban on the pretext of spreading fake news in Unnao rape case involving a BJP MLA Kuldeep Singh Sengar. The PTI reported that "Unnao case: FIR against 8 Twitter handles for fake news". The 'Mojo Story' editor alleged that the Unnao Police had refused to even give a copy of the FIR without which one cannot appeal for judicial intervention. "Brazen Harassment and bullying," she said. "Even more suspicious is how Unnao Police has clubbed us with a bunch of politicians." Reacting to the FIR, Barkha Dutt said, "We've followed journalistic principles by reporting all sides of an evolving story. To use IPC sections that are punishable with prison is pure intimidation. I am very ready to fight it and face it in court."

It is not only the reputation of the accused/ victim that is destroyed but also their families who suffers along the way. The news of acquittal is hardly carried with same prominence therefore the ruined reputation is beyond retrieval. It seems that media man has moved to media verdict which clearly indicates the misuse of freedom of speech. A powerful independent media helps in bringing positive changes in the society and converse thereof brings anarchy.

V. VARIOUS INSTANCES OF MEDIA TRIAL

The increasing competitiveness in the market of Media industry, media emphasized on grabbing the attention of the viewers and the readers by promoting sensational news on media channels. Nowadays, to get high TRPs they customarily propagandize subjective opinion and shows biasness in the news. Even there are many incidents we can see in media where they are conducting the trial of an accused and gives their own decision even before the court passed any judgement. In the present time, Media Trial has become a very common Phenomena at present. Media Trial become through the opinion of the media persons that the justice which the court cannot provide or justice which will be delayed by the court will be secured by Media through Media Trial. Media trial has able to secure conviction in certain cases such as Hathras rape Victim case, Unnav victim case, Sushant Rajput suicide mystery, Aryan Khan drug case, Cruise Ship Drug case, Bijal Joshi rape case, Madhya Pradesh Vyapam Scam case and so on where Media Trial was witnessed.

Media Trial means a trial proceeded by Media through their own judgments Where media engaged on the separate investigation on any high-profile cases outside the court's purview makes their assumptions or prejudice the accused before the court comes up to any judgement. Media ignores the crucial gaps between the word convict and accused Media Trial not only affects the reputation of the accused but also affect the verdict of the court. In all above quoted cases media has declared the alleged accused as guilty and repeatedly telecasted their videos on the television. The media pronounced judgment in Sushant Rajput case and convicted Riha Chakorvarty. Similarly in Cruise ship case Delhi High Court intervened and asked media to show restraint while reporting the matters under investigation.

VI. COMMERCIALIZATION OF MEDIA AND FAKE NEWS: “MEDIA TRIAL”

The hunt of commercial interests motivates the use of disturbing 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. To sensationalize news stories, media tends to spread fake news that hamper the right to a fair trial and posed a grave threat to the presumption of innocence. The pervasive influence of the press is increasingly proving to be detrimental to the impartial decision making process of the judiciary. The news stories aired to prove the editorial verdict to be only possible view has given birth to paid news and fake stories. Every institution and liberty is liable to be abused, if left unbridled. India is facing this menace at this juncture when media is spreading motivated surveys and fake news to serve its commercial interests. Television channels in a bid to increase their Television Rating Point (TRP) ratings are resorting to sensationalized journalism with a view to earn a competitive edge over the others.

VII. MEDIA TRIAL AND ITS IMPACT ON MEDIA CONSUMERS

The term media trail is already defined in proceeding paras of this paper. The judges, Advocates, investigators and litigants are the worse affected categories by media Trial. In this section we would discuss impact on each section elaborately.

- (i) **Effect on Judges:-**Media Trials more often subconsciously affect the mind of the Judges as they are human living in same society. They get influenced by the prejudice decision of the media, which creates an unseen pressure on the judges. Generally, judges are not socialising under self-defined code but inception of internet and social media sites has changed this scenario. Having said so, even

the social media verdicts may be the part of verbal discussions in the courtrooms but the ultimate decision of judge rests on the records of the case. It has been witnessed that they do not get influenced by the fabricated and half- baked news reporting by media persons and perform their duty strictly in consonance with law.

- (ii) **Effect on Advocates:-**The social media news are used and misused by advocates to shape up their cases. The advocates are governed by the ethical norms prescribed under the ages of Advocates Act, however same are also flouted sometimes when advocates gets more obsessed with his brief than to assist the court of law in fair manner. The continuous reporting of a pending case sometimes provides clues to the advocates for rendering better assistance to the judges to achieve the ultimate goal of doing justice.
- (iii) **Effect on accused/ Sufferer: -** Media Trial destructively affect the life of a person. Sometimes, prejudice of the media turns to be wrong and the court declares innocent to such person. In such a case, these people go under deep trauma, loses their dignity and cannot stand in society. Their lives became miserable and they live whole life with the tag of criminal because half of the society already believed him guilty.
- (iv) **Effect on Society: -** In modern times media has more responsibility as its reaching the people in a blink. During interaction with the consumers and with those who have suffered losses due to media interventions and found guilty of civil or criminal acts are more against the media and its techniques of reporting. They were of the view that media publishes one sided stories under the influence of its management. Due to high publicity in society, people get highly biased to what media delivers. They believe it to be true, thus create public pressure to the court of law also.

VIII. POSITIVE AND NEGATIVE ASPECTS OF MEDIA TRIAL IN INDIA

The Media has positive and negative impact on the lives of its consumers. Media trial is one facet of the Media which means that media is carrying an issue everyday with the intent to unearth the truth or with intent to gain more and more publicity for its organization. The former can be said to be positives of the media whereas latter would be termed as negative impact. It is important to note here that both are divided by a very thin line and it takes no time to convert the positives of Media into negatives. The positives of the Media trial help the criminal justice system in finding, trying and punishing the guilty, where as its converse leads to ambiguity and injustice to victims, accused and their families. It not only does injustice but also ruin the social and economic status of

victim and accused for no fault of theirs. Media houses nowadays are concentrating on profits and TRP's. In cut throat competition and 24 hour working, the Media organizations are compromising with the content and veracity of news shown and published for public consumption. Especially in the last two decades, the arrival of cable television, local radio networks and the internet has greatly enhanced the reach and impact of the mass media. The circulation of newspapers and magazines in English as well as the various vernacular languages has also been continuously growing in our country. This ever-expanding readership and viewership coupled with the use of modern technologies for newsgathering has given media organizations an unprecedented role in shaping popular opinions. However, media freedom also entails a certain degree of responsibility.

The media exceeded 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. It encompasses several other rights including the right to be presumed innocent until proven guilty, the guilt is to be proved beyond reasonable doubt in criminal cases and the law is governed by senses and not by emotions. the right not to be compelled to be a witness against oneself, the right to a fair trial, the right to legal representation, the right to speedy trial, the right to be present during trial and examine witnesses, etc. is thereby affected.

Through media trial, we have started to create pressure on the lawyers even to not take up cases of accused, thus trying to force 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.

IX. CONCLUSION

Media is a blessing and curse for a democratic country like India. The Colonialism impressions are still existing in Indian society therefore every democratic government tends to be autocratic in its performance. The parliament is promulgating the laws without discussions on the dictates of its leader of the house. The democratic institutions like executives and autonomous bodies has tendency to appease their political bosses for short terms gains. In such situation the exposures by media is the only savour of democracy. However the tendency of media to lean in favour of government is curse for the democracies, especially like India where people have reposed huge faith on media reporting. The prime function of media is to provide information at a large with truthfulness and accuracy. But in the case of Trial by media, most of the stories are self-demonstrative

stories, half-baked sensations to media consumers to gain TRPs. As a result, it not only violates the rights of the individual but also creates a massive panic in the society.

To conclude we would say that media should cover report in such a way so that it does not hinder the proceeding of the court and also keep in mind that prejudice will not only affect the public opinion but also can hamper the fair trial of court.

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